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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission
DOCKETED

MAY 21 2009

DOCKETED BY nr

In the matter of:)	DOCKET NO. S-20649A-09-0013
JEFFRIE HARPER (CRD #2863910)(a/k/a)	
Jeff Harper) and KATHLEEN JANICE)	DECISION NO. <u>71068</u>
HARPER, husband and wife)	
DONALD ROBERT MATTSON JR (a/k/a)	ORDER TO CEASE AND DESIST, FOR
Rob Mattson), an unmarried man)	RESTITUTION AND FOR
KNUCKLEBALL CAPITAL)	ADMINISTRATIVE PENALTY RE:
MANAGEMENT, LLC, an Arizona limited)	KNUCKLEBALL CAPITAL
liability company)	MANAGEMENT, LLC
Respondents.)	

On January 15, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties and for other Affirmative Action ("Notice") in the matter against Respondents Jeffrie Harper (a/k/a Jeff Harper) ("Harper") and Kathleen Janice Harper, husband and wife, Donald Robert Mattson (a/k/a Rob Mattson) ("Mattson"), and Knuckleball Capital Management, LLC, an Arizona limited liability company ("Knuckleball").

Knuckleball Capital Management, LLC, was personally served on January 15, 2009. The Notice specified that Knuckleball had ten days to request a hearing and 30 days to file an answer. Knuckleball neither requested a hearing nor filed an answer within the required time.

Mattson was served on January 21, 2009. Mattson filed an answer on February 17, 2009. Harper and Kathleen Janice Harper were served on January 23, 2009. Harper and Kathleen Janice

1 Harper filed an answer on February 18, 2009. Harper, Kathleen Janice Harper, and Mattson are not
2 subject to this Order.

3 **I.**

4 **FINDINGS OF FACT**

5 1. Jeffrie Harper (CRD #2863910)(a/k/a Jeff Harper) ("Harper") is an individual who
6 at all relevant times resided in Maricopa County, Arizona.

7 2. Donald Robert Mattson (a/k/a Rob Mattson) ("Mattson") is an individual who at all
8 relevant times resided in Maricopa County, Arizona.

9 3. KNUCKLEBALL CAPITAL MANAGEMENT, LLC ("KNUCKLEBALL"), is an
10 Arizona limited liability company organized on or about May 15, 2007. According to Commission
11 records, Harper and Mattson are members of KNUCKLEBALL.

12 4. According to Commission records, KNUCKLEBALL's primary purpose is currency
13 investing.

14 5. Harper, Mattson, and KNUCKLEBALL may be collectively referred to as
15 "Respondents."

16 6. Beginning in or around April 2007 until in or around February 2008, Respondents
17 offered and sold securities in the form of investment contracts and/or commodity investment
18 contracts ("Investment(s)"). Respondents sold at least \$179,000 of the Investments to at least six
19 Arizona investors who at all relevant times resided in Arizona.

20 7. Respondents represented to the investors that the funds would be used to trade in the
21 foreign currency exchange market. Respondents represented to at least one investor that the
22 Respondents would be trading in the Euro/dollar market.

23 8. Respondents directed the investors to make their investment monies payable to
24 KNUCKLEBALL. KNUCKLEBALL received the investor funds and pooled the funds in a bank
25 account opened by Mattson and controlled by Mattson and Harper.

1 9. The Respondents told investors different things as to who would conduct the
2 trading. At least one investor was told Mattson would conduct the trading. In another instance,
3 Harper told at least one investor that a "friend" would do the trading. Upon information and belief,
4 the "friend" is Mattson.

5 10. The Respondents promised positive returns to the investors solely from the efforts
6 of the Respondents. At least one investor was promised returns of three percent a month.
7 However, none of the returns materialized.

8 11. The Respondents represented to the investors that their investor funds would be
9 used for the Investments. None of the investors gave the Respondents authorization to use the
10 investor funds for any purpose other than investing in the Investments.

11 12. The Respondents failed to tell investors they used the investor funds to repay other
12 investors and withdraw the funds from the KNUCKLEBALL bank account in cash. In another
13 instance, the Respondents failed to tell investors they transferred investor funds to an offshore bank
14 account.

15 13. Respondents represented to investors different levels of risk regarding the
16 Investments. In at least one instance, an investor was told that the Investment was risky but
17 lucrative. In another instance, an investor was not told about any risks to the Investment, including
18 but not limited to, the possibility that the investor may lose all or a large portion of the investment.
19 In yet another instance, an investor was told that the Investment was a good, safe investment where
20 the investor could not lose any money.

21 14. The Respondents failed to disclose any risks because a majority of investors who
22 invested with the Respondents lost their entire investment.

23 15. KNUCKLEBALL and Harper told at least one investor that the Investment was
24 growing and doing well. This investor made a second Investment based on these statements.
25 However, the Respondents failed to tell the investor that at the time of the investment the funds
26 were being used for purposes other than the Investment.

1 16. Respondents failed to disclose that Harper filed for bankruptcy and voluntary
2 resigned from his position as a registered salesman, which misled investors to believe the
3 Investments were risk-free and would generate positive returns, to wit:

4 a. that on or about December 23, 2004, Harper and Kathleen Janice Harper filed for
5 protection under Chapter 7 of the United States Bankruptcy Code in the U.S. Bankruptcy Court,
6 District of Arizona in the matter entitled *In re Harper*, case no. 2:04-bk-22104-GBN. On May 20,
7 2005, Harper and Kathleen Janice Harper received a bankruptcy discharge.

8 b. that Harper was a registered salesman who resigned his position during an
9 internal investigation for alleged misconduct. Harper was a registered salesman with World Group
10 Securities, Inc. ("WGS") from April 12, 2002 until August 27, 2004. WGS reported on the Central
11 Registration Depository ("CRD") of the Financial Industry Regulatory Authority, Inc. ("FINRA")
12 that Harper "was permitted to resign while under internal review for failure to repay debts owed to
13 customer of the firm, possible sharing of commissions with a representative of another firm, and a
14 possible unapproved outside business activity."

15 17. Some of the investors requested from Harper statements of their accounts. Harper
16 did not provide any statements or accounting of the investment despite numerous requests, but
17 assured at least one investor that the investment was doing well.

18 18. At least one investor contacted Harper consistently to find out how the investment
19 was doing. Harper responded that the investment was fine and the monies were growing.
20 However, Mattson contacted this investor and told him that Mattson lost \$50,000 in currency
21 trading and that another \$50,000 was never received from the investor. Harper later told this same
22 investor that he used some of the funds to pay medical bills.

23 19. Another investor contacted Harper regarding the status of the investment. Harper
24 told this investor that the money was gone and that Mattson invested the funds in areas not
25 intended for the funds.

26

1 20. At all times relevant, Respondents were not registered with the Commission as
2 dealers or salesmen.

3 21. At all times relevant, the Investments were not registered with the Commission.
4

5 **II.**

6 **CONCLUSIONS OF LAW**

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

9 2. KNUCKLEBALL offered or sold securities within or from Arizona, within the
10 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

11 3. KNUCKLEBALL violated A.R.S. § 44-1841 by offering or selling securities that
12 were neither registered nor exempt from registration.

13 4. KNUCKLEBALL violated A.R.S. § 44-1842 by offering or selling securities while
14 neither registered as a dealer nor exempt from registration.

15 5. KNUCKLEBALL violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
16 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
17 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
18 or deceit. The conduct included:

19 a) Provided information regarding potential positive returns to at least one
20 investor, but failed disclose to at least one investor the risks associated with their
21 investment including, but not limited to, the possibility that he/she may lose all or a large
22 portion of their investment;

23 b) Failed to tell at least one investor that on or about December 23, 2004,
24 Harper and Kathleen Janice Harper filed for protection under Chapter 7 of the United States
25 Bankruptcy Code in the U.S. Bankruptcy Court, District of Arizona in the matter entitled In
26 re Harper, case no. 2:04-bk-22104-GBN. On May 20, 2005, Harper and Kathleen Janice

1 Harper received a bankruptcy discharge. This failure misled investors to believe that the
2 Investment was risk-free and would generate positive returns;

3 c) Failed to tell at least one investor that Harper was a registered salesman who
4 resigned his position during an internal investigation for alleged misconduct. Harper was a
5 registered salesman with World Group Securities, Inc. ("WGS") from April 12, 2002 until
6 August 27, 2004. WGI reported on the Central Registration Depository ("CRD") of the
7 Financial Industry Regulatory Authority, Inc. ("FINRA") that Harper resigned for
8 borrowing money from a WGI customer and did not pay it back, possibly referred business
9 to another firm and shared commissions with a representative from that firm, and possibly
10 participated in an unauthorized outside business activity. This failure misled investors to
11 believe that the Investment was risk-free and would generate positive returns;

12 d) Misrepresented to at least one investor that the investor would receive
13 returns of three percent per month when no returns materialized;

14 e) Misrepresented to investors that the funds they invested would be used in
15 their entirety for the Investments when KNUCKLEBALL used investor funds to repay
16 other investors, withdraw the funds as cash and/or transfer the funds to an offshore bank
17 account;

18 f) Misrepresented to at least one investor that the Investment was growing and
19 doing well when the funds were used to repay other investors, withdraw the funds as cash
20 and/or transfer the funds to an offshore bank account; and

21 g) Misrepresented to at least one investor that the Investment was a good, safe
22 investment where the investor could not lose any money when the funds were used to repay
23 other investors, withdraw the funds as cash and/or transfer the funds to an offshore bank
24 account.

25 6. KNUCKLEBALL's conduct is grounds for a cease and desist order pursuant to
26 A.R.S. § 44-2032.

7. KNUCKLEBALL's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. KNUCKLEBALL's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that KNUCKLEBALL, and any of KNUCKLEBALL's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032 that KNUCKLEBALL, individually, shall, jointly and severally with any other Respondent against whom the Commission enters an order under Docket No. S-20649A-09-0013, pay restitution to the Commission in the amount of \$179,000.00. Payment shall be made in full 60 days from the date of this Order. Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased and the Commission cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at the time of the distribution, shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the

1 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
2 disburse shall be transferred to the general fund of the state of Arizona.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that KNUCKLEBALL,
4 individually, shall pay an administrative penalty in the amount of \$50,000.00. Payment shall be
5 made to the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10%
6 per annum from the date of this Order until paid in full. The payment obligations for these
7 administrative penalties shall be subordinate to any restitution obligations ordered herein and shall
8 become immediately due and payable only after restitution payments have been paid in full or
9 upon KNUCKLEBALL's default with respect to KNUCKLEBALL's restitution obligations.

10 If KNUCKLEBALL fails to make any payment as required in the Order, any outstanding
11 balance shall be in default and shall be immediately due and payable without notice or demand.
12 KNUCKLEBALL agrees and understands that acceptance of any partial or late payment by the
13 Commission is not a waiver of default by Commission.

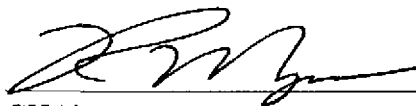
14 For purposes of this Order, a bankruptcy filing by KNUCKLEBALL shall be an act of
15 default. If KNUCKLEBALL does not comply with this Order, any outstanding balance may be
16 deemed in default and shall be immediately due and payable.


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1 IT IS FURTHER ORDERED, that if KNUCKLEBALL fails to comply with this order, the
2 Commission may bring further legal proceedings against KNUCKLEBALL, including application
3 to the superior court for an order of contempt.

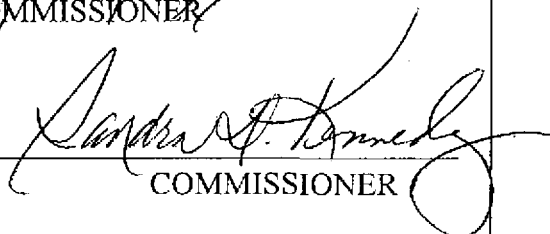
4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

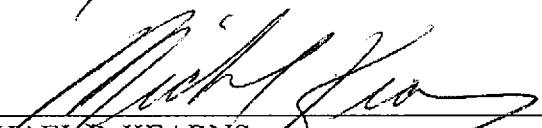
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7  _____
8 CHAIRMAN

9  _____
10 COMMISSIONER

11  _____
12 COMMISSIONER

13  _____
14 COMMISSIONER

15 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,
16 Interim Executive Director of the Arizona Corporation
17 Commission, have hereunto set my hand and caused the
18 official seal of the Commission to be affixed at the
19 Capitol, in the City of Phoenix, this 21st day of
20 MAY, 2009.

21  _____
22 MICHAEL P. KEARNS
23 INTERIM EXECUTIVE DIRECTOR

24 _____
25 DISSENT

26 _____
DISSENT

27 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
28 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

29 (AV)