

1 13. In or around November 2007, Client A and TOTH discussed consolidating and/or
2 reallocating Client A's various investment and retirement accounts. TOTH suggested centralizing
3 Client A's various accounts into a self-directed IRA and a 403(b) money fund.

4 14. A self-directed IRA and a 403(b) money fund were set up for Client A by TOTH.

5 15. On or around March 2008, TOTH contacted Client A by telephone to solicit from
6 Client A a short-term loan in the amount of \$70,000.

7 16. TOTH represented to Client A that the \$70,000 would be used to provide a short
8 term loan to a company unrelated to TOTH. The terms of the loan included repayment of principal
9 and payment of interest at a high rate.

10 17. TOTH represented to Client A that there would be no tax owed on the \$70,000 that
11 Client A would withdraw from the 403(b) money fund account to fund the loan.

12 18. TOTH represented to Client A that the loan to the company unrelated to TOTH
13 would have very little to no risk.

14 19. TOTH filled out the paperwork necessary to facilitate the \$70,000 distribution from
15 the 403(b) money fund and sent an unsigned copy to Client A. Client A signed the distribution
16 paperwork and a distribution request was submitted to the company where the 403(b) money fund
17 account was held.

18 20. On or about March 25, 2008, a distribution was requested from the 403(b) account
19 in the amount of \$70,000. Client A's shares of money market funds, symbol FMFXX, were
20 liquidated to meet the distribution request. A total of \$17,500 in federal and state taxes were
21 withheld and a net amount of \$52,500 was disbursed to Client A's bank account.

22 21. On or before March 28, 2008, TOTH directed Client A to wire the net amount of
23 \$52,500 to a bank account designated by TOTH.

24 22. On or around March 28, 2008, the amount of \$52,500 was transferred into TOTH's
25 personal bank account. TOTH is a signatory on the personal bank account.

26

1 23. Client A believed that, after TOTH received the wire transfer, TOTH had transferred
2 the monies to the company to whom TOTH had indicated the loan would be made.

3 24. The \$52,500 was not distributed to the company.

4 25. Instead, the monies remained in TOTH's personal bank account and were used by
5 TOTH for personal expenses, including, but not limited to, medical and real estate expenses.

6 26. Client A did not authorize TOTH to use the funds for personal expenses.

7 27. Client A is not a related family member of TOTH.

8 28. On July 14, 2008, TOTH ended his employment with CapWest and became a
9 securities salesman associated with Workman. Client A continued his investment relationship with
10 TOTH.

11 29. On or about August 17, 2009, Client A contacted a supervisor of TOTH at Workman
12 to report the \$70,000 amount that was outstanding to Client A.

13 30. As a result of Client A's contact, an internal investigation was initiated by
14 Workman.

15 31. When asked by a Workman supervisor for details of the \$70,000 transaction, TOTH
16 stated that Client A had agreed to provide a personal loan to TOTH. TOTH then presented a
17 promissory note that was signed by TOTH only.

18 32. Workman did not provide prior approval to TOTH to borrow the money.

19 33. An internal investigation conducted by Workman concluded that, "through an
20 investigation the firm reached the opinion that the representative used client funds for personal
21 reasons without the client's authority."

22 34. On September 4, 2009, Workman terminated TOTH's employment.

23 35. To date, Client A has not received a return of his \$70,000.

24 **B. CLIENT B**

25 36. On or around May 23, 2008, TOTH contacted an Arizona resident ("Client B") by
26 telephone to offer brokerage services. Client B did not know TOTH prior to the phone call

1 solicitation and had not provided TOTH with his contact information. As a result of the unsolicited
2 phone call, Client B agreed to meet with TOTH.

3 37. On or about May 23, 2008, TOTH discussed with Client B certain preferred stocks.

4 38. The preferred stocks were issued by Shale Royalties 12, Inc. and Shale Royalties 15,
5 Inc. (collectively "Shale Royalties").

6 39. On May 23, 2008, TOTH sold Client B \$100,000 of Shale Royalties 12, Inc.
7 preferred stock. TOTH received a commission for this transaction.

8 40. TOTH completed the subscription agreement and questionnaire documentation
9 required in relation to the investment by Client B in Shale Royalties.

10 41. Prior to Client B's investment, TOTH had assured Client B that the investment was
11 low risk.

12 42. After making his initial investment, Client B received, for the first time, a copy of
13 the offering documents related to Shale Royalties. In reviewing the documents, Client B noted the
14 numerous risk disclosures included in the offering materials. The offering documents set forth
15 various risks associated with the Shale Royalties investment. These risks were contrary to what
16 Client B had been told by TOTH regarding risks related to Shale Royalties.

17 43. In response to Client B's inquiries directed to TOTH related to the risk disclosures
18 contained in the offering materials, TOTH stated to Client B that investments in Shale Royalties
19 were "as safe as the Rock of Gibraltar" and that they were paying eighteen percent (18%) annual
20 interest.

21 44. At the time of Client B's initial investment, TOTH and Client B discussed that,
22 depending upon the performance of the \$100,000 investment, Client B would consider investing
23 the additional \$150,000 at a later point in time; however, Client B did not enter into a binding
24 contract that required him to invest the remaining \$150,000 in the Shale Royalties or other
25 securities recommended by TOTH.

26

1 b) Engaged in dishonest or unethical practices in the securities industry, within the
2 meaning of A.R.S. § 44-1962(A)(10), which includes, but is not limited to:

3 (i) Making unauthorized use of customer funds or converting customer funds for
4 personal benefit within the meaning of R14-4-130(A)(16);

5 (ii) Within the meaning of R14-4-130(A)(14), misrepresented to Client A that the
6 \$70,000 withdrawn from the 403(b) account would be used to provide a
7 short-term loan to a company unrelated to TOTH; however, the 403(b)
8 distribution monies were not provided to a company unrelated to TOTH; and

9 (iii) Within the meaning of R14-4-130(A)(14), misrepresented to Client B that,
10 since Client B had agreed to invest his entire \$250,000 during his initial
11 conversations with TOTH, Client B was bound to honor that agreement and
12 that Shale Royalties could and/or would seek to enforce, through legal
13 action, Client B's "agreement" to invest his additional \$150,000 in Shale
14 Royalties.

15 50. Respondent's conduct is grounds to assess restitution, penalties, and/or take appropriate
16 affirmative action pursuant to A.R.S. § 44-1962. Specifically, Respondent has engaged in dishonest or
17 unethical practices in the securities industry, within the meaning of A.R.S. § 44-1962(A)(10), which
18 includes, but is not limited to:

19 a) Making unauthorized use of customer funds or converting customer funds for
20 personal benefit within the meaning of R14-4-130(A)(16);

21 b) Within the meaning of R14-4-130(A)(14), misrepresented to Client A that the
22 \$70,000 withdrawn from the 403(b) account would be used to provide a short-term loan to a
23 company unrelated to TOTH; however, the 403(b) distribution monies were not provided to a
24 company unrelated to TOTH; and

25 c) Within the meaning of R14-4-130(A)(14), misrepresented to Client B that,
26 since Client B had agreed to invest his entire \$250,000 during his initial conversations with TOTH,

1 Client B was bound to honor that agreement and that Shale Royalties could and/or would seek to
2 enforce, through legal action, Client B's "agreement" to invest his additional \$150,000 in Shale
3 Royalties.

4 **V.**

5 **VIOLATION OF A.R.S. § 44-1991**

6 **(Fraud in Connection with the Offer or Sale of Securities)**

7 51. In connection with the offer or sale of securities within or from Arizona, Respondent
8 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements
9 of material fact or omitted to state material facts that were necessary in order to make the statements
10 made not misleading in light of the circumstances under which they were made; or (iii) engaged in
11 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
12 offerees and investors. Respondent's conduct includes, but is not limited to, the following:

13 a) Misrepresenting to Client A that the \$70,000 withdrawn from the 403(b)
14 account would be used to provide a short-term loan to a company unrelated to TOTH; however, the
15 403(b) distribution monies were not provided to a company unrelated to TOTH and/or were used
16 by TOTH for personal expenses;

17 b) Misrepresenting to Client A that the \$70,000 withdrawn from the 403(b)
18 account would not be taxed; however, \$17,500 in federal and state taxes were withheld; and

19 c) Misrepresenting to Client B that the investments in Shale Royalties involved
20 very low risk and/or were "as safe as the Rock of Gibraltar."

21 52. This conduct violates A.R.S. § 44-1991.

22 **VI.**

23 **REQUESTED RELIEF**

24 The Division requests that the Commission grant the following relief:

25 1. Order Respondent to permanently cease and desist from violating the Securities Act,
26 pursuant to A.R.S. §§ 44-2032 and 44-1962;

1 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
2 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
3 parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission
4 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
5 Opportunity for Hearing.

6 Persons with a disability may request a reasonable accommodation such as a sign language
7 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
8 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
9 Requests should be made as early as possible to allow time to arrange the accommodation.

10 **VIII.**

11 **ANSWER REQUIREMENT**

12 Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the
13 requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to
14 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007,
15 within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained
16 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
17 <http://www.azcc.gov/divisions/hearings/docket.asp>.

18 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
19 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
20 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
21 addressed to Phong (Paul) Huynh.

22 The Answer shall contain an admission or denial of each allegation in this Notice and the
23 original signature of the answering respondent or respondent's attorney. A statement of a lack of
24 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
25 denied shall be considered admitted.

