



0000159293

BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

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

Arizona Corporation Commission

DOCKETED

NOV 13 2014

DOCKETED BY nr

IN THE MATTER OF:

DOCKET NO. S-20844A-12-0122

SEED CORPORATION, an Arizona Corporation dissolved by administrative action;

RANDALL DUANE SIMONSON and MARILYN J. SIMONSON, husband and wife; and

DECISION NO. 74827

KARL HENRY REHBERG AKA SHAWN PIERCE, and HELEN REHBERG AKA LISA PIERCE, husband and wife;

Respondents.

OPINION AND ORDER

DATES OF PRE-HEARING CONFERENCES:

May 9 and 30, 2012, and January 8, 2013

DATES OF HEARING:

February 19, 2013

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Marc E. Stern and Mark Preny<sup>1</sup>

APPEARANCES:

Randall Duane Simonson and Marilyn J. Simonson, pro per and for SEED Corporation;

Mr. Steven Briggs and Ms. Stacy Luedtke, Staff Attorneys, on behalf of the Securities Division of the Arizona Corporation Commission.

**BY THE COMMISSION:**

On March 30, 2012, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against SEED Corporation ("SEED"), Randall Duane Simonson and Marilyn J. Simonson, husband and wife, and

<sup>1</sup> The proceedings were held before Administrative Law Judge Marc E. Stern. Administrative Law Judge Marc E. Stern and Administrative Law Judge Mark Preny drafted the Recommended Opinion and Order.

1 Karl Henry Rehberg (aka Shawn Pierce), and Helen Rehberg (aka Lisa Pierce), husband and wife  
2 (collectively "Respondents"), in which the Division alleged multiple violations of the Arizona  
3 Securities Act ("Act") in connection with the offer and sale of securities in the form of stock and  
4 notes.

5 The Respondent Spouses, Marilyn J. Simonson and Helen Rehberg (aka Lisa Pierce), were  
6 joined in the action for the purpose of determining the liability of the marital communities pursuant to  
7 A.R.S. § 44-2031(C).

8 The Respondents were duly served with copies of the Notice.

9 On April 13, 2012, Respondents Randall Duane Simonson and Marilyn J. Simonson filed a  
10 request for hearing in this matter.

11 On April 23, 2012, by Procedural Order, a pre-hearing conference was scheduled on May 9,  
12 2012, in response to the Simonsons' request for hearing.

13 On May 3, 2012, Respondents Karl Henry Rehberg and Helen Rehberg filed requests for  
14 hearing in this matter.

15 On May 7, 2012, by Procedural Order, a second pre-hearing conference was scheduled on  
16 May 30, 2012, in response to the Rehbergs' requests for hearing.

17 On May 9 and May 30, 2012, the pre-hearing conferences were held as scheduled. The  
18 Division appeared with counsel and the Simonson Respondents appeared on their own behalf at the  
19 May 9, 2012, pre-hearing conference and the parties indicated they were discussing a possible  
20 settlement with respect to the Simonson Respondents.

21 On May 30, 2012, at the second pre-hearing conference scheduled in response to the  
22 Rehbergs' requests for a hearing, the Division appeared with counsel and Mr. Simonson appeared on  
23 his own behalf. The Rehbergs did not appear. The Division and the Simonsons were continuing their  
24 discussions, but in the interim the Division requested that a hearing be scheduled.

25 On May 31, 2012, by Procedural Order, a hearing was scheduled to commence on November  
26 13, 2012, with additional days of hearing on November 26, 27, 28, 29 and 30, 2012.

27 On October 29, 2012, it was determined that a scheduling conflict had arisen with the  
28 scheduled commencement of the proceeding on November 13, 2012, and it was necessary to

1 reschedule the commencement of the proceeding by Procedural Order to November 26, 2012.

2 On November 19, 2012, due to on-going construction renovations at the Commission, it  
3 became necessary to continue the proceeding. As a result, the hearing was continued to January 8,  
4 2013.

5 On January 8, 2013, the Division appeared through counsel and Mr. and Mrs. Simonson  
6 appeared on their own behalf at the commencement of the proceeding. Mr. and Mrs. Rehberg did not  
7 appear. After a brief recess, counsel for the Division and the Simonsons indicated that they were in  
8 the process of concluding a settlement in the proceeding and that a proposed Consent Order would be  
9 submitted for approval by the Commission. The Division requested that the proceeding be continued  
10 with respect to the presentation of evidence against the Rehbergs.

11 On January 16, 2013, by Procedural Order, the hearing was continued to commence on  
12 February 19, 2013.

13 On February 19, 2013, a full public hearing was commenced before a duly authorized  
14 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division  
15 appeared through counsel and Mr. and Mrs. Simonson appeared on their own behalf, and on behalf of  
16 SEED, because they had not entered into a Consent Order as was indicated previously. Mr. and Mrs.  
17 Rehberg did not appear. At the conclusion of the proceeding, the Division agreed to file a closing  
18 brief by April 1, 2013. Mr. Simonson indicated that he did not intend to file anything further.

19 On April 1, 2013, the Division filed its post-hearing brief.

20 \* \* \* \* \*

## 21 DISCUSSION

### 22 I. Testimony

#### 23 Susan Sica

24 Susan Sica testified that she is an Arizona resident employed as a bookkeeper.<sup>2</sup> Ms. Sica  
25 testified that she first became aware of the investment opportunity with SEED from her employer,  
26 Howard Lein.<sup>3</sup> Ms. Sica attended a meeting at SEED's offices where Mr. Simonson discussed

27 \_\_\_\_\_  
28 <sup>2</sup> Tr. at 43, 45.

<sup>3</sup> Tr. at 43-44.

1 investment opportunities with the company.<sup>4</sup> Ms. Sica testified that she learned SEED's business  
2 was constructing "green" storage facilities.<sup>5</sup> Ms. Sica also testified that, at this meeting, Mr. Pierce  
3 (aka Mr. Rehberg) told her that the minimum investment would be \$42,500, or 10,000 shares at \$4.25  
4 per share.<sup>6</sup> Ms. Sica signed two investment checks to SEED on behalf of Mr. Lein, one dated August  
5 9, 2007, in the amount of \$4,250, and one dated August 9, 2007, in the amount of \$17,000.<sup>7</sup> Ms. Sica  
6 testified that she signed a Subscription Agreement on behalf of Mr. Lein, for his purchase of 5,000  
7 shares of SEED stock, at \$4.25 per share, on August 9, 2007.<sup>8</sup>

8 Ms. Sica testified that she also invested \$12,750 of her own money in SEED, with a check  
9 dated August 13, 2007.<sup>9</sup> Ms. Sica signed a Subscription Agreement purchasing 3,000 shares of  
10 SEED stock, at \$4.25 per share, on August 9, 2007, which was accepted by Randall Simonson per his  
11 signature, as president, dated August 23, 2007.<sup>10</sup> Ms. Sica testified that she received an August 28,  
12 2007 letter from Randall Simonson, as president of SEED, welcoming her as a Founding  
13 Shareholder.<sup>11</sup> The Subscription Agreement displayed a footer on each page thereof reading  
14 "COPYRIGHT 2007 S. PIERCE, ALL RIGHTS RESERVED."<sup>12</sup>

15 Ms. Sica testified she received a letter in the mail from SEED, signed by Mr. Simonson, dated  
16 September 24, 2007.<sup>13</sup> The letter stated that SEED had retained Fennemore Craig as legal counsel  
17 who informed the company that "our private placement offering earlier this summer did not meet  
18 federal or state securities law guidelines due to, among other things, inadequate disclosure and  
19 documentation."<sup>14</sup> The letter also gave the following information regarding the Rehberg  
20 Respondents:

21 [C]onsultants Shawn and Lisa Pierce are no longer affiliated with  
22 SEED Corporation. Through the diligence efforts of Fennemore Craig

23 <sup>4</sup> Tr. at 44-45.

24 <sup>5</sup> Tr. at 45.

<sup>6</sup> Tr. at 44.

25 <sup>7</sup> Tr. at 45-46; Exh. S-19.

<sup>8</sup> Tr. at 65-66, 68; Exhs. S-25, S-42.

26 <sup>9</sup> Tr. at 47; Exh S-21.

<sup>10</sup> Tr. at 53-54; Exhs. S-20, S-47.

27 <sup>11</sup> Tr. at 61; Exh. S-22.

<sup>12</sup> Tr. at 53; Exh. S-47. (Emphasis in original).

<sup>13</sup> Tr. at 48-49; Exh. S-9.

28 <sup>14</sup> Tr. at 48; Exh. S-9.

1 and the management of Seed [sic], it was discovered they were not who  
2 they claimed to be, but rather Karl and Helen Rehberg. The Rehbergs'  
3 [sic] were actually federal fugitives wanted for securities fraud. They  
4 were subsequently arrested and are being extradited to Florida. The  
5 Rehberg's [sic] never had access to SEED's bank accounts.<sup>15</sup>

6 Ms. Sica testified that she was not aware of the true identities of the Rehbergs prior to reading  
7 the letter.<sup>16</sup> Ms. Sica considered this information relevant as she would not have invested had she  
8 known about the Rehbergs' identities and backgrounds.<sup>17</sup> Ms. Sica testified that she received a copy  
9 of SEED's "Executive Summary of the Business Plan and Stock Offering" after making her  
10 investment.<sup>18</sup> The SEED Executive Summary provided the following information regarding  
11 Respondent Rehberg, under his alias Shawn Pierce:

12 CSL Breckenridge, LLC is orchestrating the financial and corporate  
13 structure for all the companies involved in the Consortium under the  
14 auspices of Dr. Shawn Pierce, PhD. He has brought together the  
15 entities comprising the Consortium, making this project possible, and  
16 further developed the concept and financial structure for SEED. CSL  
17 remains a consultant to Alter-Air, Amason, ETA, as well as SEED, but  
18 is not a shareholder, officer nor director of any of them. He provides  
19 the liaison between the companies and has developed some of the  
20 principal ideas behind several of the Consortiums [sic] products and  
21 financial strategies. CSL does have a limited amount of stock options  
22 in each Consortium member.<sup>19</sup>

23 Ms. Sica testified that prior to investing, Mr. Pierce (aka Mr. Rehberg) was introduced to her as  
24 working with SEED by "putting together the paperwork, financial end."<sup>20</sup>

25  
26 <sup>15</sup> Tr. at 49; Exh. S-9.

<sup>16</sup> Tr. at 50.

27 <sup>17</sup> Tr. at 50.

<sup>18</sup> Tr. at 50-51.

<sup>19</sup> Tr. at 52; Exh. S-10.

28 <sup>20</sup> Tr. at 52.

1 Also subsequent to making her investment, Ms. Sica received a Private Placement  
2 Memorandum regarding SEED, dated October 30, 2007.<sup>21</sup> The Private Placement Memorandum  
3 expanded upon the earlier information disclosed in Mr. Simonson's September 24, 2007 letter:

4 The Company previously engaged CSL Breckenridge, LLC, the  
5 principals of which were an individual going by the name of Dr. Shawn  
6 Pierce, Ph.D. and his wife Lisa Pierce, to bring together the Company  
7 and the Consortium members and to put together the financial and  
8 corporate structure for the Company and the Consortium members.  
9 The Company recently found out that Dr. Shawn Pierce, Ph.D. is  
10 actually Karl Henry Rehberg and that Lisa Pierce is actually Helen  
11 Rehberg. Further, the Company recently found out that Karl Henry  
12 Rehberg and Helen Rehberg are wanted by the Federal Bureau of  
13 Investigation for alleged securities law violations in connection with  
14 the sale of unregistered securities, and they have been on the run from  
15 law enforcement since December 1998. Upon becoming aware of the  
16 true identity of Karl Henry Rehberg and Helen Rehberg and their  
17 alleged securities law violations, the Company immediately ended its  
18 relationship with the Rehbergs and CSL Breckenridge, LLC. CSL  
19 Breckenridge, LLC was previously granted options to purchase shares  
20 of stock in the Company. The Company's position is that any options  
21 held by the Rehbergs or CSL Breckenridge, LLC to purchase stock in  
22 the Company are void and will not be honored by the Company.<sup>22</sup>

23 The October 30, 2007 Private Placement Memorandum further advised that Accredited Investors  
24 would have the opportunity to either reaffirm or rescind their initial investments while investors who  
25 were not accredited would be required to rescind.<sup>23</sup> Ms. Sica sought rescission.<sup>24</sup> A November 12,

---

26  
27 <sup>21</sup> Tr. at 57; Exh. S-15.

<sup>22</sup> Tr. at 56-57; Exh. S-15.

<sup>23</sup> Exh. S-15.

28 <sup>24</sup> See Tr. at 53, 59, 61; Exh. S-47.

1 2007 Private Placement Memorandum gave the following information regarding rescission:

2 As of the date of this Memorandum, four (4) Prior Investors have  
3 requested and received a return of their funds invested, for a total of  
4 \$221,000. Besides those four (4) Prior Investors, we have received  
5 official documentation requesting rescission from seven (7) Prior  
6 Investors, three of whom are accredited investors, for a total of  
7 \$56,950, and four of whom are unaccredited investors, for a total of  
8 \$87,989. Those seven (7) Prior Investors have not yet received a return  
9 of their funds. Additionally, all unaccredited Prior Investors will be  
10 required to rescind.<sup>25</sup>

11 Ms. Sica testified that she believed she would receive her money back by December 31, 2007,  
12 pursuant to the terms of the November 12, 2007 Private Placement Memorandum, however, none of  
13 her investment was returned.<sup>26</sup> Ms. Sica testified that she followed up her request for rescission with  
14 a January 4, 2008 letter to Randall and Marilyn Simonson again requesting return of her investment.<sup>27</sup>  
15 Ms. Sica testified that she once again requested rescission in an e-mail to Randall Simonson, dated  
16 March 6, 2008.<sup>28</sup>

17 Howard Lein

18 Howard Lein testified that he is an Arizona resident.<sup>29</sup> Mr. Lein testified that he became  
19 aware of SEED through one of his associates.<sup>30</sup> Mr. Lein testified he met with two men, including  
20 Mr. Simonson, regarding investment opportunities with SEED.<sup>31</sup> Mr. Lein learned that SEED was  
21 going to build an energy efficient records storage facility in Mesa, Arizona.<sup>32</sup> Mr. Lein testified that  
22 he expected to receive a return on his investment after the facility had been built.<sup>33</sup> Mr. Lein testified  
23 that he authorized Susan Sica to sign checks and a subscription agreement on his behalf for SEED

24 <sup>25</sup> Tr. at p. 60; Exh. S-16.

25 <sup>26</sup> Tr. at 59, 61-62.

26 <sup>27</sup> Tr. at 62-63; Exh. S-23.

27 <sup>28</sup> Tr. at 63-64; Exh. S-24.

28 <sup>29</sup> Tr. at 72-73.

<sup>30</sup> Tr. at 72.

<sup>31</sup> Tr. at 72.

<sup>32</sup> Tr. at 73.

<sup>33</sup> Tr. at 74.

1 stock in the total price of \$21,250.<sup>34</sup>

2 Subsequently, Mr. Lein was offered rescission, and he expected to be repaid within thirty days  
3 of signing the rescission agreement.<sup>35</sup> Mr. Lein acknowledged that he did not carefully read the  
4 terms of the Private Placement Memoranda regarding rescission.<sup>36</sup> Mr. Lein testified that he did not  
5 receive any of his money back.<sup>37</sup>

6 Edward Welday

7 Edward Welday testified that he is an Arizona resident and is currently retired.<sup>38</sup> Mr. Welday  
8 first heard about SEED when he accompanied some acquaintances to two meetings about the  
9 company.<sup>39</sup> Mr. Welday testified he first met Mr. Simonson at the second such meeting.<sup>40</sup> Mr.  
10 Welday testified that Mr. Simonson told him he could invest with SEED by purchasing stock or a  
11 promissory note, and that funds so invested would be used by SEED for operating costs.<sup>41</sup> Mr.  
12 Welday did not discuss his financial situation with anyone at SEED prior to investing.<sup>42</sup>

13 On September 28, 2008, Mr. Welday used a personal check to invest \$20,000 with SEED for  
14 a promissory note.<sup>43</sup> The note, signed by Mr. Welday and Mr. Simonson, provided for repayment at  
15 a 10% interest rate, payable in \$500 monthly installments beginning January 1, 2009.<sup>44</sup> Mr. Welday  
16

17 \_\_\_\_\_  
18 <sup>34</sup> Tr. at 75-76; Exhs. S-19, S-25, S-42.

19 <sup>35</sup> Tr. at 74-75.

20 <sup>36</sup> Tr. at 83. The October 30, 2007 Private Placement Memorandum provided the following information to investors  
21 regarding rescission:

22 The source of the funds with which the Company will repay Investors electing to rescind their initial  
23 investments will be the proceeds, if any, from the balance payable for subscriptions by Investors  
24 electing to reaffirm their initial investments pursuant to this offering, the Company's operations, and  
25 concurrent and future equity financings. There can be no assurance, however, that the Company will in  
26 fact generate any proceeds from the balance payable on current subscriptions, its operations or  
27 concurrent or future equity financings or that the proceeds generated will be sufficient to repay the total  
28 number of Investors electing rescission of their investments. The failure to generate sufficient proceeds  
will have a material adverse effect on the Company's ability to repay the Investors electing rescission in  
a timely manner and on the Company's business, operating results and financial condition. Tr. at 80;  
Exh. S-15.

Similar provisions were contained in the November 12, 2007 Private Placement Memorandum. See Tr. at 82; Exh. S-16.

<sup>37</sup> Tr. at 83.

<sup>38</sup> Tr. at 86.

<sup>39</sup> Tr. at 87.

<sup>40</sup> Tr. at 87.

<sup>41</sup> Tr. at 88-89.

<sup>42</sup> Tr. at 89.

<sup>43</sup> Tr. at 89-92; Exhs. S-85, S-86.

<sup>44</sup> Tr. at 89-90; Exh. S-85.



1 testified that he received only one payment, in the amount of \$500, on or about December 30, 2008.<sup>45</sup>

2 William Santee, Sr.

3 Mr. Santee testified that he is a special investigator for the Division.<sup>46</sup> Mr. Santee testified  
4 that he took over the case regarding the Respondents following the retirement of another  
5 investigator.<sup>47</sup> Mr. Santee testified that the Rehbergs (aka Pierces) were married in 1982 and were  
6 still married in 1998, when they were charged for securities fraud in Florida.<sup>48</sup> Mr. Santee reviewed  
7 Commission documents to discover that the Respondents were not registered securities dealers or  
8 salesmen and that SEED had not registered securities.<sup>49</sup> Mr. Santee testified that he could not locate  
9 any SEC Form D filing for an exemption from securities registration having been filed by SEED.<sup>50</sup>

10 Mr. Santee testified as to the existence of an April 18, 2007 Articles of Incorporation for  
11 SEED, a June 10, 2008 Annual Report filed for SEED, and an October 23, 2009 Certificate of  
12 Dissolution for SEED.<sup>51</sup> Mr. Santee testified that the June 10, 2008 Annual Report identified Mr.  
13 Simonson as president and CEO of SEED and Mrs. Simonson as vice president, with the Simonsons  
14 both listed as directors.<sup>52</sup>

15 Mr. Santee further testified that in the course of his investigation he discovered court records  
16 from Florida regarding legal actions against the Rehbergs.<sup>53</sup> Specifically, Mr. Santee testified that he  
17 discovered an indictment for conspiracy in United States District Court, Middle District of Florida,  
18 against the Rehberg Resondents, a plea agreement signed by Mr. Rehberg on January 8, 2008, a  
19 Judgment acknowledging Mr. Rehberg's guilty plea to Conspiracy to Execute a Scheme to Defraud  
20 Investor-Victims by Mail Fraud, and a Sentencing Memorandum in Support of a Reasonable  
21 Sentence regarding Mrs. Rehberg.<sup>54</sup> Based on his research into the Rehbergs, Mr. Santee testified  
22 that the Rehbergs were being investigated in Florida for investment fraud of over \$20 million dollars

23 

---

<sup>45</sup> Tr. at 92.

24 <sup>46</sup> Tr. at 95.

25 <sup>47</sup> Tr. at 97.

26 <sup>48</sup> Tr. at 97. The Sentencing Memorandum in Support of a Reasonable Sentence, filed in U.S. District Court on behalf of  
Ms. Rehberg on August 20, 2008, noted that she was still married to Mr. Rehberg at the time. Exh. S-3d.

27 <sup>49</sup> Tr. at 97-98; Exh. S-1.

28 <sup>50</sup> Tr. at 98.

<sup>51</sup> Tr. at 98-99; Exh. S-2.

<sup>52</sup> Tr. at 99-100; Exh. S-2b.

<sup>53</sup> Tr. at 100; Exh. S-3.

<sup>54</sup> Tr. at 100-101; Exh. S-3.

1 and they were in the process of plea bargaining when they fled to Arizona and adopted the names of  
 2 Shawn and Helen Pierce.<sup>55</sup> Mr. Santee testified that he believed the Rehbergs resided in Arizona  
 3 under these assumed names from 1998 until their arrest in August 2007.<sup>56</sup> Mr. Santee testified that  
 4 Mrs. Rehberg was released from federal incarceration on July 14, 2009, and that Mr. Rehberg was  
 5 released on December 28, 2011.<sup>57</sup>

6 Mr. Santee testified that, pursuant to a subpoena, Mr. Simonson produced numerous  
 7 subscription agreements from multiple investors in SEED.<sup>58</sup> Mr. Simonson also testified that bank  
 8 records for SEED, acquired by subpoena, showed Mr. and Mrs. Simonson as signers for SEED's  
 9 business account applications.<sup>59</sup> Mr. Santee testified that a review of the records obtained determined  
 10 that, prior to the arrest of Mr. Rehberg, SEED had received investments totaling \$1,432,577.31.<sup>60</sup> Of  
 11 those investments, \$221,000 was repaid to investors.<sup>61</sup> Subsequent to Mr. Rehberg's arrest, SEED  
 12 received investments from five additional investors, raising the investment total to \$1,629,577.31,  
 13 with an additional \$500 repayment having been made.<sup>62</sup>

14 Mr. Santee also testified regarding an examination under oath of Mr. Simonson, taken on July  
 15 6, 2011.<sup>63</sup> Mr. Simonson had stated that when SEED was started, Shawn Pierce (aka Karl Henry  
 16 Rehberg), "was supposed to get 50 percent of it."<sup>64</sup> Mr. Santee also testified that Mr. Simonson had  
 17 stated Mr. Pierce (aka Mr. Rehberg) had "found a group" of investors and that all 44 of the original  
 18 investors of the approximate \$1.3 million came through Mr. Pierce (aka Mr. Rehberg).<sup>65</sup>

19 Mr. Santee testified that a background check would have been necessary to discover that the  
 20 Rehbergs were wanted for criminal activity.<sup>66</sup> According to Mr. Santee, anyone could request such  
 21 information from local law enforcement, however, without a correct name or known alias the  
 22

23 <sup>55</sup> Tr. at 102; Exh. S-3.

24 <sup>56</sup> Tr. at 103.

25 <sup>57</sup> Tr. at 103; Exh. S-4.

26 <sup>58</sup> Tr. at 104-105; Exhs. S-29 to S-72.

27 <sup>59</sup> Tr. at 106-109; Exhs. S-81 to S-84.

28 <sup>60</sup> Tr. at 110-113; Exh. S-80a.

<sup>61</sup> Tr. at 113; Exh. S-80a.

<sup>62</sup> Tr. at 111, 113-114; Exh. S-80b.

<sup>63</sup> Tr. at 115; Exh. S-5.

<sup>64</sup> Tr. at 115-116; Exh. S-5 at 17.

<sup>65</sup> Tr. at 117; Exh. S-5 at 21-22.

<sup>66</sup> Tr. at 122.

1 information may not be discovered.<sup>67</sup> Mr. Santee further testified that the FBI maintains a public  
 2 most wanted list with pictures.<sup>68</sup> Mr. Santee testified that, according to the police report, the  
 3 Rehbergs' true identities were discovered after the police noticed they had a counterfeit license plate  
 4 on their vehicle.<sup>69</sup>

5 Randall Simonson

6 Mr. Simonson testified that he was the president and CEO of SEED Corporation.<sup>70</sup> Mr.  
 7 Simonson testified that he has been an Arizona resident since January 1976, and that he has been  
 8 married to Marilyn Simonson nearly fifty years.<sup>71</sup> Mr. Simonson had thirty-five years experience as a  
 9 general contractor.<sup>72</sup> In 2004, Mr. Simonson developed a concept for starting a self-sustainable self-  
 10 storage business.<sup>73</sup> Mr. Simonson testified that, through a friend, he met Shields Fair, who ran Alter-  
 11 Air, an air conditioning business based on chilling and circulating water using solar power.<sup>74</sup> Mr.  
 12 Simonson testified he met Karl Rehberg, as Shawn Pierce, through Shields Fair, with whom Mr.  
 13 Rehberg had worked at the time.<sup>75</sup>

14 According to Mr. Simonson, Mr. Pierce (aka Mr. Rehberg) had been working with Alter-Air  
 15 and three other companies in Tempe for four years.<sup>76</sup> Mr. Simonson testified that Mr. Pierce (aka Mr.  
 16 Rehberg) realized Simonson's concept could utilize the services of all four of his affiliated  
 17 companies.<sup>77</sup> Mr. Simonson testified that he and Mr. Pierce (aka Mr. Rehberg) set up SEED and  
 18 moved into new offices with the other four companies in 2006.<sup>78</sup> Mr. Simonson testified that his due  
 19 diligence regarding Shawn Pierce (aka Karl Henry Rehberg) consisted of being "part of the system"  
 20 of companies for seven or eight months prior to setting up SEED with him.<sup>79</sup> Mr. Simonson testified

21  
 22 \_\_\_\_\_  
 23 <sup>67</sup> Tr. at 122-124.

24 <sup>68</sup> Tr. at 125.

25 <sup>69</sup> Tr. at 124.

26 <sup>70</sup> Tr. at 129.

27 <sup>71</sup> Tr. at 164-167.

28 <sup>72</sup> Tr. at 129.

<sup>73</sup> Tr. at 129-130.

<sup>74</sup> Tr. at 130-131.

<sup>75</sup> Tr. at 131.

<sup>76</sup> Tr. at 129, 172.

<sup>77</sup> Tr. at 131-132.

<sup>78</sup> Tr. at 132-134, 136.

<sup>79</sup> Tr. at 172.

1 that he did not check Shawn Pierce's employment history or verify his educational background.<sup>80</sup>

2 Mr. Simonson testified that SEED's first investor, Severina Vanagunas, had initially wanted  
3 to invest in Alter-Air, but Alter-Air refused to take her investment as she was an unaccredited  
4 investor.<sup>81</sup> Mr. Pierce (aka Mr. Rehberg) met with her and she invested nearly \$10,000 in SEED.<sup>82</sup>  
5 Mr. Simonson testified that he worked on a business plan coordinating with the other four companies  
6 while Mr. Pierce (aka Mr. Rehberg) "was putting together the financial side."<sup>83</sup> For his efforts, Mr.  
7 Pierce (aka Mr. Rehberg) was to receive the same number of shares in the business as Mr.  
8 Simonson.<sup>84</sup> Mr. Simonson testified that he was present with Mr. Pierce (aka Mr. Rehberg) at some  
9 meetings with prospective investors.<sup>85</sup> Prospective investors were shown a video presentation of the  
10 planned storage facility and the records storage system.<sup>86</sup> Prospective investors were also provided  
11 an executive summary of the business plan and stock offering.<sup>87</sup> Mr. Pierce (aka Mr. Rehberg)  
12 drafted subscription agreements that were sent to investors prior to his arrest.<sup>88</sup>

13 Mr. Simonson testified that prior to Mr. Rehberg's arrest on or about August 17, 2007, the  
14 Respondents had raised approximately \$1.4 million of investments.<sup>89</sup> Approximately \$200,000 more  
15 was raised following Mr. Rehberg's arrest.<sup>90</sup> The SEED investors were not made aware that Mr.  
16 Rehberg was using an alias and attempting to avoid arrest until after he was arrested.<sup>91</sup>

17 Mr. Simonson testified that the Respondents developed plans to build an 186,000 square foot  
18 storage facility in Mesa.<sup>92</sup> Mr. Simonson further testified that the Respondents purchased the land on  
19 which the facility was intended to be built for \$1.2 million, with a down payment of \$650,000.<sup>93</sup>  
20 Approximately \$150,000 more was paid to Alter-Air to develop the air conditioning system for the  
21

---

22 <sup>80</sup> Tr. at 172-173.

23 <sup>81</sup> Tr. at 137.

24 <sup>82</sup> Tr. at 138; Exh. S-80.

25 <sup>83</sup> Tr. at 138, 143.

26 <sup>84</sup> Tr. at 166.

27 <sup>85</sup> Tr. at 162-163.

28 <sup>86</sup> Tr. at 162-163.

<sup>87</sup> Tr. at 165-166; Exh. S-10.

<sup>88</sup> Tr. at 174-177.

<sup>89</sup> Tr. at 146, 168, 169.

<sup>90</sup> Tr. at 146.

<sup>91</sup> Tr. at 168.

<sup>92</sup> Tr. at 139.

<sup>93</sup> Tr. at 147.

1 storage facility.<sup>94</sup> Mr. Simonson testified that \$100,000 was paid to develop the Radio Frequency  
 2 Identification (“RFID”) system that would be used to tag and locate boxes within the storage  
 3 facility.<sup>95</sup> Other expenses included renting a 5,000 square foot building for several months to test the  
 4 RFID system, acquiring an appraisal of the business to show banks when seeking a business loan, and  
 5 obtaining a tax evaluation.<sup>96</sup> Mr. Simonson testified that he took a salary of \$25,000 for 2007.<sup>97</sup> Mr.  
 6 Simonson also testified to having paid \$15,000 to an individual who had worked for the business  
 7 three years without compensation but who needed money to visit his dying father in San Francisco.<sup>98</sup>

8       Following Mr. Rehberg’s arrest in August 2007, Mr. Simonson testified that he was unable to  
 9 secure financing from two banks he visited.<sup>99</sup> Mr. Simonson testified that he had been working with  
 10 an attorney to help put the SEED business plan together and assist in raising funds, however the  
 11 attorney was unable to arrange any additional funding for SEED.<sup>100</sup> Mr. Simonson testified that he  
 12 also paid the attorney \$80,000 after Mr. Rehberg’s arrest to do “anything they needed to do to make  
 13 sure that SEED shareholders were protected.”<sup>101</sup> Mr. Simonson testified that the attorney provided  
 14 him with a letter offering rescission and instructed him to send it out to the shareholders on SEED  
 15 letterhead, which was done.<sup>102</sup>

16       Mr. Simonson testified that he came to meet Mr. Welday through Mr. Welday’s caretaker,  
 17 who knew that Mr. Simonson was looking for additional funding for SEED and that Mr. Welday was  
 18 looking for an investment opportunity.<sup>103</sup> Mr. Simonson testified that Mr. Welday purchased a note  
 19 for \$20,000 in September.<sup>104</sup> Mr. Simonson testified that some other shareholders chose to purchase  
 20 additional options.<sup>105</sup> By December, Mr. Simonson testified that SEED was out of money and that he  
 21 borrowed approximately \$12,600 from his father to pay back rent to SEED’s landlord, who forced  
 22

---

23 <sup>94</sup> Tr. at 148-149, 155.

24 <sup>95</sup> Tr. at 149, 155.

25 <sup>96</sup> Tr. at 150-151.

26 <sup>97</sup> Tr. at 155.

27 <sup>98</sup> Tr. at 161.

28 <sup>99</sup> Tr. at 152, 158, 169.

<sup>100</sup> Tr. at 140-143, 151-153.

<sup>101</sup> Tr. at 156.

<sup>102</sup> Tr. at 157, 160.

<sup>103</sup> Tr. at 153.

<sup>104</sup> Tr. at 154, 159.

<sup>105</sup> Tr. at 160-161.

1 them out of their offices in January 2010.<sup>106</sup> Mr. Simonson further testified that the land purchased  
 2 for the facility had to be given up “in lieu of foreclosure with the ability to buy it back at no  
 3 penalty.”<sup>107</sup>

4 Mr. Simonson testified that a Private Placement Memorandum was sent to all SEED investors  
 5 by SEED’s counsel after the arrest of Mr. Rehberg.<sup>108</sup> The Private Placement Memorandum offered  
 6 rescission to the investors.<sup>109</sup> A second Private Placement Memorandum, dated November 12, 2007,  
 7 was also sent out to investors by SEED’s counsel at the time.<sup>110</sup>

## 8 II. Legal Argument

### 9 Sale of Unregistered Securities: The SEED Note

10 The Division contends that the SEED promissory note (“SEED Note”) issued to Edward  
 11 Welday is a security within the meaning of A.R.S. § 44-1801(26), and therefore needed to be  
 12 registered under A.R.S. § 44-1841.<sup>111</sup> The definition of security under A.R.S. § 44-1801(26) includes  
 13 “any note.” Under *State v. Tober*, 173 Ariz. 211, 213, 841 P.2d 206, 208 (1992), all notes are  
 14 considered securities subject to the registration provisions unless specifically exempted from  
 15 registration pursuant to A.R.S. § 44–1843 or § 44–1843.01, or sold through an exempt transaction  
 16 under A.R.S. § 44-1844. The burden of proving the existence of an exemption rests upon the party  
 17 raising the defense.<sup>112</sup> Here, the Respondents have failed to present evidence that any of the statutory  
 18 exemptions would apply to the SEED Note. The weight of the evidence establishes that the sale of  
 19 the SEED Note was subject to registration requirements.

### 20 Sale of Unregistered Securities: The SEED Stock

21 The Division contends that the SEED stock is a security within the meaning of A.R.S. § 44-  
 22 1801(26), and therefore needed to be registered under A.R.S. § 44-1841. Stock is included in the

23 <sup>106</sup> Tr. at 154-155, 158-159.

24 <sup>107</sup> Tr. at 164.

25 <sup>108</sup> Tr. at 169-170; Exh. S-15. This initial private placement memorandum was dated October 30, 2007. Exh. S-15.

26 <sup>109</sup> Tr. at 182; Exh. S-15.

27 <sup>110</sup> Tr. at 170-172; Exh. S-16.

28 <sup>111</sup> **A.R.S. § 44-1841. Sale of unregistered securities prohibited; classification**

A. It is unlawful to sell or offer for sale within or from this state any securities unless the securities have been registered pursuant to article 6 or 7 of this chapter or are federal covered securities if the securities comply with section 44-1843.02 or chapter 13, article 12 of this title.

B. A person violating this section is guilty of a class 4 felony.

<sup>112</sup> A.R.S. § 44-2033; *State v. Baumann*, 125 Ariz. 404, 412, 610 P.2d 38, 46 (1980).

1 definition of security under A.R.S. § 44-1801(26).

2 Through subscription agreements with investors, SEED sold “stock” to investors.<sup>113</sup> What  
 3 may constitute stock has not been expressly set forth under Arizona law. The Arizona Supreme  
 4 Court follows the reasoning of the United States Supreme Court when interpreting sections of  
 5 Arizona statutes that are identical or similar to the federal securities statutes, unless a good reason  
 6 exists to justify deviation.<sup>114</sup> In contemplating whether the sale of shares called “stock” constitutes a  
 7 security transaction, the United States Supreme Court has expressed that the analysis requires an  
 8 examination of substance, not form.<sup>115</sup> The instruments in question must “possess ‘some of the  
 9 significant characteristics typically associated with’ stock.”<sup>116</sup> The characteristics associated with  
 10 common stock are (i) the right to receive dividends contingent upon an apportionment of profits; (ii)  
 11 negotiability; (iii) the ability to be pledged or hypothecated; (iv) the conferring of voting rights in  
 12 proportion to the number of shares owned; and (v) the capacity to appreciate in value.<sup>117</sup>

13 SEED, pursuant to its Articles of Incorporation, had authority to issue 25 million shares of  
 14 Class A and B stock.<sup>118</sup> The shares of stock carried voting rights and the opportunity to receive  
 15 dividends.<sup>119</sup> The SEED executive summary predicted that shares selling initially for \$5.00 could  
 16 appreciate in value to \$20.00 to \$30.00 based upon projected earnings from the Mesa storage  
 17 facility.<sup>120</sup> The subscription agreement stated that “the Shares may not be sold, hypothecated or  
 18 otherwise disposed of unless subsequently registered under the Securities Act and applicable state  
 19 securities laws or an exemption from such registration is available.”<sup>121</sup> The subscription agreement  
 20 further warned that “[i]t is not anticipated that there will be any market for resale of the Shares and  
 21 the Shares will not be freely transferable at any time in the foreseeable future.”<sup>122</sup> In practice,  
 22

23 <sup>113</sup> Tr. at 143, 174-176; Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

24 <sup>114</sup> See *State v. Gunnison*, 127 Ariz. 110, 112-113, 618 P.2d 604, 606-607 (1980).

25 <sup>115</sup> See *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 848, 95 S.Ct. 2051, 2058 (1975).

26 <sup>116</sup> *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 686, 105 S. Ct. 2297, 2302 (1985) (citing *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 850, 95 S.Ct. 2051, 2059 (1975)).

27 <sup>117</sup> *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 686, 105 S. Ct. 2297, 2302 (1985).

28 <sup>118</sup> Exh. S-2a.

<sup>119</sup> *Id.* Class B shares were limited to participating only in dividends paid in shares or fractional shares of Class B stock.

<sup>120</sup> *Id.*

<sup>121</sup> Exh. S-10 at ACC002069.

<sup>122</sup> Exh. S-14 at ACC002962.

<sup>123</sup> *Id.*

1 however, at least one investor transferred shares to another shareholder.<sup>123</sup>

2 Shareholders were entitled to dividends, voting rights, and an opportunity for the stock to  
3 appreciate in value. While the SEED stock subscription agreement stated restrictions on negotiability  
4 and the ability to be pledged, in actuality shares were transferred on at least one occasion. The  
5 weight of the evidence establishes that the SEED stock possessed significant characteristics  
6 associated with stock so as to be considered a security within the meaning of A.R.S. § 44-1801(26).

7 The Respondents contend that SEED stock was exempt from registration requirements  
8 pursuant to federal Rules 504<sup>124</sup> ("Rule 504") and/or 506<sup>125</sup> ("Rule 506") of Regulation D. The  
9 burden of proof of establishing an exemption is on the party claiming it.<sup>126</sup>

10 Under Rule 504, sales of securities may qualify for an exemption provided they satisfy  
11 requisite conditions regarding integration of sales, limitations on the manner of offering, and  
12 limitations on resale.<sup>127</sup> The limitations as to manner of offering require that neither the issuer, nor  
13 any person acting on its behalf, offer or sell the securities by any form of general solicitation or  
14 general advertising.<sup>128</sup> In determining what constitutes a general solicitation, the SEC has  
15 emphasized the importance of the issuer having established substantive and pre-existing relationships  
16 with those being solicited.<sup>129</sup> Here, the record does not establish the existence of any such  
17 relationships between the Respondents and the SEED investors.<sup>130</sup>

18 The limitations on offering and resale may be waived provided the sales are made in  
19 compliance with relevant state requirements for registration or exemption therefrom.<sup>131</sup> The SEED  
20 stock was not registered pursuant to the Act. Offers and sales of securities by an issuer in compliance  
21 with Rule 504 shall be exempt from the registration requirements of A.R.S. §§ 44-1841 and 44-1842,  
22 provided the sales are made exclusively to accredited investors.<sup>132</sup> Here, SEED stock was sold to

---

24 <sup>123</sup> Exh. S-44 at ACC002646.

25 <sup>124</sup> 17 C.F.R. § 230.504.

26 <sup>125</sup> 17 C.F.R. § 230.506.

27 <sup>126</sup> A.R.S. § 44-2033.

28 <sup>127</sup> 17 C.F.R. §§ 230.502(a), (c), (d), 230.504(b)(1).

<sup>128</sup> 17 C.F.R. § 230.502(c).

<sup>129</sup> See *E.F. Hutton & Co. Inc.*, SEC No-Action Letter, 1985 WL 55680 (Dec. 3, 1985).

<sup>130</sup> Tr. at 44, 72; Exh. S-5 at 38.

<sup>131</sup> 17 C.F.R. § 230.504(b)(1).

<sup>132</sup> A.A.C. R14-4-140(B), (D).



1 unaccredited investors.<sup>133</sup> Therefore, the Respondents fail to qualify for an exemption under Rule  
2 504 as they have failed to meet the general conditions set forth under 17 C.F.R. § 230.504(b).<sup>134</sup>

3 Similarly, the Respondents failed to establish an exemption under Rule 506.<sup>135</sup> An exemption  
4 under Rule 506 is conditioned upon the same prohibitions of general advertising and general  
5 solicitation as a Rule 504 exemption.<sup>136</sup> As noted above, the Respondents have failed to demonstrate  
6 the existence of substantive, pre-existing relationships with the investors who purchased SEED stock.

7 Rule 506 further imposes a maximum of thirty-five purchasers who are not accredited  
8 investors.<sup>137</sup> Each such purchaser must, individually or with his representative, have knowledge and  
9 experience in financial and business matters making him capable of evaluating the merits and risks of  
10 the prospective investment, or the issuer must reasonably believe prior to any sale that the purchaser  
11 meets this description.<sup>138</sup> Further, the issuer must establish that all offerees had access to or  
12 disclosure of the same type of information that a registration statement would provide.<sup>139</sup> To qualify  
13 for the Rule 506 exemption, the Respondents would need to have offered evidence of their reasonable  
14 belief as to each purchaser.<sup>140</sup> The record establishes that twelve of the SEED investors purchased  
15 stock without completing an investor questionnaire.<sup>141</sup> The subscription agreements specifically state  
16 that they are being provided without a Private Placement Memorandum.<sup>142</sup> The record does not  
17 establish that sufficient information was provided to the investors to enable them to properly evaluate  
18 the investment as required for an exemption under Rule 506.

19 The Respondents have asserted that the sale of SEED stock qualifies for an exemption from  
20 registration under Rule 504 and/or Rule 506. However, the evidence of record does not support such

21 \_\_\_\_\_  
22 <sup>133</sup> Exhs. S-36, S-39, S-40, S-41, S-43, S-45, S-46, S-60, S-67, S-72, S-76, S-79.

23 <sup>134</sup> Respondents also failed to meet the requirements of 17 C.F.R. § 230.504(2), which mandates that the aggregate  
24 offering price of the securities shall not exceed \$1,000,000. Here, the Respondents sold securities of a price totaling  
25 approximately \$1.629 million. Exh. S-80b.

26 <sup>135</sup> We note that Rule 506 was amended, effective September 23, 2013, to include an exemption for offerings not subject  
27 to a limitation on the manner of offering. As the sales of SEED stock occurred prior to the effective date of this  
28 amendment, we do not consider this additional exemption in our analysis.

<sup>136</sup> 17 C.F.R. §§ 230.502(c), 230.506(b)(1).

<sup>137</sup> 17 C.F.R. §§ 230.501(e)(1)(iv), 230.506(b)(2)(i).

<sup>138</sup> 17 C.F.R. § 230.506(b)(2)(ii).

<sup>139</sup> *McDaniel v. Compania Minera Mar de Cotes, Sociedad Anonimo, Inc.*, 528 F.Supp. 152, 164 (Dist. Ct. Ariz. 1981).

<sup>140</sup> *See Mark v. FSC Sec. Corp.*, 870 F.2d 331, 335 (6th Cir. 1989).

<sup>141</sup> Exhs. S-36, S-39, S-40, S-41, S-43, S-45, S-46, S-60, S-67, S-72, S-76, S-79.

<sup>142</sup> Exh. S-20 at ACC002175; See also Exhs. S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

1 a conclusion. The Respondents failed to meet their burden of proof to establish that the sale of SEED  
2 stock was exempt from registration requirements.

3 Transactions by Unregistered Dealers or Salespersons

4 The Division contends that the Respondents violated A.R.S. § 44-1842 by selling securities in  
5 SEED without being registered.<sup>143</sup> As determined above, the SEED stock and the SEED note are  
6 securities subject to the registration requirements of A.R.S. § 44-1842. None of the Respondents  
7 were registered as a securities salesman or dealer.<sup>144</sup> The Respondents have failed to present  
8 evidence that they would qualify for an exemption from the requirements of A.R.S. § 44-1842.

9 Fraud

10 The Division contends that the Respondents' failure to disclose Mr. Rehberg's use of an alias,  
11 his past criminal securities violations, and his outstanding arrest warrant are omissions of material  
12 fact that constitute fraud pursuant to A.R.S. § 44-1991(A)(2).<sup>145</sup> Under A.R.S. § 44-1991(A)(2),  
13 materiality will be found by showing a substantial likelihood that, under all circumstances, the  
14 misstated or omitted fact would have assumed actual significance in the deliberations of a reasonable  
15 buyer.<sup>146</sup> The test is an objective one, not subject to the actual significance of an omission or  
16

17 \_\_\_\_\_  
18 <sup>143</sup> **A.R.S. § 44-1842. Transactions by unregistered dealers and salesmen prohibited; classification**

19 A. It is unlawful for any dealer to sell or purchase or offer to sell or buy any securities, or for any salesman to sell or offer  
20 for sale any securities within or from this state unless the dealer or salesman is registered as such pursuant to the  
21 provisions of article 9 of this chapter.

22 B. A person violating this section is guilty of a class 4 felony.

23 <sup>144</sup> Exh. S-1.

24 <sup>145</sup> **A.R.S. § 44-1991. Fraud in purchase or sale of securities**

25 A. It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from this  
26 state involving an offer to sell or buy securities, or a sale or purchase of securities, including securities exempted under  
27 section 44-1843 or 44-1843.01 and including transactions exempted under section 44-1844, 44-1845 or 44-1850, directly  
28 or indirectly to do any of the following:

1. Employ any device, scheme or artifice to defraud.

2. Make any untrue statement of material fact, or omit to state any material fact necessary in order to make the statements  
made, in the light of the circumstances under which they were made, not misleading.

3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit.

B. In a private action brought pursuant to subsection A, paragraph 2 of this section or section 44-1992, if the person who  
offered or sold the security proves that any portion or all of the amount recoverable under subsection A, paragraph 2 of  
this section or section 44-1992 represents an amount other than the depreciation in value of the subject security resulting  
from the part of the prospectus or oral communication, with respect to which the liability of the person is asserted, not  
being true or omitting to state a material fact required to be stated or necessary to make the statement not misleading, then  
the amount shall not be recoverable. This subsection does not apply to any actions based on allegations of activities  
constituting dishonest or unethical practices in the securities industry.

<sup>146</sup> *Trimble v. Am. Sav. Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131, 1136 (App. 1986).

1 misstatement to any particular buyer.<sup>147</sup>

2 Here, Mr. Rehberg represented himself to investors by the name Shawn Pierce.<sup>148</sup> The  
3 subscription agreements sent to investors had a footer stating “Copyright 2007 S. Pierce, All Rights  
4 Reserved.”<sup>149</sup> Mr. Rehberg hid his true identity and prior illicit activity from potential investors. We  
5 find that a reasonable buyer would have found this information material when considering investing  
6 in SEED.<sup>150</sup> Respondent Rehberg violated A.R.S. § 44-1991(A)(2) by concealing his identity and  
7 history from potential investors.

8 The Division further contends that Respondents SEED and Simonson also violated A.R.S. §  
9 44-1991(A)(2) by failing to disclose Mr. Rehberg’s true identity and prior illegal conduct.<sup>151</sup> The  
10 evidence of record established that Respondent Simonson had no knowledge of Mr. Rehberg’s true  
11 identity and prior illicit activity until after Rehberg’s arrest.<sup>152</sup> Following Mr. Rehberg’s arrest, Mr.  
12 Simonson sought the advice of legal counsel and disclosed Rehberg’s identity to SEED investors.<sup>153</sup>

13 The record establishes that Respondent Simonson, like the SEED investors, was deceived by  
14 Mr. Rehberg’s misrepresentation of his identity and nondisclosure of his prior illicit activity.  
15 However, scienter is not a requirement in a civil violation of A.R.S. § 44-1991(A)(2).<sup>154</sup> Instead,  
16 A.R.S. § 44-1991(A)(2) imposes an affirmative duty not to mislead.<sup>155</sup> The failure of Respondents  
17 SEED and Simonson to disclose Mr. Rehberg’s past when the offers were made constituted a  
18 violation of A.R.S. § 44-1991(A)(2).

19  
20  
21 <sup>147</sup> *Id.*

<sup>148</sup> Tr. at 50, 102, 168-169.

<sup>149</sup> Tr. at 53; Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

<sup>150</sup> Indeed, investor Susan Sica testified that she would not have invested in SEED had she known of Rehberg’s past (Tr. at 50).

<sup>151</sup> We note that the Notice specifically names only one Respondent, Mr. Rehberg, under the violation of A.R.S. § 44-1991. Notice at 10. In his opening statement at the hearing, counsel for the Division expressly stated that there was a “fraudulent failure of SEED Corporation and its officers to warn investors” about Mr. Rehberg. Tr. at 16. The Simonsons raised questions regarding documents and subpoenas, but the Simonsons did not request a continuance for any reason even though the Administrative Law Judge suggested something could be arranged if they needed additional time to bring in a witness. Tr. at 20-41. Randall Simonson further acknowledged his awareness that the Division was alleging that he committed fraud. Tr. at 39. As such, we find the Respondents received due process allowing substantive consideration of the allegation of fraud.

<sup>152</sup> Tr. at 168-169; Exh. S-5 at 35-36.

<sup>153</sup> Tr. at 157-158; Exh. S-9 at ACC002084.

<sup>154</sup> *State v. Gunnison*, 127 Ariz. 110, 113, 618 P.2d 604, 607 (1980).

<sup>155</sup> *Aaron v. Fromkin*, 196 Ariz. 224, 227, 994 P.2d 1039, 1042 (App. 2000).

1           Good Faith Reliance on Advice of Counsel

2           Respondents contend that their reliance upon the advice of counsel acts as a defense to the  
3 alleged violations of the Act. Respondents' argument of a good faith defense relies upon the factor  
4 of intent being a necessary element of the alleged violations. As noted above, a civil fraud violation  
5 under A.R.S. § 44-1991(A)(2) requires no element of scienter. Therefore, whether Respondents  
6 acted in good faith reliance on the advice of counsel is irrelevant as to the alleged violation of A.R.S.  
7 § 44-1991(A)(2).

8           Similarly, A.R.S. §§ 44-1841 and 44-1842 contain no language regarding a culpable mental  
9 state for these offenses. Under A.R.S. § 13-202(B), a statutory offense that does not set forth a  
10 culpable mental state will be one of strict liability.<sup>156</sup> Since A.R.S. §§ 44-1841 and 44-1842 are strict  
11 liability offenses, whether Respondents acted in good faith under the advice of counsel is irrelevant to  
12 determining whether the Respondents violated those statutes.<sup>157</sup>

13           Community Property

14           The Division contends that the marital communities of the Simonsons and Rehbergs are liable  
15 for any restitution and administrative penalties ordered. The Division further contends that the  
16 Rehbergs' relocation to Florida does not relieve the Rehberg marital community of liability.

17           The Commission has the authority to join a spouse in an action to determine the liability of  
18 the marital community.<sup>158</sup> All property acquired by either the husband or the wife during the  
19

20 \_\_\_\_\_  
21 <sup>156</sup> A.R.S. § 13-202 provides, in pertinent part:

22 B. If a statute defining an offense does not expressly prescribe a culpable mental state that is sufficient for commission of  
23 the offense, no culpable mental state is required for the commission of such offense, and the offense is one of strict  
24 liability unless the proscribed conduct necessarily involves a culpable mental state. If the offense is one of strict liability,  
25 proof of a culpable mental state will also suffice to establish criminal responsibility.

26 <sup>157</sup> "[A]dvice of counsel is not a defense to a strict liability violation of the Act. It can, however, be considered by the  
27 Commission as a mitigating factor in determining penalties and sanctions." Decision No. 58259 (April 8, 1993) at 11.

28 <sup>158</sup> **A.R.S. § 44-2031. Jurisdiction and venue of offenses and actions; joinder of spouse**

A. The superior court in this state shall have jurisdiction over violations of this chapter, the rules and orders of the  
commission under this chapter and all actions brought to enforce any liability or duty created under this chapter, except  
actions or proceedings brought under section 44-2032, paragraph 2, 3 or 4 or appeals filed under article 12 of this chapter,  
over which the superior court in Maricopa county shall have exclusive jurisdiction.

B. Any action authorized by this chapter may be brought in the county in which the defendant is found, is an inhabitant or  
transacts business, or in the county where the transaction took place, and in such cases, process may be served in any  
other county in which the defendant is an inhabitant or in which the defendant is found.

C. The commission may join the spouse in any action authorized by this chapter to determine the liability of the marital  
community.

1 marriage is the community property of the husband and wife, except for property that is (1) acquired  
 2 by gift, devise, or descent; or (2) acquired after service of a petition for dissolution of marriage, legal  
 3 separation or annulment if the petition results in a decree of dissolution of marriage, legal separation  
 4 or annulment.<sup>159</sup> The Arizona Supreme Court has found that “the presumption of law is, in the  
 5 absence of the contrary showing, that all property acquired and all business done and transacted  
 6 during coverture, by either spouse, is for the community.”<sup>160</sup>

7 Under A.R.S. § 25-214(B), the spouses have “equal management, control and disposition  
 8 rights over their community property and have equal power to bind the community.”<sup>161</sup> Either spouse  
 9 may contract debts and otherwise act for the benefit of the community except as prohibited under  
 10 A.R.S. § 25-214.<sup>162</sup> “[A] debt is incurred at the time of the actions that give rise to the debt.”<sup>163</sup> “In  
 11

---

12 A.R.S. § 44-2031(C) was amended effective July 24, 2014, pursuant to Laws 2014, Ch. 87 § 1, to include the following  
 13 sentence: This subsection does not authorize the commission to join any individual who is divorced from the defendant at  
 the time an action authorized by this chapter is filed.

14 <sup>159</sup> **A.R.S. § 25-211. Property acquired during marriage as community property; exceptions; effect of service of a  
 petition**

15 A. All property acquired by either husband or wife during the marriage is the community property of the husband and  
 wife except for property that is:

16 1. Acquired by gift, devise or descent.  
 17 2. Acquired after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a  
 decree of dissolution of marriage, legal separation or annulment.

18 B. Notwithstanding subsection A, paragraph 2, service of a petition for dissolution of marriage, legal separation or  
 annulment does not:

19 1. Alter the status of preexisting community property.  
 20 2. Change the status of community property used to acquire new property or the status of that new property as community  
 property.  
 21 3. Alter the duties and rights of either spouse with respect to the management of community property except as prescribed  
 pursuant to section 25-315, subsection A, paragraph 1, subdivision (a).

22 <sup>160</sup> *Johnson v. Johnson*, 131 Ariz. 38, 45, 638 P.2d 705, 712 (1981), citing *Benson v. Hunter*, 23 Ariz. 132, 134-35, 202 P.  
 23 233, 233-34 (1921).

24 <sup>161</sup> **A.R.S. § 25-214. Management and control**

25 A. Each spouse has the sole management, control and disposition rights of each spouse's separate property.

26 B. The spouses have equal management, control and disposition rights over their community property and have equal  
 power to bind the community.

27 C. Either spouse separately may acquire, manage, control or dispose of community property or bind the community,  
 except that joinder of both spouses is required in any of the following cases:

28 1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented  
 mining claim or a lease of less than one year.

2. Any transaction of guaranty, indemnity or suretyship.

3. To bind the community, irrespective of any person's intent with respect to that binder, after service of a petition for  
 dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal  
 separation or annulment.

<sup>162</sup> **A.R.S. § 25-215. Liability of community property and separate property for community and separate debts**

A. The separate property of a spouse shall not be liable for the separate debts or obligations of the other spouse, absent  
 agreement of the property owner to the contrary.

1 an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall  
 2 be satisfied: first, from the community property, and second, from the separate property of the spouse  
 3 contracting the debt or obligation.”<sup>164</sup> “A debt incurred by a spouse during marriage is presumed to  
 4 be a community obligation; a party contesting the community nature of a debt bears the burden of  
 5 overcoming that presumption by clear and convincing evidence.”<sup>165</sup>

6 Here, Mr. Simonson has been married to Marilyn J. Simonson since 1963.<sup>166</sup> Mr. Rehberg  
 7 has been married to Helen Rehberg since 1982.<sup>167</sup> The securities law violations committed by Mr.  
 8 Simonson and Mr. Rehberg occurred while they were married. Any debt created by an order for  
 9 restitution and administrative penalties arising from those violations would be considered as having  
 10 been incurred at the time of the violation. The Respondents have presented no evidence to rebut the  
 11 legal presumption that such debt would be a liability of the Simonson and Rehberg marital  
 12 communities.

13 Regarding the Rehbergs, the further question arises as to whether their subsequent relocation  
 14 to Florida would act as a defense to an order against the Rehbergs’ marital community. Florida is not  
 15 a community property state.<sup>168</sup> Under Florida law, “the law of the situs has primary control over  
 16 property within its borders.”<sup>169</sup> However, Florida courts have held that community property will  
 17 retain its characteristics when brought into the state.<sup>170</sup> While the Rehbergs no longer reside in a

18  
 19 B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after  
 20 September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which  
 21 would have been such spouse's separate property if single.

22 C. The community property is liable for a spouse's debts incurred outside of this state during the marriage which would  
 23 have been community debts if incurred in this state.

24 D. Except as prohibited in section 25-214, either spouse may contract debts and otherwise act for the benefit of the  
 25 community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be  
 26 satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or  
 27 obligation.

28 <sup>163</sup> *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 111, 193 P.3d 802, 805 (Ct. App. 2008).

<sup>164</sup> A.R.S. § 25-215(D).

<sup>165</sup> *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92, 919 P.2d 179, 186-87 (Ct. App. 1995).

<sup>166</sup> Tr. at 164-165.

<sup>167</sup> Tr. at 97; Exh. S-3d at 4-5.

<sup>168</sup> *Herrera v. Herrera*, 673 So. 2d 143, 144 (Fla. 5th DCA 1996).

<sup>169</sup> *Quintana v. Ordonez*, 195 So. 2d 577, 579 (Fla. 3d DCA 1967).

<sup>170</sup> *See Republic Credit Corp. I v. Upshaw*, 10 So. 3d 1103, 1104 (Fla. 4th DCA 2009) (Since California does not recognize tenancy by the entireties as a form of ownership, proceeds from the sale of California home cannot retain characteristics it never had); *see also Quintana v. Ordonez*, 195 So. 2d 577, 579 (Fla. 3d DCA 1967) (adopting the rule set forth in Restatement, Conflict of Law § 290 (1934) that the “interests of one spouse in movables acquired by the other during the marriage are determined by the law of the domicile of the parties when the movables are acquired”).

1 community property state, they would still possess community property subject to the debts incurred  
2 by the marital community.

3 Restitution and Administrative Penalties

4 The Division contends that the Rehberg Respondents should be ordered to pay restitution in  
5 the amount of \$1,211,577.31, reflecting the amount of the securities sold prior to the arrest of Mr.  
6 Rehberg, less the amount of \$221,000 already repaid to some investors.<sup>171</sup> The Division further  
7 contends that SEED and the Simonson Respondents should be ordered to pay restitution in the  
8 amount of \$1,408,077.31, reflecting the total amount of the SEED securities sold less the amount of  
9 \$221,500 already repaid to some investors. The Division also seeks administrative penalties against  
10 the Respondents "to address the Respondents' conduct that includes raising in excess of \$1 million,  
11 the general solicitation, and multiple material omissions regarding Rehberg's past."<sup>172</sup> The Division  
12 recommends an administrative penalty in the amount of \$25,000 to be assessed against SEED and the  
13 Simonson Respondents. An administrative penalty in the amount of \$50,000 is requested by the  
14 Division against the Rehberg Respondents.

15 The Commission has the authority to order restitution pursuant to A.R.S. § 44-2032.<sup>173</sup> The  
16 evidence of record establishes that SEED and the Simonson Respondents received a total of  
17 \$1,629,577.31 in investments in SEED securities.<sup>174</sup> Of that amount, \$221,500 was returned to  
18 investors.<sup>175</sup> SEED and the Simonson Respondents should be liable for restitution on the remaining  
19 amount of \$1,408,077.31, plus interest. Prior to the arrest of the Rehberg Respondents,  
20

21 <sup>171</sup> We note the Division's Post Hearing Brief incorrectly states the repayment amount regarding the Rehberg  
22 Respondents to be \$221,500. Division Post-Hearing Brief at 16. However, \$500 of the repayment total was made to the  
23 SEED Note investor, who invested after the arrest of Mr. Rehberg. In spite of this error, the Division's Post Hearing  
24 Brief correctly states the total amount of unpaid restitution at \$1,211,577.31 for the Rehberg Respondents.

25 <sup>172</sup> Division Post-Hearing Brief at 16-17.

26 <sup>173</sup> A.R.S. § 44-2032 provides, in pertinent part:

27 If it appears to the commission, either on complaint or otherwise, that any person has engaged in, is engaging in or is  
28 about to engage in any act, practice or transaction that constitutes a violation of this chapter, or any rule or order of the  
commission under this chapter, the commission, in its discretion may:

1. Issue an order directing such person to cease and desist from engaging in the act, practice or transaction, or doing any  
other act in furtherance of the act, practice or transaction, and to take appropriate affirmative action within a reasonable  
period of time, as prescribed by the commission, to correct the conditions resulting from the act, practice or transaction  
including, without limitation, a requirement to provide restitution as prescribed by rules of the commission. ...

See also A.A.C. R14-4-308.

<sup>174</sup> Exh. S-80b.

<sup>175</sup> *Id.*

1 \$1,432,577.31 had been raised from the sale of SEED securities.<sup>176</sup> Deducting \$221,000 previously  
 2 paid to investors leaves a total of \$1,211,577.31, plus interest, in restitution for which the Rehberg  
 3 Respondents should be liable.<sup>177</sup>

4 Under A.R.S. § 44-2036(A), the Commission has authority to assess an administrative penalty  
 5 of no more than \$5,000 for each violation committed.<sup>178</sup> The record establishes that a total of forty-  
 6 eight investors purchased stock in SEED with one additional investor purchasing a note.<sup>179</sup> Forty-  
 7 four of those investors purchased while Mr. Rehberg was involved in the sale of SEED stock.<sup>180</sup>  
 8 Based on the number of investments, the Commission could assess administrative penalties against  
 9 each Respondent in excess of \$200,000. We find the Division's recommendation of an  
 10 administrative penalty in the amount of \$50,000 against the Rehberg Respondents to be appropriate  
 11 based upon the evidence of record.

12 The Division requests a lesser administrative penalty of \$25,000 against SEED and the  
 13 Simonson Respondents. The Division does not state its reasoning for requesting a lesser penalty  
 14 against SEED and the Simonson Respondents than the penalty sought against the Rehberg  
 15 Respondents. The record establishes that Mr. Rehberg, under the alias Shawn Pierce, played the  
 16 primary role in acquiring investors for SEED, including drafting the subscription agreement that was  
 17 given to those investors.<sup>181</sup> Mr. Rehberg hid his true identity from both the SEED investors and Mr.  
 18 Simonson.<sup>182</sup> Upon discovery of Mr. Rehberg's true identity, Mr. Simonson sought the advice of  
 19 counsel, disclosed the information of Mr. Rehberg's history to investors, and offered rescission to  
 20 investors in a Private Placement Memorandum prepared by counsel.<sup>183</sup> Comparing the relative  
 21 culpability of Mr. Simonson to that of Mr. Rehberg, we conclude a significantly lesser administrative  
 22 penalty would be appropriate for the Simonson Respondents. Accordingly, an administrative penalty

---

23 <sup>176</sup> Exh. S-80a.

24 <sup>177</sup> *Id.*

25 <sup>178</sup> A.R.S. § 44-2036 provides, in pertinent part:

26 A. A person who, in an administrative action, is found to have violated any provision of this chapter or any rule or order  
 of the commission may be assessed an administrative penalty by the commission, after a hearing, in an amount of not to  
 exceed five thousand dollars for each violation.

27 <sup>179</sup> Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79, S-80b, S-85.

28 <sup>180</sup> Exh. S-80a.

<sup>181</sup> Tr. at 138, 143, 174-177; Exh. S-5 at 21-22, 35, 45.

<sup>182</sup> Tr. at 50, 102, 158, 168-169; Exhs. S-3a, S-3b at 20, S-5 at 35-36, S-15 at ACC002105.

<sup>183</sup> Exhs. S-5 at 18, 37-38, S-9, S-15.



1 of \$5,000 shall be assessed against SEED and the Simonson Respondents.

2 \* \* \* \* \*

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

5 **FINDINGS OF FACT**

6 1. Randall Duane Simonson is a married person who, at all relevant times herein, was a  
7 resident of Arizona.<sup>184</sup>

8 2. SEED was an Arizona Corporation incorporated on April 18, 2007. SEED was  
9 administratively dissolved on October 23, 2009. Randall Simonson served as President and CEO of  
10 SEED.<sup>185</sup>

11 3. SEED has not been registered as a securities dealer with the Commission.<sup>186</sup>

12 4. Marilyn J. Simonson was at all relevant times the spouse of Randall Simonson.<sup>187</sup>

13 5. Mr. Simonson has not been registered as a securities dealer or salesman with the  
14 Commission.<sup>188</sup>

15 6. Karl Henry Rehberg, aka Shawn Pierce, is a married person who was a resident of  
16 Arizona for all relevant times herein, until after his arrest on or about August 17, 2007.<sup>189</sup>

17 7. Helen Rehberg, aka Lisa Pierce, was at all relevant times herein the spouse of Karl  
18 Rehberg.<sup>190</sup>

19 8. Mr. Rehberg has not been registered as a securities dealer or salesman with the  
20 Commission.<sup>191</sup>

21 9. At all times relevant, Mr. Simonson and Mr. Rehberg were acting for their own benefit  
22 and for the benefit or in furtherance of their marital communities with their respective Respondent  
23 Spouse.<sup>192</sup>

24 \_\_\_\_\_  
184 Tr. at 164; Exh. S-5 at 8.  
25 185 Tr. at 99-100, 129; Exhs. S-2, S-5 at 13.  
186 Tr. at 97-98; Exh. S-1a.  
26 187 Tr. at 164-165; Exh. S-5 at 8.  
188 Tr. at 98; Exhs. S-1b, S-5 at 11.  
27 189 Tr. at 103, 158, 169; Exh. S-3b at 20.  
190 Tr. at 97; Exh. S-3d at 4-5.  
28 191 Tr. at 98; Exh. S-1c.  
192 Tr. at 115-116; Exh. S-5 at 17, 24, 48.

1 10. Mr. Simonson incorporated SEED to finance and develop an energy efficient  
2 document and self-storage facility.<sup>193</sup>

3 11. SEED purchased a plot of land in Mesa, Arizona, with the intention of constructing a  
4 self-sustaining record storage facility (the "Fiesta Mesa Facility"). The land was purchased with  
5 approximately \$650,000 cash and \$550,000 in mortgage debt.<sup>194</sup>

6 12. SEED opened a business office in Mesa, Arizona. SEED invested in green technology  
7 and RFID technology that it planned to use at the Fiesta Mesa Facility.<sup>195</sup>

8 13. SEED also incurred expenses for professional services including appraisals, a tax  
9 evaluation, and attorney fees.<sup>196</sup>

10 14. Construction of the Fiesta Mesa Facility was projected to cost between approximately  
11 \$7.4 million to \$16 million.<sup>197</sup>

12 15. SEED raised approximately \$1.629 million from the sale of stock and \$20,000 through  
13 the sale of a note.<sup>198</sup>

14 16. SEED sought a business loan to provide additional funding for construction of the  
15 Fiesta Mesa Facility, but SEED was unable to obtain a loan.<sup>199</sup>

16 17. After SEED failed to make payments, the parcel of land in Mesa was returned to the  
17 seller.<sup>200</sup>

18 18. Between June 2007 and September 5, 2007 (the "First Offering"), the Respondents  
19 sold approximately 538,000 shares of SEED Corporation Class A common stock to approximately 44  
20 investors for a total investment of approximately \$1.4 million.<sup>201</sup>

21 19. Investors were provided a document titled "SEED Corporation Subscription  
22 Agreement" (the "Subscription Agreement").<sup>202</sup>

23  
24 <sup>193</sup> Tr. at 129; Exh. S-10 at ACC002066.

25 <sup>194</sup> Tr. at 147; Exh. S-5 at 25-27.

26 <sup>195</sup> Tr. at 133, 148-150, 155.

27 <sup>196</sup> Tr. at 147, 150-151, 156

28 <sup>197</sup> Exhs. S-5 at 33, S-10 at ACC002069, S-15 at ACC002101, S-16 at ACC002023.

<sup>198</sup> Exh. S-80b.

<sup>199</sup> Tr. at 148, 151-152; Exh. S-5 at 30, 34.

<sup>200</sup> Tr. at 163-164.

<sup>201</sup> Tr. at 113; Exh. S-15 at ACC002090, Exh. 80a.

<sup>202</sup> Tr. at 104, 175; Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

1           20.    The Subscription Agreements in the First Offering bore a footnote which read:  
2 “Copyright 2007 S. Pierce, All Rights Reserved. Confidential PPM – Unauthorized Use or  
3 Reproduction is Prohibited.”<sup>203</sup>

4           21.    “S. Pierce” referred to Shawn Pierce, the alias used by Mr. Rehberg.<sup>204</sup>

5           22.    In spite of the “Confidential PPM” footnote, the Subscription Agreement stated that it  
6 was being provided without a SEED Corporation Private Placement Memorandum.<sup>205</sup>

7           23.    The Subscription Agreement was accompanied by an investor suitability  
8 questionnaire.<sup>206</sup>

9           24.    Twelve investors purchased SEED stock without indicating that they were accredited  
10 investors on the suitability questionnaire.<sup>207</sup>

11          25.    Under the name of Shawn Pierce, Mr. Rehberg worked as a consultant to SEED and  
12 contacted potential investors.<sup>208</sup>

13          26.    Other investors heard about SEED through word of mouth and attended investment  
14 presentations online or at SEED’s offices.<sup>209</sup>

15          27.    In an Executive Summary provided to investors, Shawn Pierce was identified as a  
16 consultant acting as liaison between SEED and its affiliates. Shawn Pierce is further credited with  
17 “making this project possible and further develop[ing] the concept and financial structure for  
18 SEED.”<sup>210</sup>

19          28.    Shawn Pierce was arrested by the Mesa Police Department on or about August 17,  
20 2007, and his true identity as Karl Rehberg was discovered by the police soon thereafter.<sup>211</sup>

21          29.    Unknown to SEED investors and Mr. Simonson prior to Mr. Rehberg’s arrest, Shawn  
22

23 \_\_\_\_\_  
<sup>203</sup> Tr. at 53; Exhs. S-20, S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

24 <sup>204</sup> Tr. at 102, 175-176; Exh. S-15 at ACC002105.

25 <sup>205</sup> Exh. S-20 at ACC002175; *See also* Exhs. S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

26 <sup>206</sup> Exh. S-20 at ACC002181; *See also* Exhs. S-29-S-47, S-49, S-51, S-53-S-55, S-58-S-64, S-67, S-68, S-71-S-74, S-76-S-79.

27 <sup>207</sup> Exhs. S-36, S-39, S-40, S-41, S-43, S-45, S-46, S-60, S-67, S-72, S-76, S-79.

28 <sup>208</sup> Tr. at 143, 178; Exhs. S-5 at 17, 21-22, 35, 38, 45, S-9, S-10 at ACC002064, S-15 at ACC002105.

<sup>209</sup> Tr. at 44; Exh. S-5 at 22.

<sup>210</sup> Exh. S-10 at ACC002064.

<sup>211</sup> Tr. at 124, 168-169; Exhs. S-3b at 20, S-5 at 18.

1 Pierce was an alias used by Respondent Karl Rehberg.<sup>212</sup>

2 30. Unknown to SEED investors and Mr. Simonson prior to Mr. Rehberg's arrest,  
3 Respondent Karl Rehberg had fled prosecution in Florida in September 1998 regarding fraud in  
4 connection with the sale of \$21 million in unregistered securities.<sup>213</sup>

5 31. Unknown to SEED investors and Mr. Simonson prior to Mr. Rehberg's arrest, a  
6 criminal warrant was issued for Mr. Rehberg's arrest in December 1998.<sup>214</sup>

7 32. Following their arrest, Mr. Rehberg and his wife pled guilty to criminal charges and  
8 were sentenced to prison by the U.S. District Court for the Middle District of Florida.<sup>215</sup>

9 33. Mr. Simonson discovered Mr. Rehberg's true identity and background following his  
10 arrest.<sup>216</sup>

11 34. Mr. Simonson obtained legal counsel to determine the business consequences to  
12 SEED resulting from Mr. Rehberg's deception and involvement with the company.<sup>217</sup>

13 35. In a September 24, 2007 letter to SEED stockholders, Mr. Simonson disclosed Shawn  
14 Pierce's true identity as the fugitive Karl Rehberg.<sup>218</sup> The letter further stated that Mr. Rehberg was  
15 "no longer affiliated with SEED Corporation."<sup>219</sup>

16 36. Simonson also stated in the September 24, 2007 letter that after obtaining legal  
17 counsel, SEED "discovered that our private placement offering earlier this summer did not meet  
18 federal or state securities law guidelines due to, among other things, inadequate disclosure and  
19 documentation."<sup>220</sup>

20 37. At the time of the letter, 44 investors had already purchased shares in SEED totaling  
21 approximately \$1.432 million.<sup>221</sup>

22 38. On October 30, 2007, Mr. Simonson and SEED issued a Private Placement  
23

24 <sup>212</sup> Tr. at 50, 102, 158, 168-169; Exhs. S-3a, S-3b at 20, S-5 at 35-36, S-15 at ACC002105.

25 <sup>213</sup> Tr. at 50, 102, 168-169; Exhs. S-3a, S-5 at 42, S-15 at ACC002105.

26 <sup>214</sup> Tr. at 50, 168-169; Exhs. S-3b at 20, S-15 at ACC002105.

27 <sup>215</sup> Tr. at 100-101; Exhs. S-3b, S-3c.

28 <sup>216</sup> Exh. S-5 at 42.

<sup>217</sup> Exh. S-5 at 18, 37-38.

<sup>218</sup> Tr. at 48-49; Exh. S-9.

<sup>219</sup> Exh. S-9 at ACC002084.

<sup>220</sup> Tr. at 48-49; Exh. S-9.

<sup>221</sup> Exh. S-80a.

1 Memorandum (the "October PPM") to its existing investors offering them rescission of their purchase  
2 of SEED stock.<sup>222</sup>

3 39. The October PPM stated that "[n]ot later than December 31, 2007, the Company will  
4 forward to Investors stock certificates (and warrants, if applicable) or rescission proceeds, as the case  
5 may be ... " noting however, that "some delay" might result "if a significant number of Investors  
6 seek rescission."<sup>223</sup>

7 40. Approximately nineteen total investors requested partial or total rescission.<sup>224</sup> Only  
8 four received refunds totaling \$221,000.<sup>225</sup>

9 41. On November 12, 2007, a Private Placement Memorandum was issued for the purpose  
10 of raising funds, offering up to \$5 million in Class A Common Stock of SEED (the "November  
11 Offer").<sup>226</sup> The November Offer was made to existing SEED shareholders approximately 80 days  
12 after the most recent sale pursuant to the First Offering.<sup>227</sup>

13 42. An additional four investors purchased approximately \$177,000 of SEED stock  
14 subsequent to Mr. Rehberg's involvement with SEED.<sup>228</sup>

15 43. On or about September 28, 2008, Simonson caused SEED to execute a 2 Year SEED  
16 Corporation Promissory Note (the "SEED Note") with a principal amount of \$20,000 to an Arizona  
17 resident (the "Note Investor").<sup>229</sup> Mr. Simonson had no prior relationship with the Note Investor  
18 before being introduced through a friend of a mutual friend.<sup>230</sup>

19 44. Mr. Simonson personally met the Note Investor in Benson, Arizona, on or about  
20 September 28, 2008, for the purposes of discussing an investment in SEED.<sup>231</sup> Mr. Simonson did not  
21 inquire about the Note Investor's net worth or financial position.<sup>232</sup>

22 45. The unsecured SEED Note guaranteed repayment in quarterly installments of \$500

23 <sup>222</sup> Tr. at 169-170; Exh. S-15.

24 <sup>223</sup> Exh. S-15 at ACC002096.

25 <sup>224</sup> Tr. at 61-64, 74, 83; Exhs. S-23, S-24, S-29-S-32, S-35, S-36, S-39, S-40, S-43-S-47, S-53, S-54, S-77-S-79.

26 <sup>225</sup> Tr. at 61-64, 74, 83; Exhs. S-16 at ACC002041, S-80.

27 <sup>226</sup> Exh. S-16.

28 <sup>227</sup> Exhs. S-16, S-80.

<sup>228</sup> Tr. at 111, 160-161; Exh. S-80.

<sup>229</sup> Tr. at 86, 89-90, 159; Exh. S-85.

<sup>230</sup> Tr. at 87-88, 153; Exh. S-5 at 39, 52, 56.

<sup>231</sup> Tr. at 87-88, 153-154; Exh. S-5 at 39.

<sup>232</sup> Tr. at 89; Exh. S-5 at 57-58.

1 commencing January 2009.<sup>233</sup> SEED made only one \$500 payment on the SEED Note.<sup>234</sup>

2 46. At no relevant time did SEED register the SEED Note with the Commission.<sup>235</sup>

3 **CONCLUSIONS OF LAW**

4 1. The Commission has jurisdiction over this matter pursuant to Article XV of the  
5 Arizona Constitution and the Securities Act of Arizona, A.R.S. § 44-1801, *et. seq.*

6 2. The findings and conclusions of law contained in the Discussion above are  
7 incorporated herein.

8 3. Respondents SEED, Randall Duane Simonson and Karl Henry Rehberg offered or  
9 sold securities, within the meaning of A.R.S. § 44-1801.

10 4. Respondents SEED, Randall Duane Simonson and Karl Henry Rehberg violated  
11 A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from  
12 registration.

13 5. Respondents SEED, Randall Duane Simonson and Karl Henry Rehberg violated  
14 A.R.S. § 44-1842 by offering or selling securities while not being registered as dealers or salesmen.

15 6. Respondents SEED, Randall Duane Simonson and Karl Henry Rehberg committed  
16 fraud in the offer and sale of securities in violation of A.R.S. § 44-1991 in the manner set forth  
17 hereinabove.

18 7. The Respondents failed to meet their burden of proof pursuant to A.R.S. § 40-2033 to  
19 establish that the securities offered and sold herein were exempt from regulation under the Act.

20 8. Respondents SEED's, Randall Duane Simonson's and Karl Henry Rehberg's conduct  
21 is grounds for a cease and desist order pursuant to A.R.S. § 44-2032, and from any future violations  
22 of the Act.

23 9. Respondents SEED's, Randall Duane Simonson's and Karl Henry Rehberg's conduct  
24 is grounds for an order of restitution pursuant to A.R.S. § 44-2032 and A.A.C. R-14-4-308, and for  
25 which the respective marital communities should be jointly and severally liable subject to the  
26 limitations of A.R.S. § 25-215.

27 <sup>233</sup> Tr. at 89-90; Exhs. S-5 at 53, 58, S-85.

28 <sup>234</sup> Tr. at 92; Exh. S-5 at 53.

<sup>235</sup> Exh. S-1a.

1        10. An administrative penalty should be ordered against SEED Corporation, Randall  
2 Duane Simonson, and the marital community of Randall Duane Simonson and Marilyn J. Simonson,  
3 jointly and severally, for their multiple violations of the Act, pursuant to A.R.S. § 44-2036 and  
4 subject to the limitations of A.R.S. § 25-215.

5        11. An administrative penalty should be ordered against Karl Henry Rehberg, and the  
6 marital community of Karl Henry Rehberg and Helen Rehberg, jointly and severally, for Mr.  
7 Rehberg's multiple violations of the Act, pursuant to A.R.S. § 44-2036 and subject to the limitations  
8 of A.R.S. § 25-215.

9                                        **ORDER**

10        IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission  
11 under A.R.S. § 44-2032, Respondents SEED Corporation, Randall Duane Simonson, and Karl Henry  
12 Rehberg, shall cease and desist from their actions, as described above, in violation of A.R.S. §§ 44-  
13 1841, 44-1842 and 44-1991.

14        IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
15 A.R.S. § 44-2032, Respondents SEED Corporation, Randall Duane Simonson, individually, and, to  
16 the extent allowable pursuant to A.R.S. § 25-215, the marital community of Randall Duane Simonson  
17 and Marilyn J. Simonson, jointly and severally, shall make restitution in the amount of  
18 \$1,408,077.31, payable to the Arizona Corporation Commission within 90 days of the effective date  
19 of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308 subject to legal setoffs  
20 by the Respondents and confirmed by the Director of Securities.

21        IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
22 A.R.S. § 44-2032, Respondents Karl Henry Rehberg, individually, and, to the extent allowable  
23 pursuant to A.R.S. § 25-215, the marital community of Karl Henry Rehberg and Helen Rehberg,  
24 jointly and severally, shall make restitution in the amount of \$1,211,577.31, payable to the Arizona  
25 Corporation Commission within 90 days of the effective date of this Decision. Such restitution shall  
26 be made pursuant to A.A.C. R14-4-308 subject to legal setoffs by the Respondents and confirmed by  
27 the Director of Securities.

28        . . .

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

3 IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the  
4 lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate  
5 as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or  
6 any publication that may supersede it on the date that the judgment is entered.

7 IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds on a  
8 *pro rata* basis to the investors shown on the records of the Commission. Any restitution funds that  
9 the Commission cannot disburse because an investor refuses to accept such payment, or any  
10 restitution funds that cannot be disbursed to an investor because the investor is deceased and the  
11 Commission cannot reasonably identify and locate the deceased investor's spouse or natural children  
12 surviving at the time of distribution, shall be disbursed on a *pro rata* basis to the remaining investors  
13 shown on the records of the Commission. Any funds that the Commission determines it is unable to  
14 or cannot feasibly disburse shall be transferred to the general fund of the State of Arizona.

15 IT IS FURTHER ORDERED that Respondents SEED Corporation, Randall Duane Simonson,  
16 individually, and the marital community of Randall Duane Simonson and Marilyn J. Simonson,  
17 jointly and severally, shall pay to the State of Arizona administrative penalties in the amount of  
18 \$5,000 for SEED Corporation's and Mr. Simonson's multiple violations of the registration and  
19 antifraud provisions of the Securities Act, pursuant to A.R.S. §§ 44-2036 and 25-215. Said  
20 administrative penalties shall be payable by either cashier's check or money order payable to "the  
21 State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general  
22 fund for the State of Arizona.

23 IT IS FURTHER ORDERED that Respondent Karl Henry Rehberg, individually, and the  
24 marital community of Karl Henry Rehberg and Helen Rehberg, jointly and severally, shall pay to the  
25 State of Arizona administrative penalties in the amount of \$50,000 for Mr. Rehberg's multiple  
26 violations of the registration and antifraud provisions of the Securities Act, pursuant to A.R.S. §§ 44-  
27 2036 and 25-215. Said administrative penalties shall be payable by either cashier's check or money  
28 order payable to "the State of Arizona" and presented to the Arizona Corporation Commission for



1 deposit in the general fund for the State of Arizona.

2 IT IS FURTHER ORDERED that the payment obligations for these administrative penalties  
3 shall be subordinate to the restitution obligations ordered herein and shall become immediately due  
4 and payable only after restitution payments have been paid in full or upon Respondents' default with  
5 respect to Respondents' restitution obligations.

6 IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties  
7 ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent *per*  
8 *annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the  
9 Board of Governors of the Federal Reserve System in Statistical Release H.15 or any publication that  
10 may supersede it on the date that the judgment is entered, may be deemed in default and shall be  
11 immediately due and payable, without further notice.

12 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,  
13 any outstanding balance shall be in default and shall be immediately due and payable without notice  
14 or demand. The acceptance of any partial or late payment by the Commission is not a waiver of  
15 default by the Commission.

16 IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission  
17 for its cost of collection and interest at the maximum legal rate.

18 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order,  
19 the Commission may bring further legal proceedings against the Respondent(s) including application  
20 to the Superior Court for an order of contempt.

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

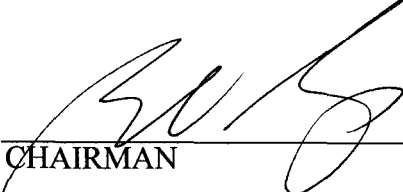
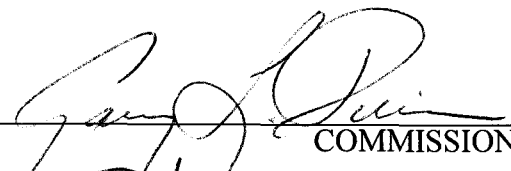



27 ...

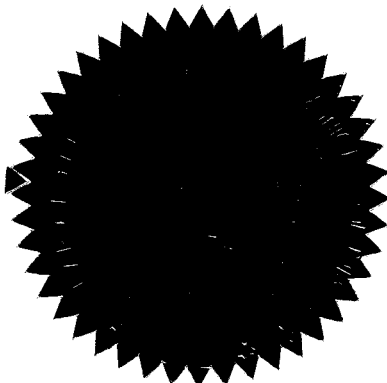
28 ...

1 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the  
2 Commission may grant a rehearing of this Order. The application must be received by the  
3 Commission at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise  
4 ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant  
5 a rehearing within twenty (20) calendar days after filing the application, the application is considered  
6 to be denied. No additional notice will be given of such denial.


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

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

9  
10  
11  CHAIRMAN  COMMISSIONER  
12  COMMISSIONER  COMMISSIONER  COMMISSIONER  
13



14  
15 IN WITNESS WHEREOF, I, JODI JERICH, Executive  
16 Director of the Arizona Corporation Commission, have  
17 hereunto set my hand and caused the official seal of the  
18 Commission to be affixed at the Capitol, in the City of Phoenix,  
19 this 13<sup>th</sup> day of November 2014.

20   
21 JODI JERICH  
22 EXECUTIVE DIRECTOR

23 DISSENT \_\_\_\_\_

24 DISSENT \_\_\_\_\_  
25 MP:ru

1 SERVICE LIST FOR: SEED CORPORATION, RANDALL DUANE  
2 SIMONSON AND MARILYN J. SIMONSON,  
3 HUSBAND AND WIFE, AND KARL HENRY  
4 REHBERG AKA SHAWN PIERCE AND HELEN  
5 REHBERG AKA LISA PIERCE, HUSBAND AND  
6 WIFE.

7 DOCKET NO.: S-20844A-12-0122

8 Randall Duane Simonson  
9 Marilyn J. Simonson  
10 SEED CORPORATION  
11 10239 East Happy Valley Road  
12 Scottsdale, AZ 85255-2326

13 Karl Henry Rehberg  
14 Helen Rehberg  
15 7848 Sonoma Springs Circle, Apt. 108  
16 Lake Worth, FL 33463-7939

17 Matt Neubert, Director  
18 Securities Division  
19 ARIZONA CORPORATION COMMISSION  
20 1300 West Washington Street  
21 Phoenix, AZ 85007

22  
23  
24  
25  
26  
27  
28