

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

6 In the matter of )  
7 TUCSON ESTATE FINANCIAL ADVISORS, )  
8 INC., )  
9 an Arizona corporation )  
3049-A S. Kinney Road )  
Tucson, Arizona 85713 )  
10 JAMES R. KINION, II )  
11 6655 N. Canyon Crest Drive, #7139 )  
Tucson, Arizona 85750, )  
12 Respondents. )

DOCKET NO. S-03389A-00-0000  
DECISION NO. \_\_\_\_\_  
**ORDER TO CEASE & DESIST and  
CONSENT TO SAME**

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14 **I.**

15 **INTRODUCTION.**

16 Respondents TUCSON ESTATE FINANCIAL ADVISORS, INC (“TEFA”) and JAMES R.  
17 KINION (collectively “RESPONDENTS”) elect to permanently waive their right to a hearing and appeal  
18 under Articles 11 and 12 of the Securities Act of Arizona (“the Act”) with respect to this Order to Cease and  
19 Desist (Order); admit the jurisdiction of the Arizona Corporation Commission (Commission); neither admit  
20 nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to entry of this  
21 Order by the Commission.

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2 **II.**

3 **FINDINGS OF FACT**

4 1. TUCSON ESTATE FINANCIAL ADVISORS, INC. is an Arizona corporation located at  
5 3049-A S. Kinney Road, Tucson, Arizona 85713.

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7 2. JAMES R. KINION, II, whose last known address is 6655 N. Canyon Crest Drive, #7139,  
8 Tucson, Arizona 85750, is the president of TEFA.

9 3. At all relevant times, JAMES KINION has been married to VICKI L. KINION, whose last  
10 known address is 6655 N. Canyon Crest Drive, #7139, Tucson, Arizona 85750. All of his actions have been  
11 in furtherance of the KINION marital community. VICKI L. KINION was not a Respondent in the Notice of  
12 Opportunity in this action filed on March 28, 2000, but acknowledges that all actions of JAMES KINION, as  
13 outlined here, have been in furtherance of the KINION marital community.

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15 4. JAMES KINION is licensed in Arizona to sell insurance and real estate.

16 5. In or about April 1998, JAMES KINION received a mailing from Robert Ryan and Dan  
17 Bennett. Ryan informed JAMES KINION that, among other things, his company was in the business of  
18 selling promissory notes for various companies. Ryan further informed JAMES KINION that any promissory  
19 notes sold through his company would be fully insured by independent bonding companies. Beginning in or  
20 about June 1998, TEFA and JAMES KINION offered to sell securities, in the form of promissory notes or  
21 investment contracts to Arizona investors, on behalf of the following corporations:  
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- 23  
24 a) Apogenics, Inc.  
25 b) Caffe Diva Group Ltd. (“Caffe Diva”)  
26 c) Corlogic Corp.

- d) Digizap Technologies LLC
- e) Pacific Air Transport, Inc. (“Pacific Air”)
- f) Redbank Petroleum, Inc. (“Redbank”)
- g) Sebastian International Entertainment, Inc. (“Sebastian”)
- h) Technical Support Services, Inc. (“TSSSI”)
- i) World Vision Entertainment, Inc. (“World Vision”)

6. TEFA and JAMES KINION sold 41 promissory notes for the above companies to 16 Arizona investors, all of whom had a prior business relationship with KINION, for a total investment of approximately \$1,176,084.62. TEFA and JAMES KINION contracted to receive commissions ranging from nine to thirteen percent, totaling approximately \$109,121.71. However, \$5041.48 was not paid them, leaving total paid commissions of \$104,080.23.

7. All notes were for a nine-month period. Interest on the notes ranged from ten percent to thirteen percent. As of this date, some of the notes have been paid off, but the majority are past due. Thus, the majority of the investors have not received a return of their principal from their investments with the companies.

8. The notes were allegedly guaranteed by an insurance company bond. JAMES KINION told the investors that he received assurances that the bond guaranteeing any specific that the note would be paid off if the company did not make the required payment and that the notes were safe and fully bonded. However, to date no investor has received any payment from any insurance bond, even though the notes are past due. The insurance companies backing the notes from the nine companies were Global Insurance Company, Ltd., located in Costa Rica and New England International Surety Inc. (“NEISI”), located in Belgium. There is currently litigation against NEISI to seek to enforce the bonds.



1           3.       In connection with the offers to sell and the sale of securities, TEFA and JAMES KINION  
2 acted as dealers and/or salesmen within and/or from Arizona, although not registered pursuant to the  
3 provisions of Article 9 of the Securities Act, in violation of A.R.S. § 44-1842.

4           4.       In connection with the offers and sales of securities within and/or from Arizona, TEFA and  
5 JAMES KINION made untrue statements of material fact or omitted to state material facts which were  
6 necessary in order to make the statements made not misleading in light of the circumstances under which they  
7 were made, in violation of A.R.S. § 44-1991. TEFA and JAMES KINION'S conduct includes, but is not  
8 limited to, the following:  
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- 10           a)       Failing to discover and inform investors that the promissory notes were not registered as  
11 securities in Arizona and were not exempt from registration;  
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- 13           b)       Failing to fully disclose the financial incentives of up to thirteen percent commissions that they  
14 received for selling the promissory notes;  
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- 16           c)       Failing to discover and provide full disclosure regarding the investment including risk, disclosure  
17 statements, prospectuses or financial statements;  
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- 19           d)       Failing to discover and inform the Redbank investors that at the time of their investment, the  
20 president of Redbank was the subject of a cease and desist order issued by the State of  
21 Maryland for securities fraud and was under order to repay approximately \$2,000,000 to  
22 Maryland investors;  
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- 24           e)       Failing to discover and inform the Sebastian investors that at the time of their investment,  
25 Sebastian was the subject of a cease and desist order issued by the State of Pennsylvania; and  
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- f)       Failing to discover and inform the World Vision investors that at the time of their investment,  
World Vision was the subject of a cease and desist order issued by the State of Pennsylvania.

**IV.**

**ORDER**

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3        THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the Commission finds that  
4 the following Order is appropriate, in the public interest and necessary for the protection of investors.

5        IT IS ORDERED, pursuant to A.R.S. § 44-2032, TEFA and JAMES KINION shall Cease and  
6 Desist from violations of the Act.

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8        IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS and the  
9 community of JAMES and VICKI KINION jointly and severally shall make monetary restitution in the  
10 amount of \$104,080.23 as set forth in the records obtained by the Securities Division.

11        IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, RESPONDENTS shall jointly and  
12 severally pay an administrative penalty in the amount of \$10,000, payable to the Treasurer of the State of  
13 Arizona for deposit into its general fund, due and payable after all restitution payments required by this Order  
14 have been made.

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16        IT IS FURTHER ORDERED that RESPONDENTS shall pay interest on all unpaid amounts of  
17 restitution accruing from the date of entry of the Order, at the statutory rate of ten percent per annum pursuant  
18 to A.A.C. R14-4-308, until the amounts are paid in full.

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20        IT IS FURTHER ORDERED that restitution funds shall be deposited in an interest bearing account  
21 through the office of Arizona Attorney General for the benefit of investors. The Attorney General shall  
22 disburse the available funds on a pro rata basis to investors as reflected in the records of the Securities  
23 Division. If any disbursement check issued by the Attorney General either is not deliverable or has not  
24 cleared the trust account within 120 days of the date of issuance, the funds related to such check shall be  
25 redistributed to the known investors. If all investors are paid in full, including interest, any returned funds shall  
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revert to the State of Arizona payable to the Treasurer.

IT IS FURTHER ORDERED that this Order shall become effective immediately upon the date set forth below.

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  
(MD)

This document is available in alternative formats by contacting Cynthia Mercurio-Sandoval, ADA Coordinator, voice phone number 602/542-0838, E-mail [csandoval@cc.state.az.us](mailto:csandoval@cc.state.az.us).

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**CONSENT TO ENTRY OF ORDER BY THE COMMISSION  
AND WAIVER OF HEARING**

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3 1. TUCSON ESTATE FINANCIAL ADVISORS and JAMES R. KINION (collectively  
4 “RESPONDENTS”) and VICKI L. KINION admit the jurisdiction of the Arizona Corporation Commission  
5 (“Commission”) over the subject matter of this proceeding, and acknowledge that they have been fully advised  
6 of their right to a hearing to present evidence and call witnesses. RESPONDENTS knowingly and voluntarily  
7 waive all rights to a hearing before the Commission and all other procedures otherwise available under Article  
8 11 of the Securities Act of Arizona (the “Act”) and Title 14, The Arizona Administrative Code.  
9 RESPONDENTS acknowledge that the accompanying Order to Cease and Desist and Consent to Sameo  
10 (“Order”) constitutes a valid final order duly rendered by the Commission.  
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13 2. RESPONDENTS and VICKI KINION knowingly and voluntarily waive any right they may  
14 have under Article 12 of the Act to judicial review by any court by way of suit, appeal or extraordinary relief  
15 resulting from the entry of this Order.  
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17 3. RESPONDENTS and VICKI KINION acknowledge and agree that this Order is entered  
18 into freely and voluntarily and that no promise was made or coercion used to induce them to enter into it.

19 4. RESPONDENTS and VICKI KINION acknowledge that they have been represented by  
20 counsel in this matter.

21 5. RESPONDENTS and VICKI KINION neither admit nor deny admit the findings of fact and  
22 conclusions of law and consent to the entry of the Order. RESPONDENTS and VICKI KINION consent to  
23 entry of this Order.  
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25 6. RESPONDENTS acknowledge that this Order resolves only administrative violations of the  
26 Act and that nothing contained in the Order purports to resolve any other issues that may exist between

1 RESPONDENTS and the State. Nothing in the Order shall be construed to restrict or preclude any other  
2 agency or officer of the State of Arizona or its subdivisions from initiating other civil or criminal proceedings  
3 against RESPONDENTS, now or in the future, that may be related to the matter addressed by the Order and  
4 the Consent. Nothing in the Order shall be construed to restrict the State's right in a future proceeding to bring  
5 an action against RESPONDENTS from or related to facts not set forth in the Order. Nothing in the Order  
6 shall be construed to restrict RESPONDENTS' right to petition the State for reconsideration of this Order in  
7 the event that additional funds are received from the promissory notes issued by the various companies or  
8 payments from the bonding companies, and those funds are returned to the investors.

10 7. RESPONDENTS acknowledge that they have been informed and understand that the  
11 Commission or its designee, at the Commission's sole and exclusive discretion, may refer or grant access to  
12 this matter, or any information or evidence gathered in connection with this matter, to any person or entity  
13 having appropriate administrative, civil or criminal jurisdiction. RESPONDENTS acknowledge that no  
14 representations regarding the above have been made so as to induce them to enter into this Order, including the  
15 fact that no promise or representation has been made by the Commission or its designee or staff with regard to  
16 any potential criminal liability or immunity from any potential criminal liability.

19 8. RESPONDENTS understand that it is the Commission's policy not to permit a Respondent to  
20 settle an action by consenting to an order that imposes a sanction while denying the allegations in the Notice.  
21 RESPONDENTS further understand that the Commission's acceptance of a settlement in this matter is based  
22 upon compliance with this policy by RESPONDENTS in any statements concerning this proceeding. If  
23 RESPONDENTS breach this agreement, the Commission may move to vacate this Order and restore this  
24 case to its active docket.

1           9.     JAMES KINION represents that he is authorized to execute this Consent on behalf of  
2 TUCSON ESTATE FINANCIAL ADVISORS, INC.

3           10.    JAMES KINION and VICKI KINION acknowledge that any restitution, fines or penalties  
4 imposed by this Order are community in nature.

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VICKI L. KINION

SUBSCRIBED TO AND SWORN BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 2000,

by Vicki L. Kinion

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NOTARY PUBLIC

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TUCSON ESTATE FINANCIAL ADVISORS, INC.

\_\_\_\_\_  
JAMES R. KINION, II

SUBSCRIBED TO AND SWORN BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 2000,

by James R. Kinion, II

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NOTARY PUBLIC

My Commission Expires:

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