

JIM IRVIN
COMMISSIONER-CHAIRMAN
TONY WEST
COMMISSIONER
CARL J. KUNASEK
COMMISSIONER



STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

ARIZONA C

COMMISSION

DATE: March 19, 1999
DOCKET NO.: S-03233A-98-0000

TO ALL PARTIES:

Enclosed please find the recommendation of Hearing Officer Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

BUCKHORN FINANCIAL SERVICES, INC. d/b/a BUCKHORN FINANCIAL SERVICE OF ARIZONA, JOSEPH K. HILYARD, MICHAEL LEE MATHIS, SAFE KEEPING, INC., d/b/a SAFE KEEPING DEPOSITORY, INC., STEVEN L. SHOOK (PENALTIES AND RESTITUTION)

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: .

MARCH 29, 1999

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:

MARCH 30, 1999 AND MARCH 31, 1999

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


STUART R. BRACKNEY
ACTING EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN
COMMISSIONER-CHAIRMAN
3 TONY WEST
COMMISSIONER
4 CARL J. KUNASEK
COMMISSIONER

5
6 IN THE MATTER OF THE OFFERING OF
SECURITIES BY:

DOCKET NO. S-03233A-98-0000

7 BUCKHORN FINANCIAL SERVICES, INC. a
Nevada Corporation
8 2533 North Carson Street, Suite 3185
Carson City, NV 89706

9
10 d/b/a BUCKHORN FINANCIAL SERVICE OF
ARIZONA
11 11811 N. Tatum Blvd., Suite 3031
Phoenix, Arizona 85088

12 JOSEPH K. HILYARD
20423 Prince Creek
13 Katy, TX 77450

14 MICHAEL LEE MATHIS
3½ miles North San Benito on Watson Road
15 San Benito, TX

16 SAFE KEEPING, INC., a Nevada Corporation
2533 N. Carson Street, Suite 3185
17 Carson City, NV 89706

18 d/b/a SAFE KEEPING DEPOSITORY, INC.
11811 N. Tatum Blvd., Suite 3031-61
19 Phoenix, Arizona 85088

DECISION NO. _____

20 STEVEN L. SHOOK
9590 East Kalil
21 Scottsdale, Arizona 85260

OPINION AND ORDER

22 DATES OF HEARING: May 21, November 30 and December 1, 1998

23 PLACE OF HEARING: Phoenix, Arizona

24 PRESIDING OFFICER: Marc E. Stern

25 APPEARANCES: BURTON M. BENTLEY, P.C., by Mr. Burton M. Bentley on
26 behalf of Buckhorn Financial Services, Inc., Buckhorn
Financial Services of Arizona, Mr. Joseph K. Hilyard and Mr.
27 Michael Lee Mathis;

28 Mr. John W. Blischak, on behalf of Safe Keeping, Inc. dba Safe
Keeping Depository, Inc.;

1 Mr. Michael V. Black, on behalf of Mr. Steven L. Shook; and
2
3 Ms. Norma Martens, Assistant Attorney General, and Ms.
4 Pamela Johnson, Special Assistant Attorney General, on behalf
of the Securities Division of the Arizona Corporation
Commission.

5 **BY THE COMMISSION:**

6 On April 16, 1998, the Securities Division ("Division") of the Arizona Corporation
7 Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order
8 for Relief ("Notice") against Buckhorn Financial Services, Inc., a Nevada Corporation, dba Buckhorn
9 Financial Service of Arizona ("Buckhorn"), Mr. Joseph K. Hilyard, Mr. Michael Lee Mathis, Safe
10 Keeping, Inc., a Nevada Corporation, dba Safe Keeping Depository, Inc. ("Safe Keeping") and Mr.
11 Steven L. Shook in which the Division alleged multiple violations of the Securities Act ("Act") in
12 connection with the offer and sale of investments involving "joint business ventures" in the form of
13 investment contracts, evidences of indebtedness or certificates of interest or participation in any
14 profit-sharing agreement.¹

15 All Respondents named in the above-captioned proceeding were duly served with copies of
16 the Notice to which timely requests for hearing were filed by all Respondents.

17 On May 1, 1998, the Commission, by Procedural Order, scheduled the above-captioned
18 proceeding for hearing on May 21, 1998.

19 On May 21, 1998, a full public hearing was convened as scheduled. The Buckhorn and
20 Shook Respondents were present with counsel. The Division was also present with counsel. At the
21 outset of the proceeding, the Respondents requested time for discussions with the Division with
22 respect to the allegations contained in the Notice. Following these discussions, it was indicated that
23 the parties were negotiating to enter into Consent Orders which would be submitted to the
24 Commission for its approval. The parties also requested that a hearing date be scheduled after the
25 middle of July to resolve any outstanding issues if necessary.

26 Pursuant to our June 3, 1998, Procedural Order, a hearing was scheduled for July 23, 1998.

27 _____
28 ¹ Hereinafter, Buckhorn, Mr. Hilyard and Mr. Mathis maybe collectively referred to as the "Buckhorn
Respondents" and Safe Keeping and Mr. Shook as the "Shook Respondents".

1 Subsequently, the hearing was continued on a number of occasions due to scheduling conflicts and
2 also because the Consent Orders with respect to the Buckhorn Respondents and Shook Respondents
3 were not approved until August 1998. On August 6, 1998, the Commission issued Decision No.
4 61041, the Consent Order with respect to the Shook Respondents. On August 26, 1998, the
5 Commission issued Decision No. 61081, the Consent Order with respect to the Buckhorn
6 Respondents.

7 Although a hearing had been scheduled for September 23, 1998, following the issuance of
8 Decision Nos. 61041 and 61081, additional scheduling conflicts required the proceeding to be
9 continued again.

10 On November 30, 1998, the hearing was reconvened before a duly authorized Hearing Officer
11 of the Commission at its offices in Phoenix, Arizona in order to resolve the remaining issues of
12 restitution and penalties. At that time, the Shook Respondents appeared with Counsel. The
13 Buckhorn Respondents did not enter an appearance.² The Division was also present and represented
14 by counsel. Testimony was taken and a number of exhibits were admitted into evidence during the
15 course of the proceeding. Following the conclusion of the hearing, closing memoranda were
16 submitted on December 23, 1998. The matter was then taken under advisement pending submission
17 of a Recommended Opinion and Order to the Commission.

18 * * * * *

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

21 **FINDINGS OF FACT**

- 22 1. On April 16, 1998, the Commission issued the Notice with respect to the above-
- 23 captioned Respondents.
- 24 2. On August 6, 1998, the Commission issued Decision No. 61041 an Order to Cease
- 25 and Desist, which had been consented to by Mr. Steven L. Shook individually and as President of
- 26

27 ² At the outset of the hearing on November 30, 1998, counsel for the Buckhorn Respondents provided
28 notice to the Commission that he had withdrawn as their counsel. The Special Assistant Attorney General representing
the Division advised the presiding Hearing Officer that she had received telephone calls from Mr. Hilyard and Mr. Mathis
indicating that they would not attend the proceeding.

1 Safe Keeping, Inc.

2 3. On August 26, 1998, the Commission issued Decision No. 61081, an Order to Cease
3 and Desist, which had been consented to by Mr. Joseph K. Hilyard individually and as President of
4 Buckhorn and Mr. Michael Lee Mathis.

5 4. Decision Nos. 61041 and 61081 are hereby incorporated by reference. In those
6 Decisions, the Shook Respondents and the Buckhorn Respondents, respectively, were found to have
7 violated the Act by: offering and selling unregistered or nonexempt securities within or from
8 Arizona; acting as unregistered dealers or salesmen; and committing fraud in the transactions.

9 5. The Buckhorn Respondents and the Shook Respondents were ordered to fully
10 cooperate with the Division and to provide an accounting to the Commission in the aforementioned
11 Decisions. The Commission retained jurisdiction in order to determine the extent of administrative
12 penalties to be assessed, and the total amount of restitution to be made.³

13 6. Although the Shook Respondents and the Buckhorn Respondents were ordered to
14 provide an accounting which would enable the Division to identify investors and the amount of their
15 investments and their distributions, only the Buckhorn Respondents came forth with any financial
16 records. The Shook Respondents failed to do so in violation of Decision No. 61041.

17 7. The records provided by the Buckhorn Respondents established that they collected
18 \$11,906,494.72 from over 400 investors.

19 8. The Division's investigation revealed that before the joint venture offering which
20 included the Shook Respondents, the Buckhorn Respondents had been involved in an earlier offering
21 known as United States Business Owners' Association ("USBOA") which was a promissory note
22 program.

23 9. The record established that a number of investors in USBOA exchanged their
24 promissory note investments in mid-1997 for the joint ventures being promoted by the Buckhorn and
25 Shook Respondents, utilizing the new Buckhorn Joint Venture Agreements ("JV Agreements") which
26 referenced "a safe-keeping depository account" and the "attached Warranty Agreement" provided by
27

28 ³ According to Decision No. 61081, restitution would not exceed \$11,906,194.72.

1 the Shook Respondents.

2 10. The Warranty Agreement purportedly guaranteed the return of an investor's principal
3 and his profits by means of a Safe Keeping Lien given by the Buckhorn Respondents to investors to
4 secure their investments by means of Certificates of Deposit ("CDs") in the amount of \$50,000,000
5 which had allegedly been deposited in an account with Safe Keeping.

6 11. There is no evidence that the Shook Respondents were in anyway connected with the
7 USBOA promissory note offering or any other earlier offering that the Buckhorn Respondents were
8 involved in prior to the exchange investment program which utilized the Buckhorn JV Agreements.

9 12. There is evidence that on May 28, 1997, Mr. Shook opened two separate accounts
10 with a Scottsdale branch of the Bank of America, one which was titled "Buckhorn Financial Services
11 of Arizona" and upon which it was indicated that Mr. Shook was the sole proprietor and a second
12 which was titled "USBOA" upon which Mr. Shook's name again appeared as the sole proprietor.
13 These documents also indicated an individual by the name of Mr. Ben W. Rutan was a cosigner on
14 both accounts.

15 13. According to Mr. Mark Klamrzynski, a Division Certified Public Accountant, Mr.
16 Hilyard provided information to the Division indicating that on or about July 1, 1997, approximately
17 \$3,955,000 from three Texas USBOA bank accounts was transferred to Arizona with about \$2.9
18 million going to the Buckhorn account and approximately \$1,000,000 to the USBOA account.

19 14. In December 1997, Mr. Hilyard opened a separate account for Buckhorn Financial
20 Services, Inc. which again had Mr. Ben W. Rutan as a cosigner.

21 15. Mr. Klamrzynski was able to trace funds from the USBOA accounts in Texas which
22 were pooled with investor funds in the first Buckhorn account in Arizona.

23 16. Based on the bank records, Mr. Klamrzynski learned that the Buckhorn Respondents
24 employed independent contractors who secured investors and were paid commissions for their
25 efforts. The evidence established that these independent contractors (some of whom testified in the
26 proceeding) invested their own funds in USBOA or Buckhorn and brought family members and
27 friends into these offerings.
28

1 17. Mr. Klamrzynski found unexplained and substantial payments were made to the
2 individual Respondents, but primarily to Mr. Shook who received approximately \$4,000,000 and
3 Safe Keeping, which received approximately \$1.4 million. These sums were transferred by means of
4 wire or telephone transfers and cashier's checks.⁴

5 18. Of the approximately \$8,000,000 collected by the Buckhorn offering, Mr. Mathis, Mr.
6 Hilyard and an entity they controlled received approximately \$1,250,000.

7 19. Investors received approximately \$2.7 million in the form of distributions from the
8 Buckhorn Respondents.

9 20. Mr. Klamrzynski was unable to discern any deposits with the Buckhorn or Shook
10 Respondents which could be credited to any business activity related to the loans purportedly made to
11 finance small business development described in the JV Agreements.

12 21. Based on the record, there is strong evidence that Mr. Shook benefited the most from
13 his relationship with the Buckhorn Respondents.

14 22. There is ample evidence in the form of powers of attorney signed by a number of the
15 investors in the USBOA program that they exchanged their promissory notes for the JV Agreements
16 offered by Buckhorn. In several instances these investors, some of whom testified during the
17 proceeding, indicated that they relied upon the representations of Mr. Shook or other individuals
18 connected with the Buckhorn Respondents as to the security for their investments because of the CDs
19 in the amount of \$50,000,000 purportedly backing the investment.

20 23. It is clear that Dr. Cecil Todd, a minister from Missouri who had invested in USBOA,
21 was induced to invest in Buckhorn after speaking with Mr. Shook concerning the safety of his
22 investment due to the purported \$50,000,000 in CDs.

23 24. Based on the evidence, it is clear that investors relied upon the Shook Respondents'
24 Warranty Agreement which described the CDs and contained the following wording: "This warranty
25 is attached to and made a part of the JV for all intents and purposes." It was signed by Mr. Shook as
26 President of Safe Keeping and Mr. Hilyard as President of Buckhorn.

27 _____
28 ⁴ Although Safe Keeping was to receive a fee of one percent of the monies collected for providing the
CDs as security for investors, these monies far exceed that amount.

1 25. The Lien provided by the Shook Respondents was signed by Mr. Shook as the
2 President of Safe Keeping, Inc. to further provide investors with a sense of security. Additionally,
3 although the Shook Respondents represented their independence from the Buckhorn Respondents
4 with an accompanying "Statement of Position" which was designed to convey a message to investors
5 that Safe Keeping was an independent party that was not connected to either the investor or
6 Buckhorn, the evidence did not support this representation.

7 26. The weight of the evidence and more particularly the movement of cash established
8 that there was a clear relationship between the Buckhorn and Shook Respondents which was not
9 disclosed to either USBOA investors or to investors in the purported joint ventures offered by
10 Buckhorn.

11 27. The Division, in its closing memorandum, requested that the Commission hold the
12 Buckhorn Respondents and the Shook Respondents jointly and severally liable for restitution of up to
13 \$8,885,361.64 to all investors as identified in Decision No. 61041 and Decision No. 61081,
14 respectively, from the inception of the Buckhorn Respondents' dealings with the Shook Respondents
15 in May 1997 through April 1998 when some deposits of investor funds were made. Included within
16 the Division's requested restitution amount are the monies, approximately \$3,955,219, which
17 represent investments by USBOA investors exchanged for the Buckhorn offering.

18 28. Additionally, the Division is requesting that the Commission order an administrative
19 penalty in the amount of \$140,000 be assessed against the Buckhorn Respondents and the Shook
20 Respondents jointly and severally for the multiple violations of the Act.

21 29. During the restitution/penalty phase of this proceeding, the Buckhorn Respondents
22 presented no evidence to rebut the Division's evidence. With respect to the Shook Respondents,
23 although they were present during the proceeding, they called no witnesses and presented only one
24 document⁵ into evidence in rebuttal to the Division's presentation of evidence.

25 30. Mr. Shook's counsel chose instead to argue primarily that pursuant to A.R.S. § 44-

26 _____
27 ⁵ This is a letter from Safe Keeping to the Buckhorn Respondents signed by Mr. Shook purportedly
28 terminating the warranty and lien arrangement on March 31, 1998. However, it does not appear that the Shook
Respondents provided any such notice, to investors until at the earliest, June 19, 1998, when Safe Keeping's attorney
wrote a letter to "All Joint Venture Partners of Buckhorn Financial, Inc."

1 2003 Mr. Shook was "a covered person" who, in a private action where a final judgement is entered,
2 is liable solely for that portion of the judgement that corresponds to the percentage of responsibility
3 of a "covered person". This would essentially absolve him personally of liability with respect to
4 monies collected from USBOA investors and also absolve him personally of a percentage of the
5 liability with respect to investors in the Buckhorn offering. Safe Keeping joined in this argument.

6 31. However, Mr. Shook, in Decision No. 61041, consented to the Commission's
7 jurisdiction and since this proceeding was an administrative action brought by the Commission and
8 not a private action in a civil proceeding, we do not agree with his argument.

9 32. Based upon our review of the record herein, Decision Nos. 61041 and 61081, and after
10 reviewing the Division's arguments as presented in its Post-Hearing Memorandum, it is clear that Mr.
11 Shook through Safe Keeping acted in concert with Mr. Hilyard and Mr. Mathis who were the
12 controlling persons behind Buckhorn, and as such they should bear joint and several liability for the
13 restitution and administrative penalties which we order hereinafter.

14 CONCLUSIONS OF LAW

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

17 2. The investments in the joint venture agreements, warranties and liens constitute
18 securities in the form of investment contracts and evidences of indebtedness pursuant to A.R.S. § 44-
19 1801 (23).

20 3. The securities were neither registered nor exempt from registration pursuant to A.R.S.
21 § 44-1801, et. seq.

22 4. The Buckhorn Respondents and the Shook Respondents offered and/or sold
23 unregistered securities within or from Arizona in violation of A.R.S. § 44-1841.

24 5. The Buckhorn Respondents offered and/or sold securities within or from Arizona
25 without being registered as dealers or salesmen in violation of A.R.S. § 44-1842.

26 6. The Buckhorn Respondents and the Shook Respondents violated the anti-fraud
27 provisions of A.R.S. § 44-1991 in the matter set forth hereinabove and as described in Decision Nos.
28

1 61041 and 61081.

2 7. The Buckhorn Respondents and the Shook Respondents should be jointly and
3 severally liable to make restitution pursuant to A.R.S. § 44-2032 and A.A.C R14-4-308 in an amount
4 not to exceed \$8,885,361.64 subject to any legal set-offs.

5 8. Based on the evidence, the Buckhorn Respondents and the Shook Respondents should
6 be assessed an administrative penalty of \$140,000 jointly and severally pursuant to A.R.S. § 44-2036
7 for the multiple violations of the Act as described hereinabove and in Decision Nos. 61041 and
8 61081.

9 **ORDER**

10 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission
11 under A.R.S. § 44-2036, Respondents Buckhorn Financial Services, Inc. dba Buckhorn Financial
12 Services of Arizona, Mr. Joseph K. Hilyard, Mr. Michael Lee Mathis, Mr. Steven L. Shook and Safe
13 Keeping, Inc. dba Safe Keeping Depository, Inc. shall jointly and severally pay as an administrative
14 penalty the sum of \$140,000 for the multiple violations of the Act described hereinabove, said
15 administrative penalties to be paid within 60 days of the effective date of this Decision.

16 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be
17 made payable to the State Treasurer for deposit in the General Fund for the State of Arizona.

18 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall bear
19 interest at the rate of ten percent per year for any outstanding balance after 60 days from the effective
20 date of this Decision.

21 IT IS FURTHER ORDERED that the administrative penalties assessed hereinabove against
22 the above-named Respondents shall be reduced to \$90,000 if restitution is made in accordance with
23 the terms of this Decision hereinafter.

24 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
25 A.R.S. § 44-2032, Respondents Buckhorn Financial Services, Inc. dba Buckhorn Financial Services
26 of Arizona, Mr. Joseph K. Hilyard, Mr. Michael Lee Mathis, Mr. Steven L. Shook and Safe Keeping,
27 Inc. dba Safe Keeping Depository, Inc. jointly and severally shall make restitution in an amount not
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1 to exceed \$8,885,361.64 which restitution shall be made pursuant to A.A.C. R14-4-308, subject to
2 any legal set-offs by any other Respondents and confirmed by the Director of Securities, said
3 restitution to be made within 60 days of the effective date of this Decision.

4 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the
5 rate of ten percent per year for the period from the dates of investment to the date of payment of
6 restitution by the Respondents.

7 IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be
8 deposited into an interest-bearing account (s), if appropriate, until distributions are made.

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

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
11
12

13 COMMISSIONER-CHAIRMAN

COMMISSIONER

COMMISSIONER

14
15
16 IN WITNESS WHEREOF, I, STUART R. BRACKNEY,
17 Acting Executive Secretary of the Arizona Corporation
18 Commission, have hereunto set my hand and caused the official
19 seal of the Commission to be affixed at the Capitol, in the City
20 of Phoenix, this ____ day of _____, 1999.

21 _____
22 STUART R. BRACKNEY
23 ACTING EXECUTIVE SECRETARY

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1 SERVICE LIST FOR: BUCKHORN FINANCIAL SERVICES, INC. d/b/a
2 BUCKHORN FINANCIAL SERVICE OF ARIZONA,
3 JOSEPH K. HILYARD, MICHAEL LEE MATHIS,
SAFE KEEPING, INC., d/b/a SAFE KEEPING
DEPOSITORY, INC., STEVEN L. SHOOK

4 DOCKET NO. S-03233A-98-0000

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