

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

COMMISSIONERS

2012 MAR 30 P 12:45

GARY PIERCE, Chairman
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AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:
SEED Corporation, an Arizona Corporation
dissolved by administrative action;
Randall Duane Simonson and Marilyn J.
Simonson, husband and wife;
Karl Henry Rehberg a/k/a Shawn Pierce, and
Helen Rehberg a/k/a Lisa Pierce, husband
and wife;
Respondents.

DOCKET NO. S-20844A-12-0122

NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER FOR
RESTITUTION AND ORDER FOR OTHER
AFFIRMATIVE ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission")
alleges that respondents SEED Corporation, an Arizona Corporation dissolved by administrative
action, Randall Duane Simonson, and Karl Henry Rehberg a/k/a Shawn Pierce have engaged in acts,
practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801
et seq. ("Securities Act").

I.

JURISDICTION

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

Arizona Corporation Commission
DOCKETED

MAR 30 2012

DOCKETED BY [Signature]

1 **II.**

2 **RESPONDENTS**

3 2. At all relevant times SEED Corporation (hereafter, "SEED" or "SEED Corporation"),  
4 Randal Duane Simonson (hereafter, "Simonson"), and/or Karl Henry Rehberg (hereafter, "Rehberg")  
5 have been offering and/or selling securities in the form of common stock shares issued by SEED  
6 Corporation and/or promissory notes issued by SEED Corporation.

7 3. SEED Corporation, and/or Rehberg may be referred to collectively or in any  
8 combination as "Respondents."

9 4. Simonson has been a resident of Arizona at all relevant times.

10 5. Simonson incorporated SEED on or about April 18, 2007 and served as its President  
11 and CEO at all relevant times.

12 6. SEED Corporation was an Arizona Corporation at all relevant times and was  
13 subsequently dissolved by administrative action on or about October 23, 2009 due to failure to file its  
14 annual report. SEED Corporation was not registered by the Commission as a securities dealer.

15 7. Simonson was not registered by the Commission as a securities dealer or salesman.

16 8. Rehberg was not registered by the Commission as a securities dealer or salesman.

17 9. Marilyn J. Simonson was at all relevant times an Arizona resident and the spouse of  
18 Respondent Randall Duane Simonson. Marilyn J. Simonson may be referred to as "Respondent  
19 Simonson Spouse." Respondent Simonson Spouse is joined in this action under A.R.S. § 44-2031(C)  
20 solely for purposes of determining the liability of the marital community.

21 10. Helen Rehberg a/k/a Lisa Pierce was at all relevant times the spouse of Karl Henry  
22 Rehberg. Helen Rehberg may be referred to as "Respondent Rehberg Spouse." Respondent Rehberg  
23 Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the  
24 liability of the marital community.

25 11. Rehberg and Respondent Rehberg Spouse were Arizona residents from on or about  
26 November, 1999 to August, 2007.



1           20.     Simonson made several applications to financial institutions seeking loans in order  
2 to finance construction of the Fiesta Mesa Facility both during and after attempts to raise capital by  
3 issuing stock and a promissory note. Despite securing letters of intent in September, 2007, June,  
4 2009, and August, 2010, SEED was not able to close a commercial loan to fund construction of its  
5 facility.

6           21.     Lacking operating capital, SEED was unable to break ground on the Fiesta Mesa  
7 Facility, and returned title of the Mesa Land parcel to its seller after defaulting on interest payments  
8 on or around November 1, 2009.

9                   **A.     The First Security Offering**

10          22.     Between June, 2007 and August, 2007, Respondents sold approximately 538,000  
11 shares of SEED Corporation Class A Common stock (the "First Security Offering") at a purchase  
12 price of \$4.25 to approximately 44 investors located within Arizona and other jurisdictions.

13          23.     At no relevant time did SEED register the First Security Offering with the  
14 Commission.

15          24.     Through the course of the First Security Offering, Respondents provided to offerees  
16 and/or investors a document titled "SEED Corporation . . . executive summary of the business plan  
17 and stock offering" (the "Executive Summary"). The Executive Summary described the plan of  
18 financing during the First Security Offering as follows: "[t]he overall financial strategy and plan is  
19 to have a limited number of shares sold in a private offering . . . This can insure that the first three  
20 to four facilities will be built." Though SEED only attempted to build the Fiesta Mesa Facility, it  
21 had hoped to build others if the project was a success.

22          25.     SEED Corporation also issued to offerees and/or investors a document titled "SEED  
23 Corporation Subscription Agreement" (the "Subscription Agreement"). The document bore a  
24 footnote stating "Copyright 2007 S. Pierce, All Rights Reserved. Confidential PPM. . . ." S. Pierce  
25 is Shawn Pierce, who Simonson and investors believed to be a consultant to SEED. Shawn Pierce  
26

1 was subsequently discovered to be an alias used by Respondent Karl Henry Rehberg. *See below, A.*  
2 *Rehberg's Criminal Past.*

3 26. Despite bearing a footnote stating "Confidential PPM," the Subscription Agreement  
4 explicitly states that it is being provided to the offeree/investor "**without** a SEED  
5 CORPORATION'S Confidential Private Placement Memorandum . . ." (emphasis added)

6 27. In addition to Rehberg contacting likely investors, others heard of an investment  
7 opportunity with SEED by word of mouth, including through discussions at investments clubs.

8 28. Rehberg and/or Simonson invited offerees to SEED's Mesa, Arizona offices to make  
9 investment presentations. Rehberg, Simonson, and/or other SEED representatives provided a  
10 guided tour of SEED's offices and discussed the project's early history and projections of  
11 profitability.

12 29. Rehberg would also arrange internet-based live video seminars ("webinars") which  
13 were hosted from SEED's Arizona offices, in which Respondents presented offerees and/or  
14 investors with, inter alia, electronic versions of offering materials. Simonson had no interactions  
15 with SEED offerees and/or shareholders before giving presentations to them through the internet or  
16 in person.

17 30. SEED failed to furnish at least one offeree or investor with a Private Placement  
18 Memorandum or functionally equivalent investor document for the First Security Offering. At least  
19 one offeree made repeated requests for a Private Placement Memorandum, but was told each time  
20 that it was not ready or was not available.

21 31. Even though the Subscription Agreement was accompanied by an investor  
22 suitability questionnaire, SEED allowed several investors to purchase stock without indicating that  
23 they were Accredited Investors.

24 32. In a September 24, 2007 SEED Corporation letter to SEED stockholders, Simonson  
25 informed investors that SEED had recently retained a local law firm which conducted a legal due  
26 diligence investigation in which it "discovered that our private placement offering earlier this

1 summer did not meet federal or state securities law guidelines due to, among other things,  
2 inadequate disclosure and documentation.”

3 33. Simonson writes further in the same letter that the law firm “is sending you a  
4 detailed investor questionnaire . . . . Please answer the questionnaire honestly and to the best of  
5 your ability, and understand that we need this information in order to comply with securities laws. . . .”

6 34. By the time Simonson wrote the stockholders asking them to send in the detailed  
7 investor questionnaires, 44 investors had already purchased approximately \$1.432 million worth of  
8 SEED Corporation shares.

9 35. By SEED’s own account, at least “[f]our of the prior investors were determined to  
10 be unaccredited investors, and so SEED required those investors to rescind.” However, the  
11 unaccredited First Security Offering investors have not to date received a return of their funds.

12 **A. Rehberg’s Criminal Past**

13 36. Throughout the course of SEED’s sales and marketing efforts, Shawn Pierce was  
14 held out to be an authorized representative of SEED, and an advisor to SEED possessing  
15 experience and expertise in securities fundraising.

16 37. The Executive Summary document SEED provided to investors describes the  
17 involvement of “Shawn Pierce.” “Shawn Pierce” is credited with “making this project possible,  
18 and further develop[ing] the concept and financial structure for SEED.” The Executive Summary  
19 also describes “Shawn Pierce” as a “consultant” to SEED who “provides the liaison between the  
20 companies [SEED and its affiliates] and has developed some of the principal ideas behind several  
21 of the Consortiums [SEED and its affiliates] products and financial strategies.”

22 38. In truth and unknown to both Simonson and SEED investors, “Shawn Pierce” was  
23 an alias taken by Respondent Karl Henry Rehberg, with no apparent connection to any of those  
24 persons in the state of Arizona who are truly named Shawn Pierce.

25 39. In truth and unknown to both Simonson and SEED investors and/or offerees,  
26 Rehberg and his wife had been investigated for fraud in connection with \$21 million in

1 unregistered securities offerings in Florida. After learning they were targets of a federal grand jury  
2 investigation and negotiating a plea agreement to settle the criminal matter, Rehberg and his wife  
3 fled prosecution in September, 1998 in order to avoid serving time in prison.

4 40. A criminal warrant for Rehberg's arrest was issued in December, 1998, which was  
5 valid and outstanding for the entire time Rehberg was involved with SEED.

6 41. Rehberg was arrested during the course of the First Security Offering on or about  
7 August 17, 2007 by the Mesa Police Department, and soon after discovered to be Karl Henry  
8 Rehberg. Rehberg and his wife were arrested on outstanding federal warrants, plead guilty to  
9 criminal charges before the U.S. District Court for the Middle District of Florida, and were  
10 imprisoned.

11 42. After learning of Rehberg's deception, Simonson sought the advice of legal counsel  
12 regarding the business consequences of Rehberg's arrest and misrepresentations. Simonson  
13 disclosed to SEED stockholders that Rehberg had been a fugitive using the name Shawn Pierce in a  
14 September 24, 2007 SEED Corporation letter to stockholders.

15 **B. The Rescission Offer**

16 43. Simonson and SEED issued from within Arizona several documents to its existing  
17 investors, including a Private Placement Memorandum dated October 30, 2007 (the "October  
18 PPM") which offered SEED investors rescission of their purchase of SEED Stock (the "Rescission  
19 Offer"). The October PPM states that:

20 "[f]rom June 1, 2007 through September 5, 2007 the Company sold an aggregate of 538,774  
21 shares of its Class A Common Stock, no par value per share (the "Shares"), to a total of  
22 forty-five (45) investors (the "Investors"). . . . Pursuant to this Private Placement  
23 Memorandum (the "Memorandum"), the Company is offering the Investors who are  
24 Accredited Investors the right to (i) reaffirm their initial investment in the shares of the  
25 Company's Class A Stock (the "Shares") in the amount that has previously been paid, or if  
26 fully paid, in the amount originally subscribed for, (ii) reaffirm their initial investment in  
the Shares in the amount that was originally subscribed for, and remit additional funds to  
the Company, or (iii) rescind their initial investment and receive a return of the full  
subscription price paid without interest, all on the terms and subject to the conditions set  
forth in this Memorandum."

1           44.     The October PPM notified investors that SEED intended to raise up to \$5 million  
2 worth of equity financing through an additional stock offering which was made just two weeks  
3 later. *See C. The November Offering*

4           45.     SEED communicated the Rescission Offer documents to prior SEED investors,  
5 without prior knowledge whether all of the offerees were accredited.

6           46.     The October PPM states: "Not later than December 31, 2007, the Company will  
7 forward to Investors stock certificates (and warrants, if applicable) or rescission proceeds, as the  
8 case may be . . . ." The October PPM then adds a caveat: "provided however, that if a significant  
9 number of Investors seek rescission, there will likely be some delay in returning proceeds as the  
10 Company seeks operating cash flow or additional financing."

11          47.     The October PPM further states, under the heading *Effects of the Rescission*  
12 *Offer*:

13           "The source of the funds with which the Company will repay Investors electing to rescind  
14 their initial investments will be the proceeds, if any, from the balance payable for  
15 subscriptions by Investors electing to reaffirm their initial investments pursuant to this  
16 offering, the Company's operations, and concurrent and future equity financings. There can  
17 be no assurance, however, that the Company will in fact generate any proceeds from the  
18 balance payable on current subscriptions, its operations or concurrent or future equity  
19 financings or that the proceeds generated will be sufficient to repay the total number of  
20 Investors electing rescission of their investments. The failure to generate sufficient  
21 proceeds will have a material adverse effect on the Company's ability to repay the Investors  
22 electing rescission in a timely manner and on the Company's business, operating results and  
23 financial condition."

24          48.     Ultimately, approximately 18 investors requested rescission. Four of the prior  
25 investors who requested rescission were refunded a total of \$221,000. No other investors who  
26 requested rescission have to date received a return of their funds.

### 27           **C.     The November Offering**

28          49.     Two weeks later, Simonson and SEED issued a November 12, 2007 Private  
29 Placement Memorandum which offered up to \$5 million in Class A Common Stock of Seed  
30 Corporation (The "November Offer") for the purpose of raising equity financing for SEED. The  
31 November Offering was made only approximately 80 days after the most recent sale pursuant to the  
32 First Security Offering and was issued to, without limitation, existing SEED shareholders.

1           50.     At no relevant time did SEED register the November Offering with the Commission.

2           51.     All but one of the investors who purchased stock in the November Offering  
3 purchased their shares with cash.

4           52.     At least four investors purchased approximately \$139,200 of SEED stock during the  
5 course of the November Offering.

6                     **D.     The Note Issue**

7           53.     On September 28, 2008 Simonson caused SEED to execute a 2 Year SEED  
8 Corporation Promissory Note (the "SEED Note") with a principal amount of \$20,000 to an Arizona  
9 resident (the "Note Investor"). The unsecured SEED Note guaranteed repayment in quarterly  
10 installments of \$500 commencing January, 2009 and did not state any interest payments.

11          54.     At no relevant time did SEED register the SEED Note with the Commission.

12          55.     Simonson had no prior relationship with the Note Investor before being introduced  
13 through a friend of a mutual friend. Simonson met the Note Investor in person in Benson, Arizona  
14 on or about September 28, 2008 for the purpose of discussing making an investment in SEED.  
15 Simonson did not inquire into the Note Investor's net worth or financial position.

16          56.     The two year period for repayment specified by the SEED Note elapsed on or about  
17 September 28, 2010. To date SEED has made a single \$500 payment toward its SEED Note  
18 obligation, leaving a principal balance of \$19,500 due and owing to the Note Investor.

19                                     **IV.**

20                                     **VIOLATION OF A.R.S. § 44-1841**

21                                     **(Offer or Sale of Unregistered Securities)**

22          57.     From on or about May, 2007, Simonson and SEED offered or sold securities in the  
23 form of stock shares and/or notes within or from Arizona.

24          58.     From on or about May, 2007 through August, 2007, Rehberg offered or sold securities  
25 in the form of stock shares and/or notes within or from Arizona.

26



1 **XII.**

2 **REQUESTED RELIEF**

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

- 4 1. Order Respondents to permanently cease and desist from violating the Securities Act  
5 pursuant to A.R.S. §44-2032;
- 6 2. Order Respondents to take affirmative action to correct the conditions resulting from  
7 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
8 A.R.S. § 44-2032;
- 9 3. Order Respondents to pay the state of Arizona administrative penalties of up to five  
10 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- 11 4. Order that the marital communities of Respondents and Respondent Spouses be subject  
12 to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action  
13 pursuant to A.R.S. § 25-215; and
- 14 5. Order any other relief that the Commission deems appropriate.

15 **XIII.**

16 **HEARING OPPORTUNITY**

17 Each respondent, including Respondent Spouses, may request a hearing pursuant to A.R.S.  
18 § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing,**  
19 **the requesting respondent must also answer this Notice.** A request for hearing must be in writing  
20 and received by the Commission within 10 business days after service of this Notice of Opportunity  
21 for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona  
22 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be  
23 obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
24 <http://www.azcc.gov/divisions/hearings/docket.asp>.

25 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin  
26 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the



