

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 CARL J. KUNASEK
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 WILLIAM A. MUNDELL
COMMISSIONER
5

6 IN THE MATTER OF
Charles Shull
687 Pampas Place
7 Sierra Vista, Arizona 85636

8 John Ebdon
4814 Equestrian Avenue
9 Sierra Vista, Arizona 85650

10 Cochise Financial Corp.
687 Pampas Place
11 Sierra Vista, Arizona 85636

12 **IN THE MATTER OF**
Carol Ebdon
1101 E. Carmelita Drive
13 Sierra Vista, Arizona 85636
14

15 Daniel Joe Garcia
8823 N. 38th Drive
16 Phoenix, Arizona 85051

DOCKET NO. S-03312A-99-000

DOCKEY NO. S-03375A-99-0000

DECISION NO. _____

OPINION AND ORDER

17 DATE OF HEARING: February 8 & 9, 2000

18 PLACE OF HEARING: Tucson, Arizona

19 PRESIDING OFFICER: Jane L. Rodda

20 APPEARANCES: Mr. Anthony B. Bingham, Special Assistant Attorney General, and Mr.
21 Robert A. Zumoff, Assistant Attorney General, on behalf of the
Securities Division of the Arizona Corporation Commission;

22 Mr. Charles Shull, In Propria Persona, and on behalf of Cochise
23 Financial Corp.;

24 Mr. John Ebdon, In Propria Persona; and

25 Ms. Carol Ebdon, In Propria Persona.

26 **BY THE COMMISSION:**

27 On August 24, 1999, the Securities Division (the "Division") of the Arizona Corporation
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1 Commission (“Commission”) filed a Notice of Opportunity for Hearing Regarding Proposed Order
2 for Relief (“Notice”) naming Respondents Charles Shull, John Ebdon and Cochise Financial Corp.
3 (“Cochise”). On September 9, 1999, Respondents Shull and Cochise filed with the Commission
4 requests for a hearing. On November 9, 1999, John Ebdon requested that a hearing be held in
5 Cochise County for medical and financial reasons.

6 On November 12, 1999, the Division filed a Notice against Respondents Carol Ebdon and
7 Daniel Joe Garcia. On November 19, 1999, Respondent Daniel Joe Garcia requested a hearing.

8 On November 17, 1999, the Division filed a Motion to Consolidate Cases and Request for
9 Pre-Hearing Conference. Pursuant to Procedural Order dated December 2, 1999, the matters were
10 consolidated for hearing to commence at the Commission’s offices in Tucson, Arizona on February
11 8, 2000. The hearing was held as scheduled before a duly authorized Hearing Officer of the
12 Commission. Respondents John Ebdon, Carol Ebdon and Charles Shull appeared at the hearing. Mr.
13 Shull was the only Respondent to testify. At the conclusion of the hearing, the Hearing Officer took
14 the matter under advisement pending the submission of a Recommended Opinion and Order to the
15 Commission.

16 **DISCUSSION**

17 John Ebdon, a resident of Sierra Vista, Arizona, is retired from his construction and real estate
18 business. Carol Ebdon is John Ebdon’s daughter. Daniel Garcia was a long-time family friend of the
19 Ebdon family. For a short period Carol Ebdon and Daniel Garcia were married. Charles Shull
20 currently resides in Las Vegas, Nevada, but at the time pertinent to this action lived in Sierra Vista.
21 Charles Shull was a business acquaintance of John Ebdon and owned and operated Cochise, a
22 mortgage brokerage business.

23 Sometime in the 1990’s, Daniel Garcia represented that he had a lawsuit or judgment against
24 the State of Arizona arising out of a medical misdiagnosis. There never was a lawsuit or judgment
25 against the State of Arizona in favor of Mr. Garcia.

26 Beginning in or about June 1995 through June 1999, Respondents, Daniel Garcia, John
27 Ebdon, Carol Ebdon and Charles Shull offered promissory notes to individuals who provided funds
28 to assist in the purported effort to collect the alleged judgment.

1 Respondents told investors that Daniel Garcia had a \$120 million judgment against the State
2 of Arizona and that he needed money for court costs, attorneys fees, bonding, to pay for competency
3 tests, and living expenses. Respondents gave investors promissory notes in return for their
4 investment in the purported effort to collect on the judgment. The promissory notes would offer a
5 return of 2, 5, 10 or 200 times the amount of the investment depending on the time they were signed.
6 The promissory notes had short terms, typically of ten days or two weeks. When the notes were not
7 paid pursuant to their terms, Respondents would provide the investors with any number of excuses,
8 including, but not limited to: judicial corruption; the transfer to another court; the suspension of the
9 attorney; Mr. Garcia needing to pass competency tests; and State Attorney General Grant Woods
10 holding up disbursement of the judgment. Respondents repeatedly asked the same investors for more
11 money and the promised return on the face of the notes increased over time.

12 The promissory notes were signed by Respondents John Ebdon and/or Carol Ebdon or Dan
13 Garcia. Respondent Shull did not sign any promissory notes, but he did solicit funds and drafted and
14 delivered some of the notes to investors. Investors provided funds in cash, by check, by mail gram or
15 wire transfer. The funds provided by check were often deposited in bank accounts belonging to Carol
16 Ebdon or Charles Shull or Cochise. Respondent Charles Shull asserts that he gave all funds he
17 received to John Ebdon or Carol Ebdon. Respondents John Ebdon and Carol Ebdon assert that they
18 gave all funds received from investors to Daniel Garcia. Respondents John Ebdon, Carol Ebdon and
19 Charles Shull state that they too provided money to Mr. Garcia on account of the purported judgment.

20 Respondents continued to solicit funds to purportedly collect on the non-existent judgment
21 until mid-July 1999, when police raided Respondents' homes and confiscated documents. At that
22 time investors were informed that there never was a lawsuit or judgment on behalf of Dan Garcia
23 against the State of Arizona. The Division presented evidence, based on information provided by
24 Respondents, that Respondents raised at least \$4,200,879 over the course of the scheme. Respondent
25 Shull was responsible for soliciting \$1,292,929 of the total amount raised.

26 The Division charged that the Respondents violated A.R.S.  44-1841 because from on or
27 about June 1995, Respondents offered and/or sold securities in the form of promissory notes within
28 Arizona. The securities were not registered under A.R.S.   44-1871 through 44-1875, or 44-1891

1 through 44-1902; were not securities for which a notice filing has been made under A.R.S. 44-3321;
2 were not exempt under A.R.S. 44-1843 or 44-1843.01; were not offered or sold in exempt
3 transactions under A.R.S. 44-1844; and were not exempt under any rule or order promulgated by
4 the Commission. Further, in connection with the offer to sell and the sale of the promissory notes,
5 Respondents acted as dealers and/or salesmen from Arizona, but were not registered pursuant to the
6 provision of Article 9 of the Arizona Securities Act, which violates A.R.S. 44-1842. Finally, the
7 Division alleged that Respondents violated A.R.S. 44-1991 (fraud in connection with the offer and
8 sale of Securities) because they represented to investors that money was needed to pay court costs
9 and fees, attorneys costs, fees to a bonding company and other miscellaneous expenses and fees to
10 collect a judgment against the State of Arizona when in fact no such judgment ever existed;
11 represented to investors that the promissory notes issued to them would be paid at face value from
12 collection of the judgment, which did not exist; and issued numerous promissory notes over a more
13 than two year period, with very short due dates, to investors and failing to pay as promised on any
14 note.

15 Respondent Shull claims that until informed by the authorities that there was no judgment, he
16 sincerely believed there was a judgment, and never knowingly made false statements. He claims
17 there is no evidence to indicate that he knew the scheme was false or that he received any of the
18 money collected from “investors.” He also claims that he was not acting through Cochise when he
19 was raising money for the purported Garcia judgment. Respondents John Ebdon and Carol Ebdon
20 also assert that they believed Mr. Garcia’s story about the lawsuit and the delays.

21 The undisputed evidence shows that all the Respondents offered and sold unregistered
22 promissory notes to investors, and that none of the Respondents were registered securities dealers or
23 salesmen. It is also not refuted that all the Respondents made untrue statements of material fact
24 related to the offer to sell or sale of the promissory notes. Respondents’ claims that they lacked
25 knowledge that the statements they made were false and that they had no intent to defraud are not a
26 defense to the charges brought under A.R.S. 44-1991 (2) and (3). Despite Mr. Shull’s claims that
27 Cochise played no role in the offer and sale of the promissory notes, the evidence indicates that often
28 the money Mr. Shull raised was deposited in Cochise’s bank account before he would give it to the

1 Ebdons, and that some of the investors he solicited were acquaintances on account of prior business
2 dealings through Cochise.

3 Consequently, we find that Respondents violated A.R.S.  44-1841 (unlawful sale of
4 unregistered securities); A.R.S.  44-1842 (unlawful transactions by unregistered dealer or salesmen);
5 and A.R.S.  44-1991 (fraud in connection with the offer and sale of securities). We find that
6 Respondents should be jointly and severally liable for the restitution to investors in the amount of
7 \$4,200,879, except that Respondent Charles Shull should be jointly and severally liable for restitution
8 in the amount not to exceed \$1,292,929, the amount invested by those investors to which he
9 introduced to the scheme. Further, Respondents shall each be assessed administrative penalties for
10 their violations of the Arizona Securities Act.

11 * * * * * * * * *

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

14 **FINDINGS OF FACT**

15 1. Respondent Daniel Garcia’s last known address is 8823 N. 38th Drive, Phoenix,
16 Arizona. At the time relevant to this action, Respondent Garcia resided in Sierra Vista, Arizona.

17 2. Respondent John Ebdon’s last known address is 4814 Equestrian Avenue, Sierra
18 Vista, Arizona.

19 3. Respondent Carol Ebdon is the daughter of John Ebdon. Carol Ebdon was at one time
20 married to Daniel Garcia, although the marriage was later annulled. Respondent Carol Ebdon’s last
21 known address is 1101 E. Carmelita Drive, Sierra Vista, Arizona.

22 4. Respondent Shull currently resides in Las Vegas, Nevada, but at the times relevant to
23 this proceeding resided at 687 Pampas Place, Sierra Vista, Arizona.

24 5. Respondent Shull was the President. CEO, Secretary and Treasurer and sole director
25 of Cochise.

26 6. Cochise was a mortgage brokerage business which was incorporated in Arizona in
27 September 1986, and dissolved in September 1999.

28 7. Commencing in or around June 1995, Respondents Daniel Garcia, John Ebdon, Carol

1 Ebdon and Charles Shull told investors that Daniel Garcia had been awarded a judgment against the
2 State of Arizona.

3 8. Respondents Daniel Garcia, John Ebdon, Carol Ebdon and Charles Shull told
4 investors that the judgment would be paid in the matter of a week or two but that Mr. Garcia needed
5 funds for court costs.

6 9. Respondents Daniel Garcia, John Ebdon, Carol Ebdon and Charles Shull told
7 investors that funds were needed to pay Mr. Garcia's attorney to collect the judgment, to pay court
8 costs, to pay a bonding company and for other miscellaneous costs and expenses.

9 10. In return for funds provided to assist in the collection of the judgment and for Mr.
10 Garcia's living expenses, investors received promissory notes, which had very short maturities.

11 11. When the judgment wasn't paid as represented, Respondents Daniel Garcia, John
12 Ebdon, Carol Ebdon and Charles Shull told investors various excuses for the delay.

13 12. Investors did not receive any repayment on the promissory notes.

14 13. There is not, and has never been a judgment against the State of Arizona in favor of
15 Daniel Garcia.

16 14. Respondent John Ebdon is the sole payer on the majority of promissory notes,
17 although some of the notes were signed by John Ebdon and Irene Ebdon, or John Ebdon and Carol
18 Ebdon, or solely by Carol Ebdon or Daniel Garcia.

19 15. None of the Respondents were registered securities dealers or salesmen in the State of
20 Arizona.

21 16. The promissory notes were not registered for sale in the State of Arizona, nor exempt
22 securities, nor offered in reliance upon an available exemption from registration.

23 17. Respondents raised at least \$4,200,879 from 92 different investors.

24 18. Respondent Shull solicited funds from and sold promissory notes to at least 17 of the
25 investors for a total of \$1,292,929.

26 19. At times Respondent Shull offered and sold promissory notes under the aegis of
27 Cochise.

CONCLUSIONS OF LAW

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2 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
3 Arizona Constitution and A.R.S.  44-1801 et seq.

4 2. The promissory notes offered and sold by Respondents Daniel Garcia, John Ebdon,
5 Carol Ebdon, Charles Shull and Cochise were securities within the meaning of A.R.S.   44-1801(23).

6 3. The securities were neither registered not exempt from registration, in violation of
7 A.R.S.  44-1841.

8 4. The actions and conduct of Respondents Daniel Garcia, John Ebdon, Carol Ebdon,
9 Charles Shull and Cochise constitute the offer and/or sale of securities within the meaning of A.R.S.  
10 44-1801(13) and (19).

11 5. Respondents Daniel Garcia, John Ebdon, Carol Ebdon, Charles Shull and Cochise
12 violated A.R.S.  44-1841 by offering for sale and selling unregistered securities within or from
13 Arizona.

14 6. Respondents Daniel Garcia, John Ebdon, Carol Ebdon, Charles Shull and Cochise
15 violated A.R.S.  44-1842 by acting as dealers and/or salesmen of securities although they were not
16 registered pursuant to Article 9 of the Arizona Securities Act.

17 7. Respondents Daniel Garcia, John Ebdon, Carol Ebdon, Charles Shull and Cochise
18 violated A.R.S.  44-1991 by making untrue statements of material fact or omitting a material fact
19 necessary to make the statements made not misleading and engaging in practices that operated as a
20 fraud or deceit upon offerees and investors.

21 8. Respondents Daniel Garcia, John Ebdon, Carol Ebdon, Charles Shull and Cochise are
22 found herein to have violated the Arizona Securities Act, and should cease and desist pursuant to
23 A.R.S.   44-2032 from any future violations of A.R.S.    44-1841, 44-1842 and 44-1991 and all
24 provisions of the Act.

25 9. Respondents Daniel Garcia, John Ebdon and Carol Ebdon should be jointly and
26 severally liable to make restitution pursuant to A.R.S.   44-2032 and A.A.C. R14-4-308 totaling
27 \$4,200,879 subject to any legal set-offs. Respondents Charles Shull and Cochise should be jointly
28 and severally liable with Respondents Daniel Garcia, John Ebdon, Carol Ebdon in an amount not to

1 exceed \$1,292,929 of the total amount owed to the investors in the purported lawsuit. Said restitution
2 to be made pursuant to A.R.S. § 44-2032 and A.A.C. R14-4-308 and subject to any legal set-offs.

3 10. All named Respondents should be assessed an administrative penalty jointly and
4 severally pursuant to A.R.S. § 44-2036 as follows: for the violation of A.R.S. § 44-1841 the sum of
5 \$20,000; for the violation of A.R.S. § 44-1842 the sum of \$20,000; and for the violation of A.R.S. §
6 44-1991 the sum of \$92,000. However, Respondents Charles Shull and Cochise should be jointly
7 and severally liable for not more than \$27,000 of the total \$132,000 as follows: for the violation of
8 A.R.S. §44-1841 the sum of \$5,000; and for the violation of A.R.S. § 44-1842 the sum of \$5,000 and
9 for the violation of A.R.S. §44-1991 the sum of \$17,000.

10 **ORDER**

11 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission
12 under A.R.S. §44-2032, Respondents Daniel Garcia, John Ebdon, Carol Ebdon, Charles Shull and
13 Cochise Financial Corp. shall cease and desist from their actions described hereinabove in violation
14 of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

15 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
16 A.R.S. §44-2036, Respondents John Ebdon, Carol Ebdon and Daniel Garcia, shall jointly and
17 severally pay as and for administrative penalties: for the violation of A.R.S. § 44-1841 the sum of
18 \$20,000; for violation of A.R.S. § 44-1842 the sum of \$20,000; and for violation of A.R.S. § 44-1991
19 the sum of \$92,000, for the violations of the Arizona Securities Act described hereinabove, said
20 administrative penalties to be paid within 60 days of the effective date of this Decision.

21 IT IS FURTHER ORDERED that that pursuant to the authority granted to the Commission
22 under A.R.S. §44-2036, Respondents Charles Shull and Cochise Financial Corp shall jointly and
23 severally pay as and for administrative penalties, an amount not to exceed \$27,000 of the previously
24 ordered penalty of \$132,000 as follows: for the violation of A.R.S. § 44-1841 the sum of \$5,000; for
25 violation of A.R.S. § 44-1842 the sum of \$5,000; and for violation of A.R.S. § 44-1991 the sum of
26 \$17,000, for the violations of the Arizona Securities Act described hereinabove, said administrative
27 penalties to be paid within 60 days of the effective date of this Decision.

28 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall be

1 made payable to the State Treasurer for deposit in the General Fund for the State of Arizona.

2 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall bear
3 interest at the rate of ten percent per year for any outstanding balance after 60 days from the effective
4 date of this Decision.

5 IT IS FURTHER ORDERED that the administrative penalties assessed hereinabove against
6 Respondents Daniel Garcia, John Ebdon and Carol Ebdon shall be reduced to \$3,000 per statutory
7 violation if restitution is made in accordance with the terms of this Decision hereinafter.

8 IT IS FURTHER ORDERED that the administrative penalties assessed hereinabove against
9 Respondents Charles Shull and Cochise Financial Corp. shall be reduced to \$3,000 per statutory
10 violation if restitution is made in accordance with the terms of this Decision hereinafter.

11 IT IS FRUTHER ORDERED that pursuant to the authority granted to the Commission under
12 A.R.S. 34-2032, Respondents Daniel Garcia, John Ebdon and Carol Ebdon jointly and severally
13 shall make restitution in the amount of \$4,200,879 together with Respondents Charles Shull and
14 Cochise Financial Corp. who shall jointly and severally make restitution in an amount not to exceed
15 \$1,292,929 of the \$4,200,879, which restitution shall be made pursuant to A.A.C. R14-4-308, subject
16 to any legal set-offs by any other Respondents and confirmed by the Director of Securities, said
17 restitution to be made within ninety days of the effective date of this Decision.

18 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the
19 rate of ten percent per year for the period from the dates of investment to the date of payment of
20 restitution by Respondents.

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2000.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

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SERVICE LIST FOR:

CHARLES SHULL, JOHN EBDON, COCHISE
FINANCIAL CORP.; CAROL EBDON and DANIEL
JOE GARCIA

DOCKET NO.

S-03312A-99-0000
S-03375A-99-0000

Charles Shull
P.O. Box 530400
Henderson, Nevada 89053

John Ebdon
4814 Equestrian Avenue
Sierra Vista, Arizona 85650

Cochise Financial Corp.
687 Pampas Place
Sierra Vista, Arizona 85636

Carol Ebdon
1101 E. Carmelita Drive
Sierra Vista, Arizona 85636

Daniel Joe Garcia
8823 N. 38th Drive
Phoenix, Arizona 85051

Robert Zumoff
ARIZONA ATTORNEY GENERAL'S OFFICE
1275 W. Washington Street
Phoenix, Arizona 85007

Mark Sendrow
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007