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OPEN MEETING ITEM



*On file*  
JACK ROSE  
EXECUTIVE SECRETARY

COMMISSIONER  
CARL J. KUNASEK  
COMMISSIONER

ARIZONA CORPORATION COMMISSION

RECEIVED  
AZ CORP COMMISSION

JUL 21 3 24 PM '98

DEPT. OF...

DATE: JULY 21, 1998

DOCKET NOS: S-03047A-97-0000

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Barbara M. Behun. The recommendation has been filed in the form of an Opinion and Order on:

DOUGLAS DEAN SACKETT  
(CEASE AND DESIST)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Hearing Officer by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 30, 1998

The enclosed is NOT an order of the Commission, but a recommendation of the Hearing Officer to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

AUGUST 4, 1998 and AUGUST 5, 1998

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

*Jack Rose*  
JACK ROSE  
EXECUTIVE SECRETARY

Arizona Corporation Commission  
DOCKETED

JUL 21 1998

DOCKETED BY *[Signature]*



1 was consolidated with the hearing against Respondent Weiner dba RWA scheduled for December 18.  
2 1997.

3 The matter was continued numerous times, with each party having requested continuances. The  
4 record was opened for a hearing scheduled on May 26, 1998, at which Respondent Weiner dba RWA  
5 received an additional continuance to June 5, 1998. Respondent Sackett did not appear at the hearing.  
6 At the scheduled time for hearing on June 5, 1998, Respondent Weiner dba RWA and the Division  
7 informed the Commission that they had entered into a settlement which would be submitted for  
8 Commission approval at the next scheduled Open Meeting. Respondent Sackett did not appear on June  
9 5, 1998.

10 The hearing was rescheduled for June 29, 1998, at which the Division intended to submit  
11 evidence in support of the Notice against any Respondent who was not subject to a Consent Order by that  
12 date. In Decision No. 60956 (June 19, 1998), the Commission entered a Consent Order regarding  
13 Respondent Weiner dba RWA. Respondent Sackett failed to appear at the hearing scheduled for June  
14 29, 1998, at which the Division appeared through counsel and presented evidence. The matter was taken  
15 under advisement pending submission of an Opinion and Order to the Commission regarding Respondent  
16 Sackett.

17 \* \* \* \* \*

18 Having considered the entire record herein and being fully advised in the premises, the  
19 Commission finds, concludes, and orders that:

20 **FINDINGS OF FACT**

- 21 1. Respondent Sackett, whose last known address is 2555 NW Highland Unit J, Grants Pass,  
22 Oregon 97256, was at all relevant times a resident of Arizona and an insurance salesman.
- 23 2. Respondent Sackett is not presently, nor has he ever been, registered in Arizona as a  
24 securities dealer or a securities salesman.
- 25 3. Respondent Weiner dba RWA is the subject of Decision No. 60956 (June 19, 1998), an  
26 Order denying an application for a securities salesman registration and for other relief, and consent to the  
27 same.
- 28 4. Between approximately October 1991 and February 1993, Respondent Sackett, acting as

1 a partner with Respondent Weiner through RWA, offered and sold securities within or from Arizona in  
2 the form of fractional interests in oil and gas mineral rights from wells operated by Big Horn Oil  
3 Company ("Big Horn"), located in Oklahoma.

4 5. Respondent Sackett and Respondent Weiner each had his own clientele, but shared  
5 overhead expenses and the bulk purchase of interests from Big Horn.

6 6. Respondent Sackett, holding himself out as a financial planner, directly or indirectly,  
7 offered and sold interests in the oil and gas wells mainly to his insurance clients, which were primarily  
8 teachers or retired teachers.

9 7. The value of the fractional interest varied with the well in which the investor invested

10 8. Big Horn was to locate, manage and operate the wells, with no involvement from  
11 investors.

12 9. The oil and gas interests were securities, in that investors invested money in a common  
13 enterprise with the expectation of profits to be derived substantially from the efforts of others.

14 10. Respondent Sackett, in partnership with Respondent Weiner, purchased the oil and gas  
15 interests from Big Horn at a volume discount price based on a sliding scale, after obtaining commitments  
16 from investors for the purchase of those interests.

17 11. In addition to a fifteen percent fee to be paid out of operating revenues, Respondent  
18 Sackett and Respondent Weiner marked up the price of fractional interests in several wells to include  
19 profit and expenses for Respondents, resold the interests to investors, and split the profit between them.  
20 For example, Respondent Sackett and Respondent Weiner purchased Top Gun No. 1 interests from Big  
21 Horn for \$3,750 per 1/64th unit and resold the units to investors for \$5,750 per 1/64th unit.

22 12. Respondent Sackett and Respondent Weiner prepared offering documents summarizing  
23 certain aspects of the investment programs, describing an opportunity for monthly distributions of income  
24 and profits, and showing a track record of successful wells. The offering documents were distributed to  
25 some investors.

26 13. According to one investor, Marsha Anne McManaway, Respondent Sackett told her that  
27 even if the well she invested in was a failure, one-half of her investment would be returned.

28 14. Ms. McManaway stated that Respondent Sackett informed her that if the well she invested

1 in hit like the previous one had, she would have her investment returned and be making a profit within  
2 six months.

3 15. Ms. Winifred Thacker Long, another investor, stated that Respondent Sackett informed  
4 her that the oil and gas interests were definitely a safe investment, a very good and sound investment.  
5 Respondent Sackett estimated a twenty percent or more annual return on her investment.

6 16. In connection with the offer or sale of securities described above, Respondent Sackett  
7 directly or indirectly made untrue statements of material fact and omitted to state material facts which  
8 were necessary in order to make the statements made not misleading in light of the circumstances under  
9 which they were made, and engaged in transactions, practices or courses of business which operated or  
10 would operate as a fraud or deceit upon offerees and investors, in violation of A.R.S. § 44-1991,  
11 including but not limited to the following:

12 (a) misrepresenting that Respondent Weiner dba RWA had prior experience in  
13 organizing and managing oil and gas investment projects in which investors had profited,  
and/or failing to disclose that Respondent Weiner dba RWA had no such prior experience:

14 (b) misrepresenting that the compensation of Respondents Weiner and Sackett was  
15 to be a fee equal to fifteen percent of the net operating revenue or disposition from the oil  
16 and gas project, and/or failing to disclose that Respondents Weiner and Sackett, through  
RWA, charged investors an undisclosed profit through a mark-up of the price of the units  
over the amount charged to Respondent Weiner dba RWA by Big Horn:

17 (c) failing to disclose Respondents' past experience as investors in Big Horn oil and  
18 gas projects and the operational problems encountered;

19 (d) failing to provide any information regarding the financial condition of  
Respondents and or Big Horn;

20 (e) failing to disclose the prior business experience of Respondents;

21 (f) failing to disclose the specific purposes for which investor funds were to be used;

22 (g) failing to disclose that Respondent Weiner dba RWA was not registered with the  
23 Division as a securities dealer, that Respondent Sackett was not registered with the  
24 Division as a securities salesman, and that Respondent Weiner was selling these securities  
without the authorization of his registered dealer.

25 17. The Division recommended that pursuant to A.R.S. § 44-2036, a fine of \$25,000 should  
26 be imposed, which the Division claimed was based upon the cost of investigation of this matter.

27 18. Records indicated that approximately 54 investors invested a total of \$527,700 through  
28 Respondents Sackett and Weiner from October 1991 to February 1993.

**CONCLUSIONS OF LAW**

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1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801. *et seq.*

2. The investments offered by Respondent were securities within the meaning of A.R.S. § 44-1801.23.

3. The securities were not registered under A.R.S. §§ 44-1871 through 44-1875, 44-1891 through 44-1900 or 44-1902; were not exempt securities under A.R.S. § 44-1843 or § 44-1843.01; were not offered or sold in exempt transactions under A.R.S. § 44-1844 and were not securities exempt under any rule or Order promulgated by the Commission.

4. The actions and conduct of Respondent constitute the offer and/or sale of securities within the meaning of A.R.S. §§ 44-1801.13 and 44-1801.19.

5. Respondent offered and sold unregistered securities within or from Arizona in violation of A.R.S. § 44-1841.

6. Respondent offered and/or sold securities within or from Arizona without being registered as a dealer or salesman in violation of A.R.S. § 44-1842.

7. In connection with the offer and sale of the above securities, Respondent violated the anti-fraud provisions of A.R.S. § 44-1991.

8. Respondent should be restrained pursuant to A.R.S. § 44-2032 from any future violations of A.R.S. §§ 44-1841, 44-1842, and 44-1991, and all other provisions of the Act.

9. Respondent should be ordered to pay restitution in the manner set forth below pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308.

10. Respondent should be assessed an administrative penalty pursuant to A.R.S. § 44-2036 for his violations of the Act.

**ORDER**

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. §§ 44-2032, 44-1972, and A.A.C. R14-4-307, Respondent Douglas Dean Sackett, his agents, servants, employees, successors, assigns, and those persons in active concert or participation with them, shall cease and desist from the following and any other violations of the Arizona Securities Act:

1           1.     Offering to sell or selling securities within or from the State of Arizona, unless the  
2 securities are registered with the Commission pursuant to Articles VI or VII of the Act, an exemption  
3 under the Act is applicable, or a notice filing has been made under A.R.S. § 44-3321;

4           2.     Offering to sell or selling securities within or from the State of Arizona unless prior  
5 registration as a dealer or salesman is obtained under Article IX of the Act, or an exemption from  
6 registration is applicable;

7           3.     Offering to sell or selling securities within or from the State of Arizona through material  
8 misrepresentations or omissions, and/or through courses of business that would operate as a fraud or  
9 deceit, in violation of A.R.S. § 44-1991.

10           IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
11 A.R.S. § 44-2032, Respondent Douglas Dean Sackett shall, jointly and severally with any other  
12 Respondent who may be ordered to pay restitution by separate Decision of the Commission, make  
13 restitution in the amount of \$527,700 to investors, as set forth in the records obtained by the Securities  
14 Division, pursuant to A.A.C. R14-4-308, subject to any set off for repayments or income received upon  
15 the sale of the security made prior to the effective date of this Decision, as verified by the Director of the  
16 Securities Division, pursuant to A.A.C. R14-4-308.C; payments are to be made in full within ninety days  
17 from the effective date of this Decision.

18           IT IS FURTHER ORDERED that restitution funds shall be paid to the Arizona Attorney  
19 General's Office, and shall be deposited in a trust account with a federally insured financial institution.  
20 The funds shall be disbursed pro rata in accordance with the outstanding balances to those investors  
21 entitled to restitution.

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IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2036, Respondent Douglas Dean Sackett shall pay an administrative penalty in the amount of \$25,000, with payment to be made in full within ninety days from the effective date of this Decision, payable to the State Treasurer for deposit in the General Fund of the State of Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

\_\_\_\_\_  
COMMISSIONER - CHAIRMAN                      COMMISSIONER                      COMMISSIONER

IN WITNESS WHEREOF, I, JACK ROSE, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

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JACK ROSE  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_  
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SERVICE LIST FOR:

RONALD H. WEINER DBA RON WEINER  
ASSOCIATES AND DOUGLAS DEAN SACKETT

DOCKET NO.:

S-03047A-97-0000

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