

ORIGINAL



0000169656

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

Arizona Corporation Commission

DOUG LITTLE, Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

DOCKETED

2016 APR 13 P 3:42

APR 13 2016

AZ CORP COMMISSION  
DOCKET CONTROL

DOCKETED BY

In the matter of:

Docket No. S-20956A-16-0090

David J. Escarcega (CRD No. 4367584), an  
unmarried man,

Respondent.

**RESPONDENT'S ANSWER  
TO NOTICE OF OPPORTUNITY  
FOR HEARING REGARDING  
PROPOSED ORDERS**

Respondent David J. Escarcega hereby submits his answer to the Notice of Opportunity for Hearing ("Notice") filed by the Securities Division ("Division") of the Arizona Corporation Commission in this matter.

1. Answering paragraph 1 of the Notice, Respondent admits that the Commission has jurisdiction over this matter.

2. Respondent admits the allegations in paragraph 2 of the Notice.

3. Respondent denies that he is currently employed by Center Street Securities, Inc. Respondent admits the remaining allegations in paragraph 3 of the Notice and affirmatively states that he was employed by Center Street Securities, Inc. at all times material to the Notice.

4. Respondent admits the allegations in paragraph 4 of the Notice.

5. Respondent admits the allegations in paragraph 5 of the Notice and affirmatively states that he initiated an appeal of the FINRA decision on March 24, 2016.

6. Respondent admits the allegations in paragraph 6 of the Notice.

7. Answering paragraph 7 of the Notice, Respondent admits that his securities Dealer approved a new debenture product ("Debenture" or "Debentures") for sale in 2012 and that the Debenture is a security. Respondent admits that the Debenture was offered by GWG Holdings, Inc. and that the corporate structure of the issuer and its affiliates, their business models, and all

1 material facts regarding the Debenture are described in the Debenture prospectuses that  
2 Respondent's customers were provided before making their investments.

3 8. Answering paragraph 8 of the Notice, Respondent admits upon information and  
4 belief that the Debentures were registered by the Commission as a special registration. Respondent  
5 affirmatively states that the remaining allegations in paragraph 8 of the Notice are legal conclusions  
6 to which no answer is required.

7 9. Respondent admits the allegations in paragraph 9 of the Notice.

8 10. Answering paragraph 10 of the Notice, Respondent admits that the Debentures were  
9 not listed on any exchange. Respondent admits that the issuer voluntarily redeemed some  
10 Debentures early, despite the issuer's discretion to deny such requests except in cases of death,  
11 bankruptcy, or total disability. Respondent affirmatively states that none of his clients made a  
12 redemption request that was denied by the issuer or granted without waiving assessments for early  
13 withdrawal. Respondent further states that the risk factors and other material information regarding  
14 the Debentures are disclosed in the prospectuses and other materials his customers were provided  
15 before making their investments. Respondent denies the remaining allegations in paragraph 10 of  
16 the Notice.

17 11. Respondent denies the allegations in paragraph 11 of the Notice.

18 12. Respondent admits that he prepared account applications and suitability forms with  
19 his customers, using information that they provided to him and that he reasonably believed was  
20 true, as part of the purchase process. Respondent admits that the forms included information  
21 regarding the customers' income, assets, investment objectives, and other information. Respondent  
22 denies any remaining allegations in paragraph 12 of the Notice and affirmatively states that  
23 investment objectives on the suitability forms were tailored to the Debentures.

24 13. Respondent admits the allegations in paragraph 13 of the Notice.

25 14. Respondent admits that J.B. and D.B. are a married couple residing in Arizona and  
26 that Respondent assisted them in their purchase of a \$117,000 Debenture investment. Respondent  
27 admits that their investment exceeded 10% of their net worth and affirmatively states that the issuer  
28 refunded an amount to J.B. and D.B. to reduce their investment to approximately 10% of their

1 relevant net worth, and Respondent voluntarily relinquished a proportional amount of his  
2 commission. Similar measures were taken for each of Respondent's customers whose initial  
3 investments exceeded 10% of their net worth when the error was found. Respondent represented  
4 J.B. and D.B.'s net worth on their suitability form based on the information they gave him, which  
5 Respondent believed to be true. J.B. and D.B. did not assert, nor did their accountant assert, that  
6 their net worth was overstated by Respondent when the refund was issued. Respondent denies the  
7 remaining allegations in paragraph 14 of the Notice.

8         15. Respondent admits that P.B. is an Arizona resident who invested \$103,000 in a  
9 Debenture through Respondent. Respondent denies the remaining allegations in paragraph 15 of  
10 the Notice.

11         16. Respondent admits that R.L. is an Arizona resident who invested \$99,000 in a  
12 Debenture through Respondent. Respondent admits that R.L.'s investment exceeded 10% of his  
13 net worth and affirmatively states that the issuer refunded an amount to R.L. to reduce his  
14 investment to approximately 10% of his relevant net worth, and Respondent voluntarily  
15 relinquished a proportional amount of his commission. Respondent denies the remaining  
16 allegations in paragraph 16 of the Notice.

17         17. Respondent admits that K.L.K. is an Arizona resident who invested \$65,500 in a  
18 Debenture through Respondent. Respondent denies the remaining allegations in paragraph 17 of  
19 the Notice.

20         18. Respondent admits that R.E. is an Arizona resident who invested \$67,000 in a  
21 Debenture through Respondent. Respondent denies the remaining allegations in paragraph 18 of  
22 the Notice.

23         19. Respondent admits that N.J. and R.J. are California residents who invested  
24 \$52,875.23 in a Debenture through Respondent. Respondent denies the remaining allegations in  
25 paragraph 19 of the Notice.

26         20. Respondent admits that C.M. is a California resident who invested \$117,000 in a  
27 Debenture through Respondent. Respondent denies the remaining allegations in paragraph 20 of the  
28 Notice.

1           21.     Respondent admits that California resident N.Z. invested in two Debentures through  
2 Respondent totaling \$64,500. Respondent denies remaining allegations in paragraph 21 of the  
3 Notice.

4           22.     Respondent admits that D.K. and K.K. are a married couple residing in Arizona and  
5 that Respondent assisted them in their purchase of four Debenture investments totaling \$500,000.  
6 Respondent admits that their investment exceeded 10% of their net worth and affirmatively states  
7 that the issuer refunded an amount to D.K. and K.K. to reduce their investment to approximately  
8 10% of their relevant net worth, and Respondent voluntarily relinquished a proportional amount of  
9 his commission.

10          23.     Respondent admits that N.H. is an Arizona resident who invested \$329,500 in a  
11 Debenture through Respondent. Respondent admits that N.H.'s investment exceeded 10% of her  
12 net worth and affirmatively states that the issuer refunded an amount to N.H. to reduce her  
13 investment to approximately 10% of her relevant net worth, and Respondent voluntarily  
14 relinquished a proportional amount of his commission.

15          24.     Respondent admits that P.A.B. is an Arizona resident and that Respondent assisted  
16 her in her purchase of two Debenture investments totaling \$267,000. Respondent admits that  
17 P.A.B.'s investment exceeded 10% of her net worth and affirmatively states that the issuer refunded  
18 an amount to P.A.B. to reduce her investment to approximately 10% of her relevant net worth, and  
19 Respondent voluntarily relinquished a proportional amount of his commission.

20          25.     Respondent admits that S.C. is an Arizona resident who invested \$78,000 in a  
21 Debenture through Respondent. Respondent admits that S.C.'s investment exceeded 10% of her  
22 net worth and affirmatively states that the issuer refunded an amount to S.C. to reduce her  
23 investment to approximately 10% of her relevant net worth, and Respondent voluntarily  
24 relinquished a proportional amount of his commission.

25          26.     Respondent admits that M.D. is an Arizona resident and that Respondent assisted  
26 M.D. in his purchase of two Debenture investments totaling \$111,000. Respondent denies the  
27 remaining allegations in paragraph 26 of the Notice.

28

1           27.     Respondent admits that A.M. is an Arizona resident who invested \$87,000 in a  
2 Debenture through Respondent, which represented approximately 12% of his net worth.  
3 Respondent affirmatively states that the issuer refunded an amount to A.M. to reduce his  
4 investment to approximately 10% of his relevant net worth, and Respondent voluntarily  
5 relinquished a proportional amount of his commission.

6           28.     Respondent admits that no investors have been harmed by their Debenture  
7 investments, which have performed as they were designed to perform. Respondent's customers  
8 have each earned a significant return on their investments. Respondent denies the remaining  
9 allegations in paragraph 28 of the Notice.

10          29.     Respondent admits the allegations in paragraph 29 of the Notice.

11          30.     Respondent admits that N.G. is a California resident and that she invested \$25,000  
12 in a Debenture through Respondent. Respondent denies the remaining allegations in paragraph 30  
13 of the Notice.

14          31.     Respondent admits that W.J. and S.M. were California residents who invested in two  
15 Debentures through Respondent totaling \$156,300. Respondent denies the remaining allegations in  
16 paragraph 31.

17          32.     Respondent denies the allegations in paragraph 32 of the Notice.

18          33.     Respondent denies the allegations in paragraph 33 of the Notice.

19          34.     Respondent denies the allegations in paragraph 34 of the Notice and affirmatively  
20 states that all risk factors were adequately disclosed to his customers before they invested in  
21 Debentures.

22          35.     Respondent denies the allegations in paragraph 35 of the Notice and its  
23 subparagraphs (a) – (d).

24          36.     Respondent denies the allegations in paragraph 36 of the Notice.

25          37.     Respondent denies the allegations in paragraph 37 of the Notice and its  
26 subparagraphs (a) – (b) and subparagraphs (b)(i) – (b)(v).

27          38.     Respondent denies the allegations in paragraph 38 of the Notice.

28





1 Advertising and received a clean letter of review for. The slide deck disclosed material risk  
2 information about the Debentures.

3 14. Respondent provided a copy of the issuer's prospectuses for the Debentures to  
4 interested customers or prospective customers at the seminars and on other occasions before they  
5 decided to make their investments, along with other forms, brochures, and literature that  
6 Respondent understood had been reviewed and approved by the issuer and his dealer. The  
7 prospectuses contained thorough disclosures of the risks and other material information about the  
8 Debentures. Respondent's customers each acknowledged receipt of the prospectuses before making  
9 their investments.

10 15. The account paperwork that Respondent completed with his customers, and which  
11 the customers signed, included prominent and accurate risk disclosures.

12 16. The statements that Respondent made to his customers verbally and comments that  
13 he wrote on Universal Switch Letters for some customers were accurate and were not misleading in  
14 the context they were spoken or written. The written statements were reviewed by Center Street  
15 Securities, Inc.'s Compliance Department and Respondent reasonably relied on his dealer's  
16 compliance approvals.

17 17. Respondent had a reasonable basis for all investment recommendations he made.

18 18. Respondent acted in good faith and at no time acted recklessly, with scienter, or with  
19 the intent to harm any customer or violate any policy or law.

20 19. Respondent did not cause any damages.

21 20. The claims in the Notice and restitution are barred, in whole or in part, because  
22 customers' damages, if any, were caused by the acts of others over whom Respondent had no  
23 control, and for whose acts Respondent is not legally answerable.

24 21. The claims in the Notice and restitution are barred, in whole or in part, because  
25 customers' damages, if any, were caused by the intervening and/or superseding acts of others over  
26 whom Respondent had no control, and for whose acts Respondent is not legally answerable.

27 22. The claims in the Notice and the requested restitution are barred, in whole or in part,  
28 by the doctrine of contributory negligence.



1 Original + 10 copies of the foregoing  
2 filed this 13th day of April, 2016 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand delivered  
8 this 13th day of April, 2016, to:

9 Dwight Nodes, Chief Administrative Law Judge  
10 Hearing Division  
11 Arizona Corporation Commission  
12 1200 West Washington  
13 Phoenix, Arizona 85007-2927

14 Matthew Neubert, Esq.  
15 Paul Kitchin, Esq.  
16 Securities Division  
17 Arizona Corporation Commission  
18 1300 West Washington, 3rd Floor  
19 Phoenix, Arizona 85007

20 Copy of the foregoing mailed  
21 this 13th day of April, 2016, to:

22 Coash & Coash Court Reporting, Video  
23 and Videoconferencing  
24 1802 North 7th Street  
25 Phoenix, Arizona 85007-2927

26 By Ruth B. Aubrey  
27  
28