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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

2014 JUL 31 P 3:40

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

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JUL 31 2014

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<p>In the matter of:</p> <p>JAMES F. LIEBES, CRD #2332174, a single man, and</p> <p>LANESBOROUGH FINANCIAL GROUP LLC, an Arizona limited liability company,</p> <p style="text-align: center;">Respondents.</p>	<p>) DOCKET NO. S-20876A-13-0014</p> <p>)</p> <p>) SECURITIES DIVISION'S POST-HEARING BRIEF</p> <p>)</p> <p>) Hearing Date: May 20, 2014</p> <p>)</p> <p>) Assigned to Administrative Law Judge Marc E. Stern</p>
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The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") submits its Post-Hearing Brief ("Brief") with respect to the administrative hearing held on May 20, 2014. This Brief is supported by the following Memorandum of Points and Authorities.

MEMORADUM OF POINTS AND AUTHORITIES

I. Procedural Background

On January 28, 2013, the Division filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for other Affirmative Action (the "Notice") against respondents James F. Liebes and Lanesborough Financial Group LLC ("LFG"), alleging multiple violations of the registration provisions of the Arizona Securities Act ("Securities Act") in connection with the offer and sale of securities.

Respondents, through counsel, timely requested a hearing and filed an answer to the Notice. Respondents' counsel requested to withdraw on May 16, 2013; that request was granted

1 on June 6, 2013.

2 In fall of 2013, the Division discovered that the respondents had engaged in additional
3 activities that violated the Securities Act, including violations of A.R.S. § 44-1991.
4 Consequently, on November 5, 2013, the Division filed a Temporary Order to Cease and Desist,
5 Docket No. S-20876A-13-0376 (the "TC&D"). The hearing scheduled for the Notice was
6 continued so that respondents would have time to reply to the TC&D and, if necessary, the
7 hearings of the two cases could be consolidated.

8 Respondents, however, failed to request a hearing or file an answer to the TC&D. On
9 January 28, 2014, the Commission issued a default order, Decision #74302, against respondents
10 based on the conduct described in the TC&D, i.e. agreeing to sell stock to purchasers, taking the
11 purchasers' money, and then failing to deliver the stock. In Decision #74302, the Commission
12 found that respondents had violated the registration and anti-fraud provisions of the Securities
13 Act and ordered respondents to pay restitution in the principal amount of \$684,725 and a \$75,000
14 administrative penalty. The conduct in the TC&D and the restitution and penalties ordered are
15 separate and independent of the conduct described in the Notice.

16 After the Commission entered Decision #74302, the allegations described in the Notice still
17 required a hearing. That hearing was held on May 20, 2014. Despite being notified of the hearing,
18 respondents failed to appear at the hearing and no representative of the respondents appeared at the
19 hearing.

20 **II. Jurisdiction**

21 The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
22 Constitution and the Securities Act. As stated in A.R.S. § 44-2032, the Commission has
23 jurisdiction when it appears to the Commission that any person has engaged in any act, practice
24 or transaction that constitutes a violation of the Securities Act or any rule or order of the
25 Commission. If there is an unregistered, non-exempt offer or sale of securities within or from
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1 Arizona, or any fraud in connection with that offer or sale, that is a potential violation of the
2 Securities Act and subject to the Commission's jurisdiction.¹

3 **III. Facts**

4 Liebes has been illegally brokering securities transactions in Arizona since December 2009

5 Liebes is a single man who resided in Arizona during the years relevant to this action, i.e.
6 throughout 2010 – 2012.²

7 Liebes has been working in the securities industry since 1993, as shown in registration and
8 employment history maintained by FINRA. FINRA is a private corporation that acts as a self-
9 regulatory organization and is sanctioned by the U.S. Securities and Exchange Commission to
10 discipline registered representatives and member firms that fail to comply with federal securities
11 laws and FINRA's rules and regulations. On behalf of state securities regulators, FINRA
12 maintains the Central Registration Depository (CRD), a database containing records for all firms
13 and individuals involved in the securities industry in the United States. The CRD includes the
14 registration and employment history of securities dealers and salesmen.³

15 The CRD report for Liebes shows that in 1993, Liebes started working for Lehman
16 Brothers Inc. as a securities salesman licensed by FINRA and California.⁴ Liebes continued
17 working as a registered securities salesman beginning in 1993 and continuing through most of
18 2009.⁵ Division special investigator, Mike Brokaw, testified that persons who were Liebes's
19 clients while Liebes worked at The Shemano Group, Inc. (Liebes's employer from 2003 – 2008)
20 knew Liebes as someone who brokered sales and purchases of securities.⁶ Division witness,
21 William Harris, also testified that Liebes's employment with Shemano involved raising capital

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¹ See e.g. A.R.S. § 44-1841, -1842 & -1991.

25 ² H.T. 14:6 – 13.

26 ³ H.T. 16:25 – 17:12; <https://www.sec.gov/answers/crd.htm>.

⁴ Ex. 4; H.T. 17:17 – 18:14.

⁵ Ex. 4; H.T. 16:25 – 18:11.

⁶ H.T. 29:2 – 8.

1 and selling investments to potential customers⁷ and that Liebes continued to sell investments
2 after Liebes left Shemano.⁸

3 On December 23, 2009, Liebes voluntarily terminated his employment with a registered
4 securities dealer.⁹ After this date, he was no longer registered as a securities salesman.¹⁰

5 In spite of his lack of registration, Liebes continued to do business as a securities dealer
6 through his entity, LFG. LFG is a member-managed Arizona limited liability company organized
7 on October 21, 2008.¹¹ Liebes is the only member listed in LFG's articles of organization.¹²
8 Besides Liebes, LFG has no other known members or employees. Most of Liebes's correspondence
9 with securities buyers and sellers was sent from his LFG email address, i.e.
10 [name]@lanesboroughfinancial.com and with a footer that included LFG's name and business
11 address.¹³ Securities sellers who used Liebes's services to sell their Lifelock Inc. stock (described in
12 detail below) entered into a contract with LFG.¹⁴ Mr. Harris testified that LFG was essentially just
13 the name that Liebes used to do business.¹⁵ LFG has not been registered with the Commission to
14 sell securities.¹⁶

15 Even though Liebes's securities-salesman registration had terminated and LFG was never
16 registered to sell securities, throughout 2010, 2011 and 2012, Liebes worked full-time as an agent
17 and a broker in transactions involving securities. The persons involved in these transactions
18 knew Liebes as someone who, during the relevant timeframe, bought and sold securities as his
19 full-time profession. Mr. Brokaw testified that Gary Woods, one of Liebes's clients, knew
20 Liebes as someone who brokered securities transactions for a living.¹⁷ Mr. Harris testified that
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22 ⁷ H.T. 36:16 – 21.

23 ⁸ H.T. 36:22 – 37:7.

24 ⁹ Ex. S-4.

25 ¹⁰ *Id.*

26 ¹¹ Ex. S-3.

¹² Ex. S-3.

¹³ *Eg.* Exs. S-7 at LC0000416, 1038, and 205, S-9 at LC0000205, S-10 at LC0000042, S-11 at LC0000914, S-16 at LC0001130, S-17 at ACC000019, S-18 at ACC000017, & S-19 at ACC000590.

¹⁴ Exs. S-10 at LC000042 & S-17 at ACC000022.

¹⁵ H.T. 37:13 – 20.

¹⁶ Ex. S-2.

¹⁷ H.T. 27:11 – 15.

1 he believed that Liebes brokered stock transactions full-time as his profession during 2010 and
 2 2011.¹⁸ Mr. Tritch testified that he understood that Liebes made his living by raising capital for
 3 new ventures, and that Liebes was known as someone who brokered sales of Lifelock stock.¹⁹

4 The evidence at hearing established that during 2010, 2011 and 2012, Liebes was, in fact,
 5 a securities broker by profession. Lifelock provided the Division with a list of all 2010, 2011 and
 6 2012, third-party purchases and sales of Lifelock stock where Lifelock believed that Liebes was
 7 involved.²⁰ These 20 transactions involved 48 total offerees. Thirteen of the transactions
 8 occurred in 2010, six in 2011 (two more offers which did not close are discussed below), and one
 9 in 2012. The details of the Lifelock transactions that resulted in sales are summarized
 10 chronologically below:

11 1. On January 4, 2010, N.D. sold 48,000 shares to three separate buyers, for a total sale
 12 price of \$144,000;²¹

13 2. On January 15, 2010, R.M. sold 125,000 shares to 14 separate buyers, for a total sale
 14 price of \$410,853.50;²²

15 3. On February 11, 2010, the R.A.L. Rev. Trust sold 50,000 shares to a single buyer for
 16 a sale price of \$150,000;²³

17 4. On March 15, 2010, B.G. sold 10,158 shares to a single buyer for a sale price of
 18 \$40,632;²⁴

19 5. On June 15, 2010, the R.A.L. Rev. Trust sold 35,000 shares to five separate
 20 purchasers for a total sale price of \$175,000;²⁵

21 6. On August 11, 2010, the R.A.L. Rev. Trust sold 29,444 shares to two separate
 22 buyers for a total sale price of \$132,498;²⁶

23 ¹⁸ H.T. 46:3 – 12.

24 ¹⁹ H.T. 47:23 – 48:8, 48:13 – 49:6.

24 ²⁰ Exs. S-5 and S-29

25 ²¹ Ex. S-5.

25 ²² Exs. S-5 & S-8.

26 ²³ Exs. S-5, S-9 & S-18; *also* H.T. 35:1 – 46:12.

26 ²⁴ Exs. S-5, S-7 & S-10.

²⁵ Exs. S-5, S-9 & S-18; *also* H.T. 35:1 – 46:12.

²⁶ Exs. S-5, S-9 & S-18; *also* H.T. 35:1 – 46:12.

- 1 7. On August 27, 2010, J.L. sold 10,000 shares to a single buyer for a total sale price of
2 \$45,000;²⁷
- 3 8. On October 18, 2010, the R.A.L. Rev. Trust sold 5,555 shares to a single buyer for a
4 sale price of \$24,997.50;²⁸
- 5 9. On October 18, 2010, J.L. sold 10,000 shares to a single buyer for a sale price of
6 \$45,000;²⁹
- 7 10. On November 30, 2010, G.W. sold 131,053 shares to five separate buyers for a total
8 sale price of \$610,001.75;³⁰
- 9 11. On December 7, 2010, G.W sold 18,392 shares to a single buyer for a purchase price
10 of \$82,764;³¹
- 11 12. On December 7, 2010, S.M. sold 9,167 shares a single purchaser for a sale price of
12 \$41,251.50;³²
- 13 13. On December 7, 2010, LGTVII, LLC sold 16,388 shares to two separate buyers for
14 a total sale price of \$73,746;³³
- 15 14. On March 21, 2011, L.G. sold 25,000 shares to a single buyer for a sale price of
16 \$110,000;³⁴
- 17 15. On May 12, 2011, K.M. sold 4,583 shares to a single buyer for a sale price of
18 \$20,623.50;³⁵
- 19 16. On June 14, 2011, L.G. sold 15,000 shares to two separate buyers for a total sale
20 price of \$75,000;³⁶

23 ²⁷ Exs. S-5 & S-11.

24 ²⁸ Exs. S-5, S-9 & S-18; *also* H.T. 35:1 – 46:12.

25 ²⁹ Exs. S-5 & S-11.

26 ³⁰ Exs. S-5 & S-12; *also* H.T. 26:20 – 28:18.

³¹ *Id.*

³² Exs. S-5 & S-13.

³³ Exs. S-5 & S-13.

³⁴ Exs. S-5 & S-14; *also* H.T. 28:19 – 29:25.

³⁵ Exs. S-5, S-15, & S-21 at ACC000295.

³⁶ Exs. S-5 & S-14; *also* H.T. 28:19 – 29:25.

1 17. On June 21, 2011, LGTVII, LLC sold 15,046 shares to two buyers for a total sale
2 price of \$75,230;³⁷

3 18. On June 21, 2011, J.L. sold 20,000 shares to two buyers for a sale price of
4 \$100,000;³⁸

5 19. On December 2, 2011, B.T. sold 33,602 shares to a single buyer for a sale price of
6 \$159,609.50.³⁹

7 Lifelock sent emails and other correspondence that substantiated Liebes's involvement in each of
8 these 19 transactions.⁴⁰

9 In addition to the 2010 – 2011 transactions, Lifelock sent a separate list containing three
10 transactions from 2012 where Liebes was involved.⁴¹ Only one of these is known to have closed:

11 20. In August 2012, I.G. sold 20,000 shares for a sale price of \$125,000.⁴²

12 Additionally, in 2011, Liebes offered to sell unregistered stock to two buyers for a total
13 purchase price of \$89,000. Division witness Avi Knishinsky testified that in January 2011, Avi's
14 brother introduced Liebes to Avi; the purpose of the introduction was to put together stock
15 transactions.⁴³ Avi understood that respondents' profession was to broker stock transactions.⁴⁴ Avi
16 testified that Liebes located the buyers (i.e. Avi and his brother) on behalf of the seller,⁴⁵ arranged
17 to have Christopher Rogers of Rogers Law Ltd. provide legal services in the transaction,⁴⁶ and
18 negotiated the price and terms of the transaction.⁴⁷ The seller was to pay Liebes a 10% commission
19 for respondents' services.⁴⁸ Avi signed a stock purchase agreement provided to him by Liebes and
20 drafted by Rogers; Avi's brother signed a nearly-identical purchase agreement.⁴⁹ Both Avi and his

21 _____
³⁷ Exs. S-5 & S-13.

22 ³⁸ Exs. S-5, S-11 & S-21 at ACC000341 (6/10/11 \$5,000 and 6/23/11 \$5,000 wires to LFG).

23 ³⁹ Exs. S-5, S-16 & S-17; H.T. 47:1 – 54:25.

24 ⁴⁰ Exs. S-6 – S-16.

25 ⁴¹ Ex. S-29.

26 ⁴² Ex. S-29; H.T. 30:5 – 32:9.

⁴³ H.T. 56:12 – 19.

⁴⁴ H.T. 56:20 – 22.

⁴⁵ H.T. 56:12 – 19.

⁴⁶ H.T. 58:3 – 25.

⁴⁷ H.T. 59:1 – 12.

⁴⁸ H.T. 59:16 – 60:25 & 60:12 – 14.

⁴⁹ H.T. 58:3 – 25 & 60:6 – 11; Ex. S-19.

1 brother paid the purchase price in their purchase agreements.⁵⁰ The purchase price was later
2 returned to the buyers when the transaction fell through.⁵¹

3 Testimony at hearing showed that respondents' role in the 20 transactions listed above
4 was similar to their role in the Knishinsky transactions, namely locating the buyers,⁵² negotiating
5 the sale price,⁵³ and handling communications between the seller and the buyer(s).⁵⁴

6 Liebes also assisted in obtaining legal counsel for the sellers.⁵⁵ In each case, counsel was
7 Rogers Law Ltd.⁵⁶ Liebes had a history of working with Rogers in stock transactions⁵⁷ and in
8 transactions involving Lifelock stock in particular: in one of Rogers's emails to Lifelock counsel,
9 Rogers describes himself and Liebes "as parties known to the Company to regularly represent in
10 these transactions [i.e. private, third-party sales of Lifelock stock]."⁵⁸ Liebes is CC'd on each of
11 the emails where Rogers sends transaction documents to Lifelock counsel, and in all other emails
12 provided by Lifelock.⁵⁹ These emails show that Liebes continued to be involved in each of the
13 transactions after Liebes had found buyers and negotiated terms of the transactions.

14 Sellers paid Liebes a commission for his services. Mr. Harris testified that in transactions
15 #3, #5, #6 and #8 above, the seller, R.A.L. Rev. Trust, paid respondents a 6% commission for each
16 transaction, respectively \$9,000, \$10,500, \$7,750 (total), and \$1,500.⁶⁰ Investigator Brokaw
17 testified that the seller in transactions #14 and #16 above paid Liebes 10% commissions, \$11,000
18 and \$7,500 respectively, in those transactions.⁶¹ Mr. Brokaw further testified that the seller in
19 transactions #10 and #11 above paid Liebes a commission that was between 4% and 6%.⁶² Mr.
20 Tritch, the seller in transaction #19 above, testified that he paid Liebes a 10% commission of

21 ⁵⁰ H.T. 60:15 – 17.

22 ⁵¹ H.T. 60:18 – 61:24.

23 ⁵² H.T. 25:14 – 18, 27:16 – 28:2, 41:2 – 12, & 51:8 – 20.

24 ⁵³ H.T. 41:16 – 42:1;

25 ⁵⁴ H.T. 25:19 – 22, 27:16 – 28:18, 29:9 – 13, 32:2 – 9, 41:16 – 42:1, & 43:4 – 15.

26 ⁵⁵ H.T. 27:21 – 28:2, 32:2 – 9, 42:2 – 19, & 52:11 – 15.

⁵⁶ *Id.*; Exs. S-7 – S-16.

⁵⁷ H.T. 42:2 – 19 & 58:3 – 15.

⁵⁸ Ex. S-7 at LC0000224.

⁵⁹ Exs. S-6 – S-16.; Ex. S-19; H.T. 43:15 – 44:1.

⁶⁰ H.T. 38:20 – 40:6; Ex. S-18.

⁶¹ H.T. 28:19 – 29:25; Exs. S-5 & S-14.

⁶² H.T. 28:9 – 18.

1 \$15,690.95 in this transaction.⁶³ And Mr. Brokaw testified that the seller in transaction #20 paid
2 Liebes a \$7,500 commission, which is 6% of the sale price.⁶⁴ If the conservative 4% figure is used
3 for transactions #10 and #11, respondents received total commissions of \$98,421.58 in these 10
4 transactions.

5 For the remaining 10 transactions, there was no testimony at hearing establishing the exact
6 amount of the commission paid. But, as shown above, respondents collected a commission ranging
7 from 4% to 10%, with 6% being the most common. Using the most conservative of these numbers
8 on the remaining transactions, a 4% commission, would result in \$39,853.44 paid to respondents
9 for these 10 sales.

10 Liebes's Examination Under Oath

11 During its investigation of this case, the Division brought in Liebes for testimony. The
12 examination was recorded and Liebes was sworn in at the beginning of the examination.⁶⁵ Liebes
13 was asked several questions regarding his activities brokering stock transactions. He was
14 specifically asked:

- 15 • To describe his role in transactions involving the purchase and sale of Lifelock stock from
16 2010 to the time of the examination (i.e. June 7, 2012);⁶⁶
- 17 • Whether he was engaged at least part-time as an agent or broker in the business of offering,
18 selling or otherwise dealing in securities, and to describe such engagement;⁶⁷
- 19 • To list all buyers and sellers for whom he acted as an agent or broker in transactions
20 involving securities;⁶⁸
- 21 • To describe his role in effecting and representing other persons in securities transactions⁶⁹
22 including whether his role included finding buyers, negotiating with buyers or sellers, and
23 advising the buyer or seller as to the valuation or merits of the securities involved;⁷⁰

24 ⁶³ H.T. 50:17 – 51:7; *see also* Exs. S-5, S-16 & S-17.

25 ⁶⁴ Ex. S-29; H.T. 30:5 – 32:9.

26 ⁶⁵ Ex. S-20 at p. 4.

⁶⁶ Ex. S-20 at pp. 19 – 20.

⁶⁷ Ex. S-20 at p. 20.

⁶⁸ Ex. S-20 at pp. 20 – 21.

⁶⁹ Ex. S-20 at pp. 21 – 22.

- 1 • Whether he received a commission for such services;⁷¹
- 2 • Whether he was involved in 12 or more such transactions in 2010 and eight or more of such
- 3 transactions in 2011.⁷²

4 In response to each of these questions, Liebes, on his own behalf and as custodian of LFG's
5 records, invoked the Fifth Amendment privilege to not testify.⁷³ He also invoked the privilege
6 when asked why he and LFG had failed to provide any documents in response to Division
7 subpoenas served on Liebes and LFG.⁷⁴

8 **IV. Legal Argument**

9 The Division established at hearing that during the years 2010, 2011 and 2012, respondents
10 repeatedly offered and sold stock in violation of Arizona law.

11 **A. Liebes and LFG were required to register as dealers for their roles in the stock sales.**

12 The Securities Act makes it unlawful for any dealer to sell or offer to sell any securities
13 within or from Arizona unless the dealer is registered with the Commission or exempt from
14 registration.⁷⁵ Commission Rule R14-4-104 requires dealers to register even if the securities or
15 transactions involved are exempt from registration where (i) in a private offering, the dealer is
16 engaged principally and primarily in the business of making a series (five or more in a 12-month
17 period) of private offerings or (ii) in an isolated transaction, where the dealer receives
18 compensation or engages in or offers to engage in repeated or successive transactions.⁷⁶

19 Liebes and LFG are dealers under the Securities Act. The Securities Act defines a dealer as
20 a person who directly engages full- or part-time as an agent, broker or principal in the business of
21 offering, buying, selling or otherwise dealing or trading in securities issued by another person, and
22 who is not a salesman of a registered dealer or a bank.⁷⁷ Liebes and LFG fit this definition.

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24 ⁷⁰ Ex. S-20 at p. 22.

⁷¹ Ex. S-20 at p. 23.

⁷² Ex. S-20 at p. 23.

⁷³ Ex. S-20 at pp. 19 – 23.

⁷⁴ Ex. S-20 at pp. 7 – 8.

⁷⁵ A.R.S. § 44-1842.

⁷⁶ A.C.C. § 14-4-104(4) & (5).

⁷⁷ A.R.S. § 44-1801(9)(a).

1 The first part of the definition is engagement in securities transactions full- or part-time. As
2 discussed above, Liebes's employment history shows that he has been a securities salesman since
3 1993. Testimony by Division witnesses established that he was known to many persons as a
4 securities broker during the relevant timeframe, i.e. beginning in 2010 and continuing through
5 2012, and that throughout this period he acted through LFG. Additionally, the evidence showed
6 that in 2010 and 2011, he was involved in 22 transactions of Lifelock stock for which he was to
7 receive a commission. Consequently, the evidence established that Liebes/LFG engaged full-time
8 as someone who offers or sells securities issued by another person.

9 The evidence also established the next part of the definition of a dealer: that Liebes was an
10 agent or broker. First, the evidence showed that Liebes, acting through LFG, was an agent for the
11 sellers. "Agent" is not defined in the Securities Act or in the Federal Securities Exchange Act.
12 The common legal meaning, as defined in Black's Law Dictionary, is "One who is authorized to
13 act for or in the place of another; a representative."⁷⁸ As discussed above, respondents acted on
14 behalf of sellers in finding and communicating with buyers, negotiating the sale price, obtaining
15 legal counsel, and communicating with Lifelock counsel. The sellers did not speak with the buyers
16 or with Lifelock's counsel; Liebes handled all of that. These actions constitute acting as an agent
17 for the sellers in the transactions.

18 Respondents also fit the definition of a "broker." Since the Securities Act does not define
19 "broker," Arizona courts will look to federal interpretations to interpret similar terms used in the
20 Securities Act.⁷⁹ The Federal Securities Exchange Act defines "broker" as one who is "engaged in
21 the business of effecting transactions in securities for the account of others."⁸⁰ In determining
22 whether a particular individual or entity falls within this definition, courts consider whether the

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24 ⁷⁸ BLACK'S LAW DICTIONARY 68 (8th Ed. 2004).

25 ⁷⁹ *Sell v. Gama*, 231 Ariz. 323, 327, 295 P.3d 421, 425 (2013) *cf.* 1996 Ariz. Sess. Laws ch. 197, § 11(C) ("It is the
26 intent of the legislature that in construing the [Securities Act], the courts may use as a guide the interpretations given
by the ... federal or other courts in construing substantially similar provisions in the federal securities laws of the
United States."); *State v. Gunnison*, 127 Ariz. 110, 112-13, 618 P.2d 604, 606-07 (1980) (The Arizona courts will
interpret the Securities Act by following settled federal securities law when the state and federal statutory provisions
are substantially similar unless there is "good reason" to depart from that authority.)

⁸⁰ 15 U.S.C. § 78c(a)(4)(A).

1 individual may be “characterized by ‘a certain regularity of participation in securities transactions
2 at key points in the chain of distribution.’”⁸¹ Acting as a middleman between sellers and buyers
3 constitutes acting as a broker.⁸²

4 Here, in each of the transactions that are the subject of this case, the sellers contacted
5 Liebes regarding their desire to sell Lifelock shares. Liebes then found buyers and handled the
6 negotiations of price and other terms. The sellers rarely, if ever, had any correspondence with the
7 buyers. Liebes also found counsel for the buyers and continued to be involved in communications
8 at all stages in the transactions. He did all of this through his entity, LFG. Thus, Liebes and LFG
9 were middlemen, involved in major points of each transaction, and, consequently, were brokers.

10 The last step of analysis is whether respondents offered, sold, or otherwise dealt in
11 securities. “Sale” or “sell” in the Securities Act means “a sale or any other disposition of a
12 security...for value, and includes a contract to make such a sale or disposition.”⁸³ And an “offer to
13 sell” securities under the Securities Act means “an attempt or offer to dispose of, or solicitation of
14 an order or offer to buy, a security...”⁸⁴ As shown during the hearing, Liebes, acting through
15 LFG, sold stock on behalf of sellers. It was shown that in several transactions, this was done
16 pursuant to a written contract between Liebes and the seller. And that in all transactions described
17 in this case, Liebes sold the stock as part of an agreement where sellers paid respondents a
18 commission. In exchange for this consideration, Liebes located the potential buyers regarding the
19 sale of the stock. Liebes came up with and negotiated the price of the stock and handled
20 communications regarding terms of the sale. Because of this, respondents sold and offered to sell
21 securities under the Securities Act. Additionally, Liebes “otherwise dealt” in securities: his entire
22 business and livelihood was based on effecting securities transactions and acting as a middleman
23 for a commission.

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26 ⁸¹ *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003).

⁸² *Id.* at 283-284.

⁸³ A.R.S. § 44-1801(21).

⁸⁴ A.R.S. § 44-1801(15).

1 Because respondents were agents and brokers who sold, offered to sell and otherwise dealt
2 in securities, they were required to be registered under the Securities Act. LFG was never
3 registered. And Liebes, after his voluntary termination from Lawson, was not employed by a
4 registered securities dealer. Consequently, after December 23, 2009, Liebes's securities salesman
5 registration was automatically suspended under A.R.S. § 44-1949. Liebes's registration then
6 expired on December 31, 2009 for failure to renew, pursuant to A.R.S. § 44-1947. Pursuant to
7 A.R.S. § 44-2034, the Division presented certificates of non-registration for all respondents for the
8 relevant time period.⁸⁵

9 Thus, respondents were not registered as dealers or salesmen in Arizona during the relevant
10 time and the offer of the securities described above violated the Securities Act.

11 **B. Negative inference from Liebes's testimony under oath.**

12 Liebes's testimony under oath further substantiates that he and LFG acted as a dealer in the
13 securities transactions described in this case. In civil proceedings adverse inferences can be drawn
14 from a party's invocation of his Fifth Amendment right when a respondent's silence is countered by
15 independent evidence of the fact being questioned.⁸⁶

16 Here, the Division conducted an examination of Liebes while Liebes was under oath. When
17 asked specific questions about his involvement in finding buyers, negotiating the sales price,
18 collecting a commission, and other aspects of involvement in the transactions that are the subject of
19 this case, Liebes invoked his Fifth Amendment privilege. As shown above, there is ample evidence
20 supporting the facts on which Liebes was questioned. Thus, an adverse inference can be drawn
21 regarding facts showing that respondents acted as dealers in violation of the Securities Act, namely
22 that respondents acted as agents/brokers in at least 12 sales in 2010 and eight transactions in 2011
23 and were paid for their services.

24 **C. Administrative penalty for numerous offers of securities.**

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26 ⁸⁵ Ex. S-1 – S-3.

⁸⁶ *Doe v. Glanzer*, 232 F.3d 1258, 1264 (9th Cir. 2000), citing *SEC v. Colello*, 139 F.3d 674, 677 (9th Cir.1998) and *Nat'l Acceptance Co. v. Bathalter*, 705 F.2d 924, 930 (7th Cir.1983); see also *Montoya v. Superior Court In & For Cnty. of Maricopa*, 173 Ariz. 129, 131, 840 P.2d 305, 307 (Ct. App. 1992).

1 In assessing the administrative penalty for respondents, each violation carries a penalty, per
2 A.R.S. § 44-2036: an assessment of an administrative penalty may be assessed “in an amount not to
3 exceed five thousand dollars for each violation.” Pursuant to A.R.S. § 44-1841(A), each offer and
4 sale by respondents was a violation of the Securities Act. As that statute provides: “It is unlawful to
5 *sell or offer for sale* within or from this state any securities unless the securities have been
6 registered....” (emphasis added). Similarly, A.R.S. § 44-1842 provides that “It is unlawful for any
7 dealer to *sell* or purchase or *offer to sell* or buy any securities, or for any salesman *to sell or offer for*
8 *sale* any securities within or from this state unless the dealer or salesman is registered....” (emphasis
9 added).

10 The evidence established that, in spite of years of experience with and knowledge of
11 securities-industry licensing requirements, respondents did not bother to register with the
12 Commission. While unregistered, respondents offered Lifelock stock to 48 buyers in 20 transactions
13 that resulted in sales of the stock. Respondents offered securities to two other offerees in
14 transactions that failed to close. This is a total of 98 violations of the Securities Act—50 offers and
15 48 sales of securities.

16 Minimally, respondents should be ordered pay an administrative penalty in the amount of
17 \$50,000. Given that the Commission could issue a \$5,000 fine for each of the 98 total violations of
18 the registration provisions, and that Liebes’s previous registration and knowledge of licensing
19 requirements makes his violation especially egregious, this is substantially less than the maximum
20 penalty that the Commission is authorized to issue.

21 **D. Restitution for commission fees paid to respondents.**

22 The Securities Act authorizes the Commission to order restitution payments if a person has
23 engaged in an act, practice or transaction that violates the Securities Act.⁸⁷ Here, respondents
24 illegally conducted business as securities dealers and collected commission payments for this
25 business in 20 transactions described above. As described above, the sellers in transactions #3, #5,
26

⁸⁷ A.R.S. § 44-2032.

1 #6, #8, #10, #11, #14, #16, #19 and #20 paid respondents total commissions of \$98,421.58 in these
2 10 transactions. If the most conservative commission payment (i.e. 4%) is used to calculate the
3 commission payments in the remaining 10 transactions, those sellers paid respondents a total
4 commission of \$39,853.44. These total payments of \$138,275.02 should be ordered as restitution.

5 **E. Respondents presented no evidence that an exemption applies.**

6 Unless respondents establish that an exemption applies, the registration provisions of A.R.S.
7 § 44-1842 apply. Under the Securities Act, A.R.S. § 44-2033, the burden of establishing an
8 exemption from registration is upon the party claiming it. In *State v. Baumann*, Arizona's Supreme
9 Court held that, "[b]ecause of the vital public policy underlying the registration requirement, there
10 must be strict compliance with all the requirements of the exemption statute."⁸⁸ Respondents did
11 not provide documents in response to Division subpoenas, did not answer questions during their
12 examination under oath, and did not appear at the administrative hearing, much less point to any
13 evidence of complying with an exemption statute. Consequently, respondents failed to establish
14 strict compliance with any statutes providing an exemption from registration.

15 It is also worth noting that even if the securities or the transactions involved in this case are
16 exempt, Commission rules would still require respondents to register as dealers. Two rules
17 requiring dealer registration are particularly relevant to this case.

18 First, R14-4-104(4) requires the dealer to be registered if the dealer is engaged principally
19 and primarily in the business of making a series of private offerings; "series" means five or more in
20 a 12-month period. The evidence showed that respondents engaged in at least 13 transactions in
21 2010 and at least 8 transactions in 2011. Thus, respondents exceeded the five-transaction limit for
22 both years, and needed to be registered as a dealer.

23 Second, the exemption found in A.R.S. § 44-1844(A)(4) applies to transactions where the
24 bona fide owner sells securities. If the bona fide owner uses a dealer as an agent for the sale, that
25 dealer's registration is governed by R14-4-104(5). Under this rule, the dealer in a transaction that
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⁸⁸ 125 Ariz. 404, 411, 610 P.2d 38, 45 (1980) (en banc).

1 in August, thus the Division recommends conservatively using August 30, 2012, as the date of
2 sale), to the date of repayment, interest rate to be calculated at the time of judgment under A.R.S. §
3 44-1201;

4 2. Order respondents to pay an administrative penalty of not more than \$5,000 for
5 each violation of the Act, as the Court deems just and proper, pursuant to A.R.S. § 44-2036(A).
6 The Division recommends that respondents pay an administrative penalty in the amount of
7 \$50,000.

8 3. Order respondents to cease and desist from further violations of the Act pursuant to
9 A.R.S. § 44-2032.

10 4. Order any other relief this tribunal deems appropriate or just.

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12 RESPECTFULLY SUBMITTED July 31, 2014.

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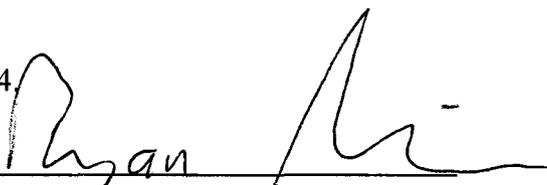
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