

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

In the matter of:)	DOCKET NO. S-03569A-05-0000
RONALD EARL PFINGSTEN , a married man)	NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, AND FOR OTHER AFFIRMATIVE ACTION
PMB #368, PO Box 439060)	
San Ysidro, CA 92143)	
SHARLENE N. PFINGSTEN , a married woman)	
PMB #368, PO Box 439060)	
San Ysidro, CA 92143)	
Respondents.)	

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

12 **EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

13 The Securities Division (“Division”) of the Arizona Corporation Commission
14 (“Commission”) alleges that RESPONDENTS have engaged in acts, practices and transactions, which
15 constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”).

16 **I.**

17 **JURISDICTION**

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

20 **II.**

21 **RESPONDENTS**

22 2. Respondent RONALD E. PFINGSTEN (“PFINGSTEN”), whose last known residential
23 address is PMB #368, P.O. Box 439060, San Ysidro, California 92143 and last known business
24 address is 9627 W. Lindgren, Sun City, Arizona 85373, is and was, at all times relevant hereto, an
25 insurance agent licensed with the State of Arizona.
26

1 10. Prior to July 18, 2000, viaticals were regulated as investment contracts under the
2 Securities Act. As investment contracts, viaticals were required to be registered in Arizona unless
3 a viatical sale qualified for a transactional exemption.

4 11. Prior to July 18, 2000, dealer and salesman registration requirements also applied to
5 viatical providers and their sales agents.

6 12. Effective July 18, 2000, revisions to the Securities Act codified the existing investment
7 contracts analysis with respect to viaticals by revising A.R.S. §§44-1801(26) and (29) and adding
8 A.R.S. §44-1850 (collectively referred to as the “new law”). The new law no longer required the
9 registration of viaticals provided the issuer/seller conformed to the filing and disclosure
10 requirements set forth in A.R.S. §44-1850. Additionally, viatical issuers and their agents were no
11 longer required to be registered contingent upon full compliance with A.R.S. §44-1850.¹

12 13. From approximately late-1999 through December 2000, PFINGSTEN offered and sold
13 approximately 12 MBC viaticals to at least 8 known investors. The principal amount of these
14 investments totaled at least \$357,000.00. PFINGSTEN received commissions from MBC (or one
15 of its agents) of least \$36,577.00 for these Arizona sales.

16 14. The RESPONDENT’S viatical sales were not registered as securities nor were they
17 exempt from registration.

18 15. At all times relevant, MBC was not registered as a securities dealer in Arizona and
19 RESPONDENT was not registered as securities salesmen in Arizona nor was he exempt from
20 registration.

21 16. Following the RESPONDENT’S association with MBC in late-1999, RESPONDENT
22 received various MBC marketing materials including promotional brochures. MBC also offered
23 to the RESPONDENT suggestions for flyers, direct mail pieces, and advertising. These
24 marketing materials included various claims such as investors could earn fixed returns as high as

25 _____
26 ¹ Effective August 22, 2002, the registration exemption for viatical issuers and sales agents under A.R.S. §44-1850
was eliminated. Offers for sale and sales of viaticals must be through a registered dealer and salesman.

1 seventy-two percent (72%) with “no speculation or stock market risk” and that the investors
2 principal and return were “fully secured.”. The materials further cautioned prospective investors
3 not to “gamble your financial future with high risk investments,” and boasted that “this [viaticals]
4 unique opportunity provides consistently higher returns for the serious minded and conservative
5 individuals” who did not wish to risk their underlying principal.

6 17. Based, in part, on the MBC marketing materials, RESPONDENT represented to his clients
7 that investments in viaticals present little to no risk and provide returns that were higher than most
8 other investments. However, the RESPONDENT misrepresented or failed to advise investors
9 about the potential risks of investing in viaticals.

10 18. Contrary to promotional claims, MBC viatical investments actually contain a number of
11 inherent risks including, without limitation, the medical prognoses for viators are susceptible to
12 manipulation and distortion and the detrimental effect on the investors’ profits and/or principal
13 should the viator live beyond the life expectancy.

14 **IV.**

15 **VIOLATION OF A.R.S. § 44-1841**

16 **(Offer or Sale of Unregistered Securities)**

17 19. From approximately late-1999 through December 2000, RESPONDENT offered or sold
18 securities in the form of investment contracts, within or from Arizona.

19 20. The securities referred to above were not registered pursuant to the provisions of Articles 6 or
20 7 of the Securities Act nor were they exempt from registration pursuant to Article 4 of the Securities
21 Act.

22 21. This conduct violates A.R.S. § 44-1841.

23 ...

24 **V.**

25 **VIOLATION OF A.R.S. § 44-1842**

26 **(Transactions by Unregistered Dealers or Salesmen)**

1 22. From approximately late-1999 through December 2000, RESPONDENT offered or sold
2 securities within or from Arizona, while not registered as a dealer or a salesman pursuant to the
3 provisions of Article 9 of the Securities Act or exempt from registration pursuant to Article 4 of the
4 Securities Act.

5 23. This conduct violates A.R.S. § 44-1842.

6 **VI.**

7 **VIOLATION OF A.R.S. § 44-1991**

8 **(Fraud in Connection with the Offer or Sale of Securities)**

9 24. In connection with the offer or sale of securities within or from Arizona, RESPONDENT
10 directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue statements
11 of material fact or omitted to state material facts which were necessary in order to make the
12 statements made not misleading in light of the circumstances under which they were made; and (iii)
13 engaged in transactions, practices or courses of business which operated or would operate as a fraud
14 or deceit upon offerees and investors. RESPONDENT'S conduct includes, but is not limited to, the
15 conduct set forth in paragraphs 17 through 19 herein.

16 25. This conduct violates A.R.S. § 44-1991.

17 **XII.**

18 **REQUESTED RELIEF**

19 The Division requests that the Commission grant the following relief against RESPONDENT:

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

22 2. Order RESPONDENT to take affirmative action to correct the conditions resulting
23 from his acts, practices or transactions, including a requirement to make restitution pursuant to A.R.S.
24 § 44-2032;

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

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if any RESPONDENT or RESPONDENT SPOUSE requests a hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must accompany the Answer. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Julie Coleman.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of each RESPONDENT, RESPONDENT SPOUSE or RESPONDENT's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a part or a qualification of an allegation, RESPONDENT or RESPONDENT SPOUSE shall specify that part or qualification of the allegation and shall admit the remainder. RESPONDENT or RESPONDENT SPOUSE waives any affirmative defense not raised in the answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 1st day of February, 2005.

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(jc)

/s/ Matthew Neubert
Matthew Neubert
Director of Securities