

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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3 CARL J. KUNASEK
4 Chairman
5 JIM IRVIN
6 Commissioner
7 WILLIAM A. MUNDELL
8 Commissioner

9 In the matter of)
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Respondent.

DOCKET NO. S-03383A-99-0000

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER FOR RELIEF**

11 **NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

12 For its proposed order for relief, the Securities Division (the "Division") of the Arizona
13 Corporation Commission (the "Commission") alleges that respondent, Susan Marie Wuest ("WUEST"),
14 has engaged in acts, practices and transactions, which constitute violations of A.R.S. § 44-1801 et seq.,
15 the Securities Act of Arizona (the "Securities Act").

16 The Division alleges as follows:

17 **I.**

18 **JURISDICTION**

19 1. The Commission has jurisdiction over these matters pursuant to Article XV of the
20 Arizona Constitution and the Securities Act.

21 **II.**

22 **RESPONDENT**

23 2. WUEST'S last known address is 2303 E. Evergreen, Mesa, Arizona 85213.

24 3. From September 1988 until May 1999, WUEST was registered with United Planners'
25 Financial Services of America, a Limited Partnership ("UPFS").

26 4. While WUEST was registered with UPFS, she served in the capacity of administrative

1 staff at BGA Associates, Inc. (“BGA”), a branch location. WUEST was paid a salary. She never had any
2 clients or earned any commissions.

3 5. On April 22, 1999, WUEST resigned from UPFS. UPFS subsequently filed a U-5 form.
4 WUEST has not registered with another Broker/Dealer since her resignation from UPFS.

5 **III.**

6 **FACTS**

7 6. Each of the preceding paragraphs is incorporated by reference.

8 7. From about June 1994 to May 1999, WUEST fraudulently converted and
9 misappropriated funds belonging to BGA and BGA’S investment advisory clients in the amount of
10 approximately \$258,812. WUEST’S fraudulent conversions and misappropriations affected fifteen
11 different clients and eighteen separate accounts.

12 8. WUEST fraudulently converted and misappropriated funds of BGA by forging checks
13 written on BGA’S bank account and credit line; by withdrawing money without authorization from
14 BGA’S bank account; by fraudulently obtaining and using without authorization a credit card in her
15 name on the account of BGA; by fabricating and falsifying BGA’S trade reports; by fabricating and
16 falsifying buy and sell transactions in securities and annuities; and by other fraudulent practices. The
17 majority of the forged checks and withdrawals from BGA’S accounts and credit card purchases were
18 for the benefit of WUEST.

19 9. WUEST fraudulently converted and misappropriated funds of BGA’S clients by
20 receiving redemption proceeds from customer accounts; by diverting clients’ funds to herself; by
21 diverting funds among BGA client accounts in an effort to cover up her earlier unauthorized
22 transactions; by fabricating and falsifying buy and sell transactions in securities and annuities; by
23 fabricating and falsifying portfolio account statements; by forging account documents, redemption
24 letters, correspondence, tax returns and other documents in the name of BGA and its clients; and by
25 other fraudulent practices.

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1 10. In April 1999, an officer of BGA assisted WUEST by going through files on WUEST’S
2 desk to help her catch up with her work. The officer discovered that WUEST had not completed
3 transactions for some clients’ accounts and had not opened financial accounts as she had been instructed
4 and claimed to have done. When confronted, WUEST admitted to lying and to fabricating an account
5 value in one account. She denied any other wrongdoing. A few days later, BGA received a credit card
6 statement listing WUEST as a credit card holder with charges to the account. BGA had never authorized
7 issuance of a credit card to WUEST. That same day, BGA contacted their accountant to begin an internal
8 audit into WUEST’S activities.

9 11. On September 7, 1999, WUEST entered into a settlement agreement with BGA. At the
10 time of execution of the settlement agreement, WUEST paid BGA \$180,000. Per the settlement
11 agreement, she was required to distribute her pension plan/401(K) account to BGA, sell her house with
12 distribution of net proceeds to BGA, distribute \$5,000 of the proceeds from an insurance policy on her
13 deceased husband to BGA, and distribute proceeds from the sale of personal assets to BGA. BGA has
14 received funds from WUEST’S pension plan/401(K) account and net proceeds from the sale of her
15 house. BGA has not received from WUEST the insurance proceeds of \$5,000 and the proceeds from
16 the sale of her personal assets. WUEST has reimbursed all clients of BGA for their losses caused by
17 her fraudulent activities.

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IV.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Sale and Purchase of Securities)

12. Each of the preceding paragraphs is incorporated by reference.

13. In connection with a transaction or transactions within and/or from Arizona involving a sale or purchase of securities, WUEST directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit. WUEST’S conduct includes, but is not limited to, the following:

- a) fraudulently converting and misappropriating BGA funds and funds of BGA clients;
- b) forging checks written on the bank account and credit line of BGA;
- c) withdrawing money from BGA’S bank account without authorization;
- d) diverting funds of BGA clients to herself;
- e) fabricating and falsifying buy and sell transactions in securities and annuities;
- f) fabricating and falsifying portfolio account statements;
- g) forging account documents, redemption letters, correspondence, tax returns and other documents.

14. This conduct violates A.R.S. § 44-1991.

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V.

GROUND FOR REVOCATION PURSUANT TO A.R.S. § 44-1962

(Denial, Revocation or Suspension of Registration of Salesman)

15. Each of the preceding paragraphs is incorporated by reference.

16. WUEST’S conduct constitutes grounds for the revocation of her registration as securities salesman with the Commission pursuant to A.R.S. § 44-1962(4), (9) and (10). Specifically:

- a) WUEST lacks integrity and is not of good business reputation;
- b) WUEST has been guilty of one or more fraudulent acts or practices in connection with the purchase or sale of securities; and,
- c) WUEST has engaged in dishonest or unethical practices in the securities industry.

VI.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief against WUEST:

1. Order WUEST to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order WUEST to take affirmative action to correct the conditions resulting from her acts, practices or transactions, including without limitation a requirement to make restitution pursuant to, inter alia, A.R.S. § 44-2032;

3. Order WUEST to pay the state of Arizona an administrative penalty of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order the revocation of WUEST’S registration as a securities salesman pursuant to A.R.S. § 44-1962;

5. Order any other relief that the Commission deems appropriate and authorized by law.

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VII.

HEARING OPPORTUNITY

In accordance with A.R.S. § 44-1972 and A.A.C. R14-4-306, WUEST is notified that she is afforded an opportunity for a hearing only by filing a written request for a hearing and cover sheet with Docket Control, Arizona Corporation Commission, 1200 West Washington Street, Phoenix, Arizona 85007, within 10 days after service of this Notice. WUEST is further notified that a cover sheet must accompany all filings. Failure to use the cover sheet may result in the delay of processing or the refusal to accept documents. WUEST may obtain a copy of the cover sheet by calling Docket Control at (602) 542-3477.

The date set for the hearing shall be within 15 to 30 days after the request for the hearing has been docketed, unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. Any respondent who does not request a hearing within the time prescribed is subject to the Commission issuing an order against that respondent containing such relief as the Commission deems appropriate, including but not limited to the relief requested above.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Cynthia Mercurio-Sandoval, ADA Coordinator, voice phone number 602/542-0838, e-mail csandoval@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this ____ day of December, 1999.

Mark Sendrow
Director of Securities