

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL

3 Chairman

4 JIM IRVIN

5 Commissioner

MARC SPITZER

Commissioner

6 In the matter of )

) DOCKET NO. S-03353A-00-0000

7 CHARLES RAY STEDMAN )

3001 East Frontage Road )

8 Amado, AZ 85629 )

) DECISION NO. \_\_\_\_\_

9 WENDELL T. DECKER, JR. )

5249 N. Adobe Circle )

10 Tucson, AZ 85750 )

) **ORDER TO CEASE AND DESIST,  
ORDER OF RESTITUTION, ORDER  
FOR ADMINISTRATIVE PENALTIES  
AND CONSENT TO SAME  
BY: RESPONDENT KEITH B. "SKIP"  
DAVIS and RESPONDENT KEITH B.  
DAVIS, INC.**

11 OXFORD DEVELOPMENT, L.L.C. )

5249 North Adobe Circle )

12 Tucson, AZ 85750 )

13 PROFUTURA, L.L.C. )

P.O. Box 4252 )

14 Tubac, AZ 85646 )

15 CNT FAMILY FUN OUTLETS, INC. )

One East First Street )

16 Reno, NV 89501 )

17 CHARLES W. TESTINO, JR. )

3656 E. Windy Point Dr. )

18 Tucson, AZ 85718 )

19 CRD#1216651 )

20 ARIZONA INVESTMENT ADVISORS, INC. )

2920 North Swan Road, Suite 206 )

21 Tucson, AZ 85712 )

22 KEITH B. "SKIP" DAVIS )

6550 North Silversmith Place )

23 Tucson, AZ 85750 )

24 SPYGLASS ENTERPRISES L.L.C. )

6550 North Silversmith Place )

25 Tucson, AZ 85750 )

26 KEITH B. DAVIS, INC. )

6550 North Silversmith Place )

Tucson, AZ 85750, )

) Respondents. )



1 investors, and agreed to pay commissions of 10% of all money raised, and an additional equity  
2 interest in the project.

3 6. Until around March 1999, all of the Notes offered and sold by RESPONDENTS were  
4 represented as being secured by deeds of trust filed in Weld County on the property described as  
5 follows (the “Dacono Project property):

6 A tract of land located in the South Half (S1/2) of Section Fourteen (14),  
7 Township One (1) North, Range Sixty-eight (68) West of the Sixth (6<sup>th</sup>)  
8 Principal Meridian, County of Weld, State of Colorado, being more  
particularly described as follows:

9 Considering the South line of the Southwest Quarter (SW/4) of said Section  
10 14 as bearing North 88°57’30” East from a 3 ¼” aluminum cap at the  
11 Southwest corner of said Section 14 to a 3 ¼” aluminum cap at the South  
Quarter corner of said Section 14 and with all bearings contained herein  
relative thereto:

12 Commencing at the Southwest corner of said Section 14; thence along said  
13 South line, North 88°57’30” East, 440.10 feet; thence, North 01°02’30”  
West, 30.00 feet to the POINT OF BEGINNING, said point being on the  
East line of Interstate 25;

14 thence along said East line the following 3 courses, North 79°41’00” West,  
15 203.10 feet; thence, North 08°14’30” West, 943.60 feet; thence, North  
16 00°17’30” East, 914.78 feet to a point on the South right-of-way line of the  
Union Pacific Railroad Company;

17 thence, along said South right-of-way line the following 6 courses, South  
18 78°47’56” East, 165.34 feet to a point on a curve concave to the North  
19 having a central angle of 11°44’53”, a radius of 1886.98 feet and the chord  
20 of which bears South 84°40’23” East, 386.23 feet; thence, along the arc of  
said curve 386.91 feet; thence, North 89°27’11” East, 467.86 feet to a point  
21 on a curve concave to the Southwest having a central angle of 54°53’25”, a  
radius of 1839.60 feet and the chord of which bears South 63°06’07” East,  
22 1695.74 feet; thence, along the arc of said curve 1762.37 feet; thence, South  
35°39’24” East, 674.84 feet to a point on a curve concave to the Northeast  
having a central angle of 11°56’40”, a radius of 2902.76 feet and the chord  
of which bears South 41°37’44” East, 604.04 feet; thence along the arc of  
said curve 605.14 feet to a point on the North line of County Road 8;

23 thence along said North line, South 88°57’03” West, 788.41 feet; thence  
24 continuing along said North line, South 88°57’30” West, 2203.18 feet to the  
Point of Beginning.

25 7. DECKER and STEDMAN’s plan was that STEDMAN would sign all of the Notes as  
26 “Maker” and be personally liable to investors; the borrowed funds would be transferred to

1 PROFUTURA, L.L.C. (“PROFUTURA”) to loan to OXFORD DEVELOPMENT, L.L.C.  
2 (“OXFORD”) to cover costs necessary to obtain construction financing for the project; OXFORD  
3 would pledge the Dacono Project property as security for the Notes and would pay STEDMAN’s  
4 obligations to investors, including the interest on the Notes; and DECKER would determine what  
5 portions of the Dacono Project property would be used to secure the Notes.

6 8. From approximately March 1996, RESPONDENTS directly offered and sold Notes to  
7 approximately 17 private investors, raising approximately \$1,063,000 from private investors.

8 9. RESPONDENTS told investors that their funds were to be used to pay expenses as  
9 interim financing for a project described as the Dacono Factory Outlet Stores or the Dacono Factory  
10 Outlet Mall and Sports Arena, and that their Notes would be paid upon the due date or at the close of  
11 the construction financing.

12 10. On December 26, 1998, DAVIS first learned that the Promissory Notes were not being  
13 recorded and secured by a deed of trust. In fact, from the inception of the project to date, less than ten  
14 private investors are beneficiaries of any recorded interests in the Dacono Project property.

15 11. As part of the paperwork for the Notes, investors were required to sign form letters  
16 addressed to STEDMAN, which the promoters called “Big Boy Letters.” The letters stated that the  
17 investors were accredited investors, defined as investors whose net worth was over \$1,000,000, or  
18 whose income was at least \$200,000 for the two years prior to investment.

19 12. The interest rates on most of the Notes sold after RESPONDENTS became involved  
20 in March 1996 varied from 15% to 20% per annum. Until around September 1997, the term of the  
21 Notes was one year. After the project failed to obtain construction financing, in or around September  
22 1997, the term of most of the Notes was reduced to 90 days, and existing Notes, including interest,  
23 were rolled over or renewed at the end of the ir terms.

24 13. DECKER offered RESPONDENTS 10% commissions on the rollover of their  
25 investors’ Notes. By August 2000, some of the Notes had been rolled over eighteen times.

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1           14.     In December 1998, one investor protested that the deed of trust that was supposed to  
2 secure his Note was never recorded. Within approximately three months, in or around April 1999,  
3 RESPONDENTS started to offer and sell “unsecured” Notes to new private investors.

4           15.     In connection with the offer or sale of securities within or from Arizona,  
5 RESPONDENTS directly or indirectly made untrue statements of material fact or omitted to state  
6 material facts which were necessary in order to make the statements made not misleading in light of  
7 the circumstances under which they were made. RESPONDENTS' conduct includes, but is not  
8 limited to, the following:

- 9           a) Representing that the investment was a short-term loan because a construction loan for  
10 the Dacono Project was in place and investors would be paid in full at the close of that  
11 loan, when in fact there were a series of purported loan “commitments” that never  
12 materialized and the principals never succeeded in negotiating construction financing  
13 for the project;
- 14           b) Representing until at least April 1999 that the Notes, and any extensions, renewals or  
15 rollovers of the Notes, were secured by a recorded interest in a deed of trust on a  
16 portion of the Dacono Project property located in Weld County, Colorado and owned  
17 by OXFORD; and representing that the total of all loans secured by Lot 6 would not  
18 exceed one million dollars. In fact only approximately eight of the original investors  
19 in 1996 and early 1997 were identified as beneficiaries on recorded deeds of trust, the  
20 total of all loans represented as secured by Lot 6 far exceeded one million dollars, and  
21 the property that was supposed to be pledged to private investors was utilized instead  
22 as security to obtain financing from institutional “bridge” lenders;
- 23           c) Failing to disclose that substantial investor funds were used for failed funding  
24 attempts, attempts to obtain bonding, tax benefits for the future owners of the project,  
25 interest payments on prior investors' Notes; redeeming prior investors' defaulted  
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Notes, profits to institutional bridge lenders, DECKER’s living expenses, and DECKER’s and STEDMAN’s travel expenses; and

d) Failing to disclose STEDMAN’s inability to repay the Notes, if construction financing was not secured.

**II.**

**CONCLUSIONS OF LAW**

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

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

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

4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

5. RESPONDENTS violated A.R.S. § 44-1991 by offering or selling securities within or from Arizona by making untrue statements or misleading omissions of material facts.

6. RESPONDENTS’ conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. RESPONDENTS’ conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. RESPONDENTS’ conduct is grounds for administrative penalties under A.R.S. § 44-2036.

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**III.**

**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the RESPONDENTS' consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

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

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall, jointly and severally, pay restitution to investors shown on the records of the Commission in the amount of \$1,063,000, plus interest at the rate of 10% per annum from the date of each investment until paid in full. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. Any funds that the Attorney General is unable to disburse shall revert to the state of Arizona.

IT IS FURTHER ORDERED that, until full restitution is made to all Note investors identified on the records of the Division, RESPONDENTS shall subordinate all rights and interests in the Dacono Project property, described in paragraph 6 above, and any contractual rights and interests to income or payment from the development and/or sale of the Dacono Project Property or the Dacono Project, including commissions from the sale of the Notes.

IT IS FURTHER ORDERED that RESPONDENTS shall not, individually or on behalf of other entities, direct or give consent to any transfer of development rights associated with the Dacono Project property, including, but not limited to, tax credits or municipal bond financing, unless the agreement for such transfer of rights provides that funds equal to full restitution as set forth in this Order shall be placed in escrow for the benefit of all Note investors.

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IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall, jointly and severally, pay an administrative penalty in the amount of \$10,000. Payment shall be made in full by cashier’s check or money order on the date of this Order, payable to the “State of Arizona.” Any amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in full.

IT IS FURTHER ORDERED that this Order 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 \_\_\_\_\_, 2001.

\_\_\_\_\_  
BRIAN C. McNEIL  
Executive Secretary

\_\_\_\_\_  
DISSENT

This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator, voice phone number 602-542-3931, E-mail [shood@cc.state.az.us](mailto:shood@cc.state.az.us).

PTJ



**CONSENT TO ENTRY OF ORDER**

1  
2 1. RESPONDENTS KEITH B. DAVIS and KEITH B. DAVIS, INC. (RESPONDENTS)  
3 admit the jurisdiction of the Commission over the subject matter of this proceeding.  
4 RESPONDENTS acknowledge that they have been fully advised of their rights to a hearing to  
5 present evidence and call witnesses and RESPONDENTS knowingly and voluntarily waive any and  
6 all rights to a hearing before the Commission and all other rights otherwise available under Article  
7 11 of the Securities Act and Title 14 of the Arizona Administrative Code. RESPONDENTS  
8 acknowledge that this Order To Cease And Desist, Order of Restitution, Order for Administrative  
9 Penalties and Consent to Same (“Order”) constitutes a valid final order of the Commission.

10 2. RESPONDENTS knowingly and voluntarily waive any right they may have under  
11 Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or  
12 extraordinary relief resulting from the entry of this Order.

13 3. RESPONDENTS acknowledge and agree that this Order is entered into freely and  
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. RESPONDENTS acknowledge that they have chosen not to be represented by counsel in  
16 this matter, they have reviewed this Order and understand all terms it contains.

17 5. RESPONDENTS admit only for purposes of this proceeding and any other  
18 administrative proceeding before the Commission or any other agency of the State of Arizona the  
19 Findings of Fact and Conclusions of Law contained in the Order.

20 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action  
21 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding  
22 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without  
23 factual basis. RESPONDENTS will undertake steps necessary to assure that all of his agents and  
24 employees understand and comply with this agreement. Nothing in this provision affects  
25 RESPONDENTS’ testimonial obligations or right to take legal positions in litigation in which an  
26 administrative agency of the State of Arizona is not a party.

7. RESPONDENTS agree to take all steps necessary to subordinate all of their rights and  
interests, both currently existing or existing in the future, in the Dacono Project property, described

1 in paragraph 6 of the Order, to the investors identified on the records of the Division, until those  
2 investors have received full restitution as mandated by the Commission in the Order.  
3 RESPONDENTS further agree to take all steps necessary to subordinate all of their contractual  
4 rights and interests, both currently existing or existing in the future, related to the development  
5 project known as the Dacono Factory Stores and located near Dacono, Weld County, Colorado,  
6 including commissions from the sale of the Notes, to the investors identified on the records of the  
7 Division.

8 8. RESPONDENTS understand that nothing in this Order relieves them of any obligation or  
9 responsibility that they have to their investors or clients outside of this Order.

10 9. While this Order settles this administrative matter between RESPONDENTS and the  
11 Commission, RESPONDENTS understand that this Order does not preclude the Commission from  
12 instituting other administrative proceedings based on violations that are not addressed by this Order.

13 10. RESPONDENTS understand that this Order does not preclude the Commission from  
14 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
15 that may be related to the matters addressed by this Order.

16 11. RESPONDENTS understand that this Order does not preclude any other agency or  
17 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal  
18 proceedings that may be related to matters addressed by this Order.

19 12. RESPONDENTS agree that they will not apply to the state of Arizona for registration as  
20 a securities dealer or salesman or for licensure as an investment adviser or investment adviser  
21 representative for five years from the date of the Order and until such time as all restitution and  
22 penalties under the Order are paid in full.

23 13. RESPONDENTS agree that they will not exercise any control over any entity that offers  
24 or sells securities or provides investment advisory services, within or from Arizona.

25 14. RESPONDENTS agree that until restitution and penalties are paid in full,  
26 RESPONDENTS will notify the Director of the Securities Division within 30 days of any change in  
home address or any change in RESPONDENTS' ability to pay amounts due under this Order.

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15. RESPONDENTS understand that default shall render them liable to the Commission for its costs of collection and interest at the maximum legal rate.

16. RESPONDENTS agree that they will continue to cooperate with the Securities Division including, but not limited to, providing complete and accurate testimony at any hearing in this matter and cooperating with the state of Arizona in any related investigation or any other matters arising from the activities described in this Order.

17. RESPONDENTS consent to the entry of this Order and agree to be fully bound by its terms and conditions. If RESPONDENTS breach any provision of this Order, the Commission may vacate this Order and restore this case to its active docket.

18. This agreement and Order shall be binding upon RESPONDENTS' agents, heirs, employees, assigns, representatives, beneficiaries or other successors in interest of any kind.

19. KEITH B. DAVIS represents that he is President of KEITH B. DAVIS, INC. and has been authorized by KEITH B. DAVIS, INC. to enter into this Order for and on behalf of it.

\_\_\_\_\_  
KEITH B. DAVIS

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 2001.

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NOTARY PUBLIC

My Commission Expires:

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KEITH B. DAVIS, INC.

\_\_\_\_\_  
By: Keith B. Davis, President

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

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