

WILLIAM A. MUNDELL  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

MARC SPITZER  
COMMISSIONER



RECEIVED



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DIRECTOR

SECURITIES DIVISION  
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ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION  
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MEMORANDUM

MAY 09 2001

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

DOCKETED BY	<i>sel</i>
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FROM: Mark Sendrow *MS*  
Director of Securities

OPEN MEETING ITEM

DATE: May 8, 2001

RE: Keith B. ("Skip") Davis, et al., Docket No. S-03353A-01-0000

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same ("Order"), fully executed by Respondents Keith B. ("Skip") Davis and Keith B. Davis, Inc. ("Respondents"). Respondents have consented to entry of the proposed Order, finding Securities Act violations including the sale of unregistered and non-exempt securities, by unregistered dealers and salesmen, and fraud in the offer and sale of securities.

From in or around March 1996 through 1999, Respondents offered and sold unregistered securities in the form of promissory notes within and from Arizona. The investors' funds were to be used for interim financing for the development of an outlet mall in Dacono, Colorado.

On December 28, 2000, the Securities Division ("Division") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties and for Other Affirmative Action, alleging that Respondents engaged in the sale of unregistered securities, by unregistered dealers or salesmen, and securities fraud, in violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

Respondents have consented to an Order of restitution in the amount of \$1,063,000, plus interest from the date of the investments, and administrative penalties in the amount of \$10,000. In addition, Respondents have agreed not to apply for any registration as a securities salesman or dealer or licensure as an investment adviser or investment adviser representative in Arizona for at least five years and until all restitution and penalties are paid in accordance with the Order.

Memorandum to Commissioners

May 8, 2001

Page Two

MS: ptj

w/ attachments

Originator: Pamela T. Johnson

Assistant Attorney General Assigned: Moira McCarthy





1 investors, and agreed to pay commissions of 10% of all money raised, and an additional equity  
2 interest in the project.

3 6. Until around March 1999, all of the Notes offered and sold by RESPONDENTS were  
4 represented as being secured by deeds of trust filed in Weld County on the property described as  
5 follows (the "Dacono Project property):

6 A tract of land located in the South Half (S1/2) of Section Fourteen (14),  
7 Township One (1) North, Range Sixty-eight (68) West of the Sixth (6<sup>th</sup>)  
8 Principal Meridian, County of Weld, State of Colorado, being more  
9 particularly described as follows:

10 Considering the South line of the Southwest Quarter (SW/4) of said Section  
11 14 as bearing North 88°57'30" East from a 3 ¼" aluminum cap at the  
12 Southwest corner of said Section 14 to a 3 ¼" aluminum cap at the South  
13 Quarter corner of said Section 14 and with all bearings contained herein  
14 relative thereto:

15 Commencing at the Southwest corner of said Section 14; thence along said  
16 South line, North 88°57'30" East, 440.10 feet; thence, North 01°02'30"  
17 West, 30.00 feet to the POINT OF BEGINNING, said point being on the  
18 East line of Interstate 25;

19 thence along said East line the following 3 courses, North 79°41'00" West,  
20 203.10 feet; thence, North 08°14'30" West, 943.60 feet; thence, North  
21 00°17'30" East, 914.78 feet to a point on the South right-of-way line of the  
22 Union Pacific Railroad Company;

23 thence, along said South right-of-way line the following 6 courses, South  
24 78°47'56" East, 165.34 feet to a point on a curve concave to the North  
25 having a central angle of 11°44'53", a radius of 1886.98 feet and the chord  
26 of which bears South 84°40'23" East, 386.23 feet; thence, along the arc of  
said curve 386.91 feet; thence, North 89°27'11" East, 467.86 feet to a point  
on a curve concave to the Southwest having a central angle of 54°53'25", a  
radius of 1839.60 feet and the chord of which bears South 63°06'07" East,  
1695.74 feet; thence, along the arc of said curve 1762.37 feet; thence, South  
35°39'24" East, 674.84 feet to a point on a curve concave to the Northeast  
having a central angle of 11°56'40", a radius of 2902.76 feet and the chord  
of which bears South 41°37'44" East, 604.04 feet; thence along the arc of  
said curve 605.14 feet to a point on the North line of County Road 8;

thence along said North line, South 88°57'03" West, 788.41 feet; thence  
continuing along said North line, South 88°57'30" West, 2203.18 feet to the  
Point of Beginning.

7. DECKER and STEDMAN's plan was that STEDMAN would sign all of the Notes as  
"Maker" and be personally liable to investors; the borrowed funds would be transferred to

1 PROFUTURA, L.L.C. ("PROFUTURA") to loan to OXFORD DEVELOPMENT, L.L.C.  
2 ("OXFORD") to cover costs necessary to obtain construction financing for the project; OXFORD  
3 would pledge the Dacono Project property as security for the Notes and would pay STEDMAN's  
4 obligations to investors, including the interest on the Notes; and DECKER would determine what  
5 portions of the Dacono Project property would be used to secure the Notes.

6 8. From approximately March 1996, RESPONDENTS directly offered and sold Notes to  
7 approximately 17 private investors, raising approximately \$1,063,000 from private investors.

8 9. RESPONDENTS told investors that their funds were to be used to pay expenses as  
9 interim financing for a project described as the Dacono Factory Outlet Stores or the Dacono Factory  
10 Outlet Mall and Sports Arena, and that their Notes would be paid upon the due date or at the close of  
11 the construction financing.

12 10. On December 26, 1998, DAVIS first learned that the Promissory Notes were not being  
13 recorded and secured by a deed of trust. In fact, from the inception of the project to date, less than ten  
14 private investors are beneficiaries of any recorded interests in the Dacono Project property.

15 11. As part of the paperwork for the Notes, investors were required to sign form letters  
16 addressed to STEDMAN, which the promoters called "Big Boy Letters." The letters stated that the  
17 investors were accredited investors, defined as investors whose net worth was over \$1,000,000, or  
18 whose income was at least \$200,000 for the two years prior to investment.

19 12. The interest rates on most of the Notes sold after RESPONDENTS became involved  
20 in March 1996 varied from 15% to 20% per annum. Until around September 1997, the term of the  
21 Notes was one year. After the project failed to obtain construction financing, in or around September  
22 1997, the term of most of the Notes was reduced to 90 days, and existing Notes, including interest,  
23 were rolled over or renewed at the end of their terms.

24 13. DECKER offered RESPONDENTS 10% commissions on the rollover of their  
25 investors' Notes. By August 2000, some of the Notes had been rolled over eighteen times.

26

1           14.     In December 1998, one investor protested that the deed of trust that was supposed to  
2 secure his Note was never recorded. Within approximately three months, in or around April 1999,  
3 RESPONDENTS started to offer and sell "unsecured" Notes to new private investors.

4           15.     In connection with the offer or sale of securities within or from Arizona,  
5 RESPONDENTS directly or indirectly made untrue statements of material fact or omitted to state  
6 material facts which were necessary in order to make the statements made not misleading in light of  
7 the circumstances under which they were made. RESPONDENTS' conduct includes, but is not  
8 limited to, the following:

- 9           a) Representing that the investment was a short-term loan because a construction loan for  
10 the Dacono Project was in place and investors would be paid in full at the close of that  
11 loan, when in fact there were a series of purported loan "commitments" that never  
12 materialized and the principals never succeeded in negotiating construction financing  
13 for the project;
- 14           b) Representing until at least April 1999 that the Notes, and any extensions, renewals or  
15 rollovers of the Notes, were secured by a recorded interest in a deed of trust on a  
16 portion of the Dacono Project property located in Weld County, Colorado and owned  
17 by OXFORD; and representing that the total of all loans secured by Lot 6 would not  
18 exceed one million dollars. In fact only approximately eight of the original investors  
19 in 1996 and early 1997 were identified as beneficiaries on recorded deeds of trust, the  
20 total of all loans represented as secured by Lot 6 far exceeded one million dollars, and  
21 the property that was supposed to be pledged to private investors was utilized instead  
22 as security to obtain financing from institutional "bridge" lenders;
- 23           c) Failing to disclose that substantial investor funds were used for failed funding  
24 attempts, attempts to obtain bonding, tax benefits for the future owners of the project,  
25 interest payments on prior investors' Notes; redeeming prior investors' defaulted  
26

1 Notes, profits to institutional bridge lenders, DECKER's living expenses, and  
 2 DECKER's and STEDMAN's travel expenses; and  
 3 d) Failing to disclose STEDMAN's inability to repay the Notes, if construction financing  
 4 was not secured.

5 **II.**

6 **CONCLUSIONS OF LAW**

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

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

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

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

15 5. RESPONDENTS violated A.R.S. § 44-1991 by offering or selling securities within or  
 16 from Arizona by making untrue statements or misleading omissions of material facts.

17 6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. §  
 18 44-2032.

19 7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-  
 20 2032.

21 8. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. § 44-  
 22 2036.

23 ...  
 24 ...  
 25 ...  
 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 \$1,063,000, plus interest at the rate of 10% per annum from the date of each investment 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. Any funds that the Attorney General is unable to disburse shall revert to the state of Arizona.

IT IS FURTHER ORDERED that, until full restitution is made to all Note investors identified on the records of the Division, RESPONDENTS shall subordinate all rights and interests in the Dacono Project property, described in paragraph 6 above, and any contractual rights and interests to income or payment from the development and/or sale of the Dacono Project Property or the Dacono Project, including commissions from the sale of the Notes.

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 \$10,000. Payment shall be

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1 made in full by cashier's check or money order on the date of this Order, payable to the "State of  
2 Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date  
3 of this Order until paid in full.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION  
6  
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8

9 CHAIRMAN

COMMISSIONER

COMMISSIONER

10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
11 Executive Secretary of the Arizona Corporation  
12 Commission, have hereunto set my hand and caused the  
13 official seal of the Commission to be affixed at the Capitol,  
14 in the City of Phoenix, this \_\_\_\_\_ day of  
15 \_\_\_\_\_, 2001.

16 \_\_\_\_\_  
17 BRIAN C. McNEIL  
18 Executive Secretary

18 \_\_\_\_\_  
19 DISSENT

19 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,  
20 voice phone number 602-542-3931, E-mail [shood@cc.state.az.us](mailto:shood@cc.state.az.us).

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**CONSENT TO ENTRY OF ORDER**

1  
2 1. RESPONDENT KEITH B. DAVIS ("DAVIS") admits the jurisdiction of the  
3 Commission over the subject matter of this proceeding. DAVIS acknowledges that he has been  
4 fully advised of his right to a hearing to present evidence and call witnesses and DAVIS knowingly  
5 and voluntarily waives any and all rights to a hearing before the Commission and all other rights  
6 otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative  
7 Code. DAVIS acknowledges that the Order To Cease And Desist, Order for Administrative  
8 Penalties and Consent to Same ("Order") constitutes a valid final order of the Commission.

9 2. DAVIS knowingly and voluntarily waives any right he may have under Article 12 of the  
10 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting  
11 from the entry of the Order.

12 3. DAVIS acknowledges and agrees that the Order is entered into freely and voluntarily and  
13 that no promise was made or coercion used to induce such entry.

14 4. DAVIS acknowledges that he has chosen not to be represented by counsel in this matter,  
15 he has reviewed the Order and understands all terms it contains.

16 5. DAVIS admits, only for purposes of this proceeding and any other administrative  
17 proceeding before the Commission or any other agency of the state of Arizona, the Findings of Fact  
18 and Conclusions of Law contained in the Order.

19 6. By consenting to the entry of the Order, DAVIS agrees not to take any action or to make,  
20 or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or  
21 Conclusion of Law in the Order or creating the impression that the Order is without factual basis.  
22 DAVIS will undertake steps necessary to assure that all of his agents and employees understand and  
23 comply with this agreement. Nothing in this provision affects DAVIS' testimonial obligations or  
24 right to take legal positions in litigation in which an administrative agency of the State of Arizona is  
25 not a party.

26

1           7. DAVIS agrees to take all steps necessary to subordinate all of his rights and interests,  
2 both currently existing or existing in the future, in the Dacono Project property described in  
3 paragraph 6 of the Order, to the investors identified on the records of the Division, until those  
4 investors have received full restitution as mandated by the Commission in the Order. DAVIS  
5 further agrees to take all steps necessary to subordinate all of his contractual rights and interests,  
6 both currently existing or existing in the future, related to the development project known as the  
7 Dacono Factory Stores and located near Dacono, Weld County, Colorado, including commissions  
8 from the sale of the Notes, to the investors identified on the records of the Division.

9           8. While the Order settles this administrative matter between DAVIS and the Commission,  
10 DAVIS understands that the Order does not preclude the Commission from instituting other  
11 administrative proceedings based on violations that are not addressed by the Order.

12           9. DAVIS understands that the Order does not preclude the Commission from referring this  
13 matter to any governmental agency for administrative, civil, or criminal proceedings that may be  
14 related to the matters addressed by the Order.

15           10. DAVIS understands that the Order does not preclude any other agency or officer of the  
16 state of Arizona or its subdivisions from instituting administrative, civil or criminal proceedings that  
17 may be related to matters addressed by the Order.

18           11. DAVIS agrees that he will not apply to the state of Arizona for registration as a securities  
19 dealer or salesman or for licensure as an investment adviser or investment adviser representative for  
20 five years from the date of the Order and until such time as all restitution and penalties under the  
21 Order are paid in full.

22           12. DAVIS agrees that he will not exercise any control over any entity that offers or sells  
23 securities or provides investment advisory services, within or from Arizona.

24           13. DAVIS agrees that until restitution and penalties are paid in full, RESPONDENT will  
25 notify the Director of the Securities Division within 30 days of any change in home address or any  
26 change in DAVIS's ability to pay amounts due under the Order.

1 14. DAVIS understands that default shall render him liable to the Commission for its costs of  
2 collection and interest at the maximum legal rate.

3 15. DAVIS agrees that he will continue to cooperate with the Securities Division including,  
4 but not limited to, providing complete and accurate testimony at any hearing in this matter and  
5 cooperating with the state of Arizona in any related investigation or any other matters arising from  
6 the activities described in the Order.

7 16. DAVIS consents to the entry of the Order and agrees to be fully bound by its terms and  
8 conditions. If DAVIS breaches any provision of the Order, the Commission may vacate the Order  
9 and restore this case to its active docket.

10 17. This agreement and Order shall be binding upon DAVIS's agents, heirs, employees,  
11 assigns, representatives, beneficiaries or other successors in interest of any kind.

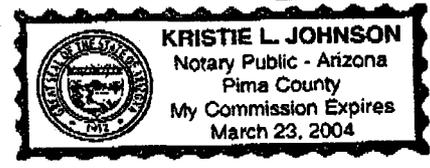
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*Keith B. Davis*  
\_\_\_\_\_  
KEITH B. DAVIS

SUBSCRIBED AND SWORN TO BEFORE me this 7 day of May, 2001.

*Kristie L. Johnson*  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
March 23, 2004



**CONSENT TO ENTRY OF ORDER**

1  
2 1. RESPONDENT KEITH B. DAVIS, INC. ("DAVIS, INC."), an Arizona corporation  
3 ("CNT") admits the jurisdiction of the Commission over the subject matter of this proceeding.  
4 DAVIS, INC. acknowledges that it has been fully advised of its right to a hearing to present  
5 evidence and call witnesses and DAVIS, INC. knowingly and voluntarily waives any and all rights  
6 to a hearing before the Commission and all other rights otherwise available under Article 11 of the  
7 Securities Act and Title 14 of the Arizona Administrative Code. DAVIS, INC. acknowledges that  
8 this Order To Cease And Desist, Order for Administrative Penalties and Consent to Same ("Order")  
9 constitutes a valid final order of the Commission.

10 2. DAVIS, INC. knowingly and voluntarily waives any right it may have under Article 12  
11 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief  
12 resulting from the entry of this Order.

13 3. DAVIS, INC. acknowledges and agrees that this Order is entered into freely and  
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. DAVIS, INC. acknowledges that it has chosen not to be represented by counsel in this  
16 matter, it has reviewed this Order and understands all terms it contains.

17 5. DAVIS, INC. admits, only for purposes of this proceeding and any other administrative  
18 proceeding before the Commission or any other agency of the state of Arizona, the Findings of Fact  
19 and Conclusions of Law contained in this Order.

20 6. By consenting to the entry of this Order, DAVIS, INC. agrees not to take any action or to  
21 make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact  
22 or Conclusion of Law in this Order or creating the impression that this Order is without factual  
23 basis. DAVIS, INC. will undertake steps necessary to assure that all of its agents and employees, if  
24 any, understand and comply with this agreement. Nothing in this provision affects DAVIS, INC.'s  
25 testimonial obligations or right to take legal positions in litigation in which an administrative agency  
26 of the State of Arizona is not a party.

1           7. DAVIS, INC. agrees to take all steps necessary to subordinate all of his rights and  
2 interests, both currently existing or existing in the future, in the Dacono Project property, described  
3 in paragraph 6 of the Order, to the investors identified on the records of the Division, until those  
4 investors have received full restitution as mandated by the commission in the Order. DAVIS, INC.  
5 further agrees to take all steps necessary to subordinate all of his contractual rights and interests,  
6 both currently existing or existing in the future, related to the development project known as the  
7 Dacono Factory Stores and located near Dacono, Weld County, Colorado, including commissions  
8 from the sale of the Notes, to the investors identified on the records of the Division.

9           8. While this Order settles this administrative matter between DAVIS, INC. and the  
10 Commission, DAVIS, INC. understands that this Order does not preclude the Commission from  
11 instituting other administrative proceedings based on violations that are not addressed by this Order.

12           9. DAVIS, INC. understands that this Order does not preclude the Commission from  
13 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
14 that may be related to the matters addressed by this Order.

15           10. DAVIS, INC. understands that this Order does not preclude any other agency or officer  
16 of the state of Arizona or its subdivisions from instituting administrative, civil or criminal  
17 proceedings that may be related to matters addressed by this Order.

18           11. DAVIS, INC. agrees that it will not apply to the state of Arizona for registration as a  
19 securities dealer or salesman or for licensure as an investment adviser or investment adviser  
20 representative for five years from the date of the Order and until such time as all restitution and  
21 penalties under this Order are paid in full until such time as all restitution and penalties under this  
22 Order are paid in full.

23           12. DAVIS, INC. agrees that it will not exercise any control over any entity that offers or  
24 sells securities or provides investment advisory services, within or from Arizona.

25           13. DAVIS, INC. agrees that until restitution and penalties are paid in full, DAVIS, INC.  
26 will notify the Director of the Securities Division within 30 days of any change in home address or

1 any change in DAVIS, INC.'s ability to pay amounts due under this Order.

2 14. DAVIS, INC. understands that default shall render them liable to the Commission for its  
3 costs of collection and interest at the maximum legal rate.

4 15. DAVIS, INC. agrees that it will continue to cooperate with the Securities Division  
5 including, but not limited to, providing complete and accurate testimony at any hearing in this  
6 matter and cooperating with the state of Arizona in any related investigation or any other matters  
7 arising from the activities described in this Order.

8 16. DAVIS, INC. consents to the entry of this Order and agrees to be fully bound by its  
9 terms and conditions. If DAVIS, INC. breaches any provision of this Order, the Commission may  
10 vacate this Order and restore this case to its active docket.

11 17. This agreement and Order shall be binding upon DAVIS, INC.'s officers, directors,  
12 agents, employees, assigns, representatives, beneficiaries or other successors in interest of any kind.

13 18. KEITH B. DAVIS represents that he is President of DAVIS, INC. and has been  
14 authorized by DAVIS, INC. to enter into this Order for and on behalf of it.

15  
16  
17 KEITH B. DAVIS, INC.

18 *Keith B. Davis*  
19 By: Keith B. Davis, President

20 SUBSCRIBED AND SWORN TO BEFORE me this 7 day of May, 2001.

21  
22 *[Signature]*  
23 NOTARY PUBLIC

24 My Commission Expires:

March 23, 2004

