

WILLIAM A. MUNDELL
CHAIRMAN

615



ORIGIN



0000116685

RECEIVED
JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

2002 MAY 14 P 3:30

ARIZONA CORPORATION COMMISSION

DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
FAX: (602) 544-7470

Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCUMENT CONTROL

MEMORANDUM

MAY 14 2002

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

DOCKETED BY *mae*

OPEN MEETING ITEM

5/23/02

FROM: Mark Sendrow *MS*
Director of Securities

DATE: May 8, 2002

RE: **Docket No. S-03449A-01-0000, 21st Century Satellite Communications, et al.:**
Proposed Order To Cease And Desist, Order Of Restitution and Order For
Administrative Penalties Re: Respondent Glenn A. Liberatore and Glenn A.
Liberatore Financial Services,

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties for Respondents GLENN A. LIBERATORE FINANCIAL SERVICES ("GALFS") and GLENN A. LIBERATORE ("LIBERATORE"). The Order requires GALFS and LIBERATORE cease and desist their activity, to pay \$28,480.84 in restitution to investors and to pay a penalty of \$5,000. The other three Respondents in this action have entered into a consent order or are subject to a default order, also scheduled for this Open Meeting.

LIBERATORE and his company, GALFS, are residents of Alpine, Utah. LIBERATORE and GALFS recruited an Arizona insurance agent, Respondent HOWARD BALDWIN ("BALDWIN"), to sell promissory notes from Respondent 21st CENTURY SATELLITE COMMUNICATIONS, INC. ("21st CENTURY") and viatical settlement contracts.

21st CENTURY is a Florida based company that allegedly installed satellite antenna equipment at gated communities, receiving monthly fees from subscribers in exchange for programming. 21st CENTURY began in business in 1997, raising over \$23,000,000 from the sale of promissory notes nationwide. \$262,000 of the notes were sold in Arizona. 21st CENTURY offered its promissory notes through marketing agents, such as LIBERATORE and GALFS, who recruited sales agents such as BALDWIN. The 21st CENTURY promissory notes stated that interest payable to the note holders was 13% per annum. The notes offered were generally for five year terms. RESPONDENTS sold 16 promissory notes to 14 Arizona investors for a total investment of \$262,000. The notes were sold from April 1998 through February 2000. LIBERATORE and GALFS received \$20,960 in commissions from the sale of the notes.

21st CENTURY made interest payments until October 2000, when it defaulted on its notes. No interest payments have been made since that time. No investor has received his or her principal back from 21st CENTURY.

On October 12, 2001, after the Division filed its Notice, the United States Securities and Exchange Commission sued 21st CENTURY and two of its officers for violation of the Federal securities laws for selling the promissory notes. 21st CENTURY and its two officers agreed to entry of judgment against them. 21st CENTURY then filed for bankruptcy. A plan of reorganization has been approved in the bankruptcy that anticipates that the note holders will receive a portion of their principal back.

LIBERATORE and GALFS also sold viatical settlement contracts to Arizona investors through insurance agents such as BALDWIN. LIBERATORE and GALFS sold viatical settlement contracts to 9 Arizona investors for a total principal investment of \$140,100. LIBERATORE and GALFS received a total of \$7,500.84 in commissions.

The attached Order finds that LIBERATORE and GALFS violated A.R.S. §§ 44-1841, 44-1842 and 44-1991. The note investors were told that there was little risk from the notes as the notes were secured by a UCC-1 that would be filed by 21st CENTURY. They were not informed that the promissory notes were not registered as securities in Arizona or exempt from registration, nor were they informed of the financial incentives that RESPONDENTS received for selling the promissory notes and were not provided full disclosure regarding the investment including risk, business and financial background of 21st CENTURY, prospectuses or financial statements. With respect to the viatical settlement contracts, the Order finds that LIBERATORE and GALFS failed to provide full disclosure that the medical reports on the viators were outdated, failed to provide adequate disclosure statements, prospectuses or financial statements of the viatical service providers including but not limited to past operations, balance sheets, statements of income, retained earnings, cash flows and uses of proceeds that would reflect the financial position of these entities and failed to disclose the fees and commissions payable to sales agents, medical advisors, or any other participants in the program.

The Order requires LIBERATORE and GALFS to cease and desist their activity, to pay restitution of \$28,460.84, the amount of their commissions, plus a penalty of \$5,000. The restitution will go to the purchasers of the promissory notes and viatical settlement contracts. LIBERATORE and GALFS agree that they will not apply for licensure as a securities dealer or salesman or investment adviser or investment adviser representative for five years. LIBERATORE and GALFS also agree that they will not exercise any control over any entity that offers or sells securities or provides investment advisory services, within or from Arizona, for five years.

The Division recommends approval of the Order.

Originator: Mark Dinell
Attorney General: Moira McCarthy

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
3 Chairman
4 JIM IRVIN
5 Commissioner
6 MARC SPITZER
7 Commissioner

8 In the matter of:)
9)
10 21st CENTURY SATELLITE)
11 COMMUNICATIONS, INC.)
12 14910 Winding Creek Court, Suite 101A)
13 Tampa, Florida 33613)
14)
15 HOWARD S. BALDWIN)
16 5926 E. Lewis Av.)
17 Scottsdale, AZ 85257)
18)
19 GLENN A. LIBERATORE FINANCIAL)
20 SERVICES)
21 165 W. Canyon Crest Rd., Suite 305)
22 Alpine, UT 84004)
23)
24 GLENN A. LIBERATORE)
25 165 W. Canyon Crest Rd., Suite 305)
26 Alpine, UT 84004,)
Respondents.)

DOCKET NO. S-03449A-01-0000

DECISION NO. _____

**ORDER TO CEASE AND DESIST,
ORDER OF RESTITUTION, ORDER
FOR ADMINISTRATIVE PENALTIES
AND CONSENT TO SAME
BY: RESPONDENT GLENN A.
LIBERATORE FINANCIAL
SERVICES and RESPONDENT
GLENN A. LIBERATORE**

17 RESPONDENT GLENN A. LIBERATORE FINANCIAL SERVICES and RESPONDENT
18 GLENN A. LIBERATORE ("RESPONDENTS") elect to permanently waive their right to a hearing
19 and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.*
20 ("Securities Act") with respect to this Order To Cease And Desist, Order Of Restitution, Order For
21 Administrative Penalties And Consent To Same ("Order"). RESPONDENTS admit the jurisdiction of
22 the Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact and
23 Conclusions of Law contained in this Order but agree that they shall not challenge the validity of the
24 Findings of Fact and Conclusions of Law in any present or future administrative proceeding before the

1 Commission or any other Arizona agency concerning the denial or issuance of any license or
2 registration required by the State to engage in the practice of any business or profession; and consent to
3 the entry of this Order by the Commission.

4 I.

5 **FINDINGS OF FACT**

- 6
- 7 1. GLENN A. LIBERATORE FINANCIAL SERVICES ("GALFS") is a company
8 located at 165 W. Canyon Crest Road, Suite 305, Alpine, Utah 84004.
- 9 2. GLENN A. LIBERATORE ("LIBERATORE") is a Utah resident whose current address
10 is 165 W. Canyon Crest Road, Suite 305, Alpine, Utah 84004. LIBERATORE is the owner of GALSF.
- 11 3. GALFS and LIBERATORE may collectively be referred to as "RESPONDENTS".

12

13 **The 21st CENTURY Promissory Notes**

14 4. Respondent 21st CENTURY SATELLITE COMMUNICATIONS, INC. ("21st
15 CENTURY is a Florida based company that allegedly installed satellite antenna equipment at gated
16 communities, receiving monthly fees from subscribers in exchange for programming. 21st CENTURY
17 began in business in 1997, raising over \$23,000,000 from the sale of promissory notes nationwide.
18 \$262,000 of the notes were sold in Arizona. 21st CENTURY offered its promissory notes through
19 marketing agents, such as GALFS and LIBERATORE, who recruited sales agents such as Respondent
20 HOWARD S. BALDWIN ("BALDWIN"). The 21st CENTURY promissory notes stated that interest
21 payable to the note holders was 13% per annum. The notes offered were generally for five years terms. In
22 addition, some investors received promises of an additional profit incentive. That additional profit
23 incentive provided that the investor would receive 25% of 21st CENTURY's profit, in proportion to the
24 amount the investor invested compared to the total capital cost of equipment. Despite such a promise, as
25 of this date no Arizona investor received any return from the profit incentive.

26

1 5. On or about September 17, 1997, RESPONDENTS entered into an agreement to market
2 promissory notes issued by 21st CENTURY. Under that agreement, RESPONDENTS were to
3 collectively receive up to 20% commissions. RESPONDENTS on or about February 18, 1998, entered
4 into an agreement with BALDWIN, an Arizona based insurance agent, for him to sell the promissory
5 notes to his clients. That agreement gave BALDWIN commissions of 12%, out of the 20% that
6 RESPONDENTS were to receive.

7 6. RESPONDENTS participated in the sale of 16 promissory notes to 14 Arizona investors
8 for a total investment of \$262,000. The notes were sold from April 1998 through February 2000.
9 RESPONDENTS received \$20,960 in commissions from the sales.

10 7. The investors were told that there was little risk from the notes as the notes were secured
11 by a UCC-1 that would be filed by 21st CENTURY. They were not informed that the promissory notes
12 were not registered as securities in Arizona or exempt from registration, nor were they informed of the
13 financial incentives that RESPONDENTS received for selling the promissory notes and were not
14 provided full disclosure regarding the investment including risk, business and financial background of
15 21st CENTURY, prospectuses or financial statements. LIBERATORE never spoke with any Arizona
16 investors.

17 8. 21st CENTURY made interest payments until October 2000, when it defaulted on its
18 notes. No interest payments have been made since that time. No investor has received his or her
19 principal back from 21st CENTURY. Despite the existence of the UCC paperwork, no security has
20 been foreclosed upon on behalf of any investor.

21 9. On October 12, 2001, the United States Securities and Exchange Commission sued 21st
22 CENTURY and two of its officers for violation of the Federal securities laws for selling the promissory
23 notes. 21st CENTURY and its two officers agreed to entry of judgment against them. 21st CENTURY
24 then filed for bankruptcy. A plan of reorganization has been approved in the bankruptcy that
25 anticipates that the note holders will receive a portion of their principal back. GALFS and
26 LIBERATORE have sued 21st CENTURY and its officers alleging that 21st CENTURY misled them.

The Viatical Policies

1
2 10. In 1997-99, RESPONDENTS provided investment contracts, in the form of viatical
3 settlement contracts, to two insurance agents in Arizona, to sell to their clients. One of those agents
4 was BALDWIN.

5 11. The agents sold the viatical settlement contracts to at least nine Arizona investors for a
6 total principal of \$140,100. RESPONDENTS participated in the sale and received a total of \$7,500.84 in
7 commissions from the sale of the viatical settlement contracts in Arizona.

8 12. In connection with the sales of the viaticals, RESPONDENTS and their agents failed to
9 inform the investors of certain material facts that may have influenced the investors' decision to invest in
10 the viaticals, including:

11 a) Not informing investors that they would need to pay the insurance policy premiums if
12 the viator lived longer than expected;

13 b) The fact that investors who made investments with IRA funds might be required to
14 make required withdrawals from the IRA even if the viator was still alive if the investor reached the age
15 of required distribution;

16 c) The fact that the investment is illiquid and there may be no public market available for
17 resale or other disposal of the security;

18 d) The fact that certain policies, such as group policies, may be subject to change, and
19 may not provide returns as promised;

20 e) The fact that the investment may not be suitable for persons who have a need for a
21 regular income from their investments.

22 13. RESPONDENTS and their agents failed to provide full disclosure that the medical reports
23 on the viators were outdated, failed to provide adequate disclosure statements, prospectuses or financial
24 statements of the viatical service providers including but not limited to past operations, balance sheets,
25 statements of income, retained earnings, cash flows and uses of proceeds that would reflect the financial
26

1 position of these entities and failed to disclose the fees and commissions payable to RESPONDENTS
2 and BALDWIN, medical advisors, or any other participants in the program.

3 II.

4 CONCLUSIONS OF LAW

5 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
6 Constitution and the Securities Act.

7 2. RESPONDENTS offered or sold securities within or from Arizona, within the meaning
8 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

9 3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that were
10 neither registered nor exempt from registration.

11 4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while
12 neither registered as dealers or salesmen nor exempt from registration.

13 5. RESPONDENTS violated A.R.S. § 44-1991 by offering or selling securities within or
14 from Arizona by making untrue statements or misleading omissions of material facts. In connection
15 with the 21st Century Promissory Note sales, RESPONDENTS' conduct includes, but is not limited to,
16 the following:

- 17 a) Failing to disclose the financial incentives they received for selling the promissory notes;
18 b) Failing to provide full disclosure regarding the risk of the investment, including the
19 potential to lose principal, the possibility that no assets existed to secure the UCC filings
20 and the riskiness of investing in a company with a limited track record;
21 c) Failing to provide investors with adequate disclosure statements, prospectuses or
22 financial statements including but not limited to past operations, balance sheets,
23 statements of income, retained earnings, cash flows and uses of proceeds that would
24 reflect the financial position of these entities.

25 In connection with the viatical settlement policies, RESPONDENTS' conduct includes, but is not limited
26 to, the following:

1 a) Failing to inform investors that the viatical settlement policies were not registered as
2 securities in Arizona and were not exempt from registration;

3 b) Failing to provide full disclosure regarding the investment including such as:

4 i. the fact that the investment is illiquid and there may be no public market
5 available for resale or other disposal of the security;

6 ii. the fact that certain policies, such as group policies, may be subject to
7 change, and may not provide returns as promised;

8 iii. the fact that the investment may not be suitable for persons who have a
9 need for a regular income from their investments;

10 iv. the fact that all involved parties, such as RESPONDENTS and
11 BALDWIN, and any medical advisors or other participants receive their
12 commissions and fees from the investment up front;

13 v. the fact that an investment made with IRA funds may require mandatory
14 withdrawals before the investment itself matures, thereby causing
15 potentially adverse tax issues for the investor.

16 c) Failing to provide adequate disclosure statements, prospectuses or financial statements of
17 the viatical service providers including but not limited to past operations, balance sheets, statements of
18 income, retained earnings, cash flows and uses of proceeds that would reflect the financial position of
19 these entities.

20 6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. §
21 44-2032.

22 7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
23 2032.

24 8. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. § 44-
25 2036.

26

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the RESPONDENTS' consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall, jointly and severally, pay restitution to investors shown on the records of the Commission in the amount of \$28,460.84. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert to the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall jointly and severally pay an administrative penalty in the amount of \$5000.00, payable to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall be made in full by cashier's check or money order on the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19 ..
20 ..
21 ..
22 ..
23 ..
24 ..
25 ..
26 ..

1 date of this Order. If RESPONDENTS do not comply with this order for administrative penalties, any
2 outstanding balance may be deemed in default and shall be immediately due and payable.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
5

6
7 CHAIRMAN

COMMISSIONER

COMMISSIONER

8
9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
10 Secretary of the Arizona Corporation Commission, have
11 hereunto set my hand and caused the official seal of the
12 Commission to be affixed at the Capitol, in the City of
13 Phoenix, this _____ day of _____, 2002.

14
15
16 _____
17 BRIAN C. McNEIL
18 Executive Secretary

19
20 _____
21 DISSENT

22 This document is available in alternative formats by contacting Shelly M. Hood, Executive Assistant to
23 the Executive Secretary, voice phone number 602-542-3931, E-mail shood@cc.state.az.us.

24 (md)
25
26

CONSENT TO ENTRY OF ORDER

1
2 1. RESPONDENTS GLENN A. LIBERATORE FINANCIAL SERVICES ("GALFS")
3 and RESPONDENT GLENN A. LIBERATORE ("LIBERATORE") (collectively
4 "RESPONDENTS") admit the jurisdiction of the Commission over the subject matter of this
5 proceeding. RESPONDENTS acknowledge that they have been fully advised of their right to a hearing
6 to present evidence and call witnesses and RESPONDENTS knowingly and voluntarily waive any and
7 all rights to a hearing before the Commission and all other rights otherwise available under Article 11
8 of the Securities Act and Title 14 of the Arizona Administrative Code. RESPONDENTS acknowledge
9 that this Order To Cease And Desist Order Of Restitution, Order For Administrative Penalties And
10 Consent To Same ("Order") constitutes a valid final order of the Commission.

11 2. RESPONDENTS knowingly and voluntarily waive any right they may have under
12 Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary
13 relief resulting from the entry of this Order.

14 3. RESPONDENTS acknowledge and agree that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. RESPONDENTS acknowledge that they have been represented by counsel in this
17 matter, they have reviewed this Order with their attorney and understand all terms it contains.

18 5. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of Law
19 contained in this Order. RESPONDENTS agree that they shall not challenge the validity of the
20 Findings of Fact and Conclusions of Law in any present or future administrative proceeding before the
21 Commission or any other Arizona agency concerning the denial or issuance of any license or
22 registration required by the State to engage in the practice of any business or profession.

23 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action
24 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
25 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
26 basis. However, nothing in this Order will in any way limit RESPONDENTS ability to conduct

1 themselves in any litigation in which the Commission is not a party. RESPONDENTS will undertake
2 steps necessary to assure that all of their agents and employees understand and comply with this
3 agreement.

4 7. While this Order settles this administrative matter between RESPONDENTS and the
5 Commission, RESPONDENTS understand that this Order does not preclude the Commission from
6 instituting other administrative proceedings based on violations that are not addressed by this Order.

7 8. RESPONDENTS understand that this Order does not preclude the Commission from
8 referring this matter to any governmental agency for administrative, civil, or criminal proceedings that
9 may be related to the matters addressed by this Order.

10 9. RESPONDENTS understand that this Order does not preclude any other agency or
11 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
12 proceedings that may be related to matters addressed by this Order.

13 10. RESPONDENTS agree that they will not apply to the state of Arizona for registration as
14 a securities dealer or salesman or for licensure as an investment adviser or investment adviser
15 representative for a period of five years from the date of this Order.

16 11. RESPONDENTS agree that they will not exercise any control over any entity that offers
17 or sells securities or provides investment advisory services, within or from Arizona for a period of five
18 years from the date of this Order.

19 12. RESPONDENTS agree that until restitution and penalties are paid in full,
20 RESPONDENTS will notify the Director of the Securities Division within 30 days of any change in
21 home address or any change in RESPONDENTS' ability to pay amounts due under this Order.

22 13. RESPONDENTS understand that default shall render them liable to the Commission for
23 its costs of collection and interest at the maximum legal rate.

24 14. LIBERATORE agrees that he will continue to cooperate with the Securities Division
25 including, but not limited to, providing complete and accurate testimony at any hearing in this matter
26

1 and cooperating with the state of Arizona in any related investigation or any other matters arising from
2 the activities described in this Order.

3 15. RESPONDENTS consent to the entry of this Order and agree to be fully bound by its
4 terms and conditions. If RESPONDENTS breach any material provision of this Order, the
5 Commission may vacate this Order and restore this case to its active docket.

6 16. LIBERATORE represents that he is authorized to execute this Consent on behalf of
7 GALFS.

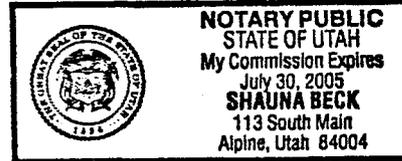
8
9 Glenn A. Liberatore
Glenn A. Liberatore

10 SUBSCRIBED AND SWORN TO BEFORE me this 28 day of March, 2002.

11
12 Shauna Beck
NOTARY PUBLIC

13 My Commission Expires:

14 7-30-05



16 GLENN A. LIBERATORE FINANCIAL SERVICES

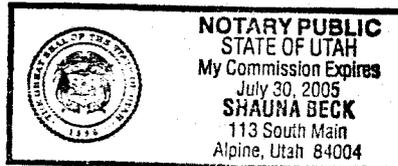
17
18 Glenn A. Liberatore
19 By Glenn A. Liberatore

20
21 SUBSCRIBED AND SWORN TO BEFORE me this 28 day of March, 2002.

22
23 Shauna Beck
NOTARY PUBLIC

24 My Commission Expires:

25 7-30-05



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26