

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)

8 3001 East Frontage Road)

Amado, AZ 85629)

) DECISION NO. _____

9 WENDELL T. DECKER, JR.)

5249 N. Adobe Circle)

Tucson, AZ 85750)

) **ORDER TO CEASE AND DESIST,
ORDER OF RESTITUTION, ORDER
FOR ADMINISTRATIVE PENALTIES
AND CONSENT TO SAME**

10 OXFORD DEVELOPMENT, L.L.C.)

5249 North Adobe Circle)

Tucson, AZ 85750)

) **BY: RESPONDENTS
WENDELL T. DECKER, JR.,
OXFORD DEVELOPMENT, L.L.C.
CNT FAMILY FUN OUTLETS, INC.**

12 PROFUTURA, L.L.C.)

P.O. Box 4252)

Tubac, AZ 85646)

14 CNT FAMILY FUN OUTLETS, INC.)

One East First Street)

Reno, NV 89501)

16 CHARLES W. TESTINO, JR.)

3656 E. Windy Point Dr.)

Tucson, AZ 85718)

CRD#1216651)

18 ARIZONA INVESTMENT ADVISORS, INC.)

2920 North Swan Road, Suite 206)

Tucson, AZ 85712)

20 KEITH B. "SKIP" DAVIS)

6550 North Silversmith Place)

Tucson, AZ 85750)

22 SPY GLASS ENTERPRISES L.L.C.)

6550 North Silversmith Place)

Tucson, AZ 85750)

23 KEITH B. DAVIS, INC.)

6550 North Silversmith Place)

Tucson, AZ 85750,)

25 Respondents.)

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1 4. OXFORD is an Arizona limited liability company organized on March 24, 1993. Its
2 principal place of business is 5249 North Adobe Circle, Tucson, Arizona, 85750. At all pertinent
3 times, OXFORD was the recorded owner of grassland property, which was to be the site for an outlet
4 mall (the Dacono Project property). The Dacono Project property was represented as collateral for
5 most of the Notes issued to investors. OXFORD is signatory to the Notes, through its managing
6 member DECKER.

7 5. CNT is a Nevada corporation incorporated on June 19, 1996. DECKER is its
8 President and Director. STEDMAN is its Secretary/Treasurer and Director. Its resident agent is
9 located at One East First Street, Reno, Nevada, 89501. CNT is signatory to the Notes, through its
10 president DECKER.

11 6. In approximately 1993, STEDMAN and DECKER agreed that PROFUTURA was to
12 contribute funds in the amount of \$650,000 to \$1,000,000 to OXFORD in exchange for an equity
13 interest in the Dacono Project.

14 7. In approximately March 1996, after the project owners had exhausted their personal
15 sources of funds and were still seeking construction financing, DECKER and STEDMAN approached
16 KEITH B. "SKIP" DAVIS (DAVIS) to use the Notes to raise \$600,000 from private investors for
17 interim financing to keep the project moving until the project owners could close on a construction
18 loan in late 1996.

19 8. In or around July 1996, DAVIS approached CHARLES W. TESTINO, JR.
20 (TESTINO) to assist in soliciting private investor funds for the Dacono Project to keep the project
21 "alive" until the principals could secure funding.

22 9. The principals of the project, DECKER and STEDMAN, authorized DAVIS and
23 TESTINO to use the Notes to raise funds from private investors, and agreed to pay commissions of
24 10% of all investor funds secured, and an equity interest in the project.

25 10. Most, but not all, of the Notes were to be secured by deeds of trust filed in Weld
26 County on the Dacono Project property described as follows:

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

Considering the South line of the Southwest Quarter (SW/4) of said Section 14 as bearing North 88°57'30" East from a 3 1/4" aluminum cap at the Southwest corner of said Section 14 to a 3 1/4" aluminum cap at the South Quarter corner of said Section 14 and with all bearings contained herein relative thereto:

Commencing at the Southwest corner of said Section 14; thence along said 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;

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

thence, along said South right-of-way line the following 6 courses, South 78°47'56" East, 165.34 feet to a point on a curve concave to the North having a central angle of 11°44'53", a radius of 1886.98 feet and the chord 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 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, 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;

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

11. DECKER and STEDMAN's plan was that STEDMAN would sign all of the Notes as "Maker" and be personally liable to investors; the borrowed funds would be transferred to PROFUTURA to loan to OXFORD to cover costs necessary to obtain construction financing for the project; OXFORD would pledge the Dacono Project property as security for most, but not all, of the Notes and would pay STEDMAN's obligations to investors, including the interest on the Notes; and DECKER would determine what portions of the Dacono Project property would be used to secure most, but not all, of the Notes.

1 12. From approximately January 1995 through December 1999, RESPONDENTS issued
2 approximately 124 Notes to approximately 110 private investors, raising approximately \$5,286,160
3 from private investors.

4 13. Investors were told that their funds were to be used for interim financing until
5 construction financing was in place to develop a project described as the Dacono Factory Outlet
6 Stores or the Dacono Factory Outlet Mall and Sports Arena, and that their Notes would be paid upon
7 the due date or at the close of the construction financing.

8 14. Up until around April 1999, Notes sold to private investors were titled
9 “PROMISSORY NOTE SECURED BY DEED OF TRUST,” and stated that the Notes and any
10 renewal or extension of the Notes were secured by a percent of the undivided interest in a deed of
11 trust on the Dacono Project property owned by OXFORD. In fact, from the inception of the project to
12 date, not all of the private investors who received notes described as “secured by deed of trust” were
13 beneficiaries of any recorded interests in the Dacono Project property.

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

18 16. The interest rates on most of the Notes varied from 15% to 20% per annum. From
19 1995 through around September 1997, the term of the Notes was one year. Because obtaining
20 construction financing was delayed, in or around September 1997, the term of most of the Notes was
21 reduced to 90 days, and existing Notes, including interest, were rolled over or renewed at the end of
22 their terms. RESPONDENTS continued to attempt to obtain construction financing and believed, and
23 told investors, that such financing would be in place within a short period of time.

24 17. DECKER offered DAVIS 10% commissions on rollovers, and TESTINO was to be
25 paid 5% commissions, for their efforts to keep investors, pending construction financing. By August
26 2000, some of the Notes had been rolled over eighteen times.

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

5 19. According to OXFORD’s accounting records, the total principal amount due on
6 outstanding Notes issued to private investors was approximately \$5,002,082 on or about May 31,
7 2000. At that time, the total due including interest on those notes was approximately \$22,166,000.

8 20. From 1993 to this date, DECKER continuously has attempted to obtain construction
9 financing for the Dacono Project, dealing with a number of prospective lenders.

10 21. DECKER and STEDMAN secured tax benefits for the Dacono Project through a local
11 election in Colorado. The tax benefits that were approved by the election would increase the value of
12 the Dacono Project property, if the project was constructed within a certain time period.

13 22. In connection with the offer or sale of securities within or from Arizona,
14 RESPONDENTS directly or indirectly made untrue statements of material fact or omitted to state
15 material facts which were necessary in order to make the statements made not misleading in light of
16 the circumstances under which they were made. RESPONDENTS’ conduct includes, but is not
17 limited to, the following:

18 a) Representing that the investment was a short-term loan and investors would be paid in
19 full at the close of that loan, when in fact there were a series of construction loan
20 letters of interest and commitment letters that never materialized and, to date, the
21 principals have not succeeded in negotiating construction financing for the project.

22 b) Representing until at least April 1999, that the Notes, and any extensions, renewals or
23 rollovers of the Notes, were secured by a recorded interest in a deed of trust on a
24 portion of the Dacono Project property located in Weld County, Colorado and owned
25 by OXFORD and that the total of all loans secured by Lot 6 would not exceed one
26 million dollars. In fact, not all of the original investors in 1996 and early 1997, and

1 none of the new investors in 1998 and 1999 were named as beneficiaries on recorded
2 deeds of trust, the total of all loans misrepresented as secured by Lot 6 was
3 substantially in excess of one million dollars, and the property that was supposed to be
4 pledged to private investors was utilized instead as security to obtain financing from
5 institutional “bridge” lenders.

6 c) Representing that investor funds were to be used for interim financing. Specifically,
7 investor funds were used primarily for attorney fees and loan fees for failed funding
8 attempts, attempts to obtain tax benefits for the future owners of the project,
9 redeeming prior investors’ defaulted Notes, interest payments to early investors with
10 secured loans, profits to bridge lenders, DECKER’s living expenses, and DECKER’s
11 and STEDMAN’s travel expenses.

12 d) Failing to disclose the risks involved with this development project, specifically, the
13 uncertainty of getting construction financing, the repeated failed attempts to obtain
14 construction financing and bond funding, the costs of attempts to obtain financing, and
15 STEDMAN’s inability to repay the Notes, if construction financing was not secured.

16 e) Failing to disclose to new investors that earlier investors were forced to accept
17 rollover Notes because STEDMAN and OXFORD could not pay the Notes when
18 due, and the total debt owed to prior investors, including interest on defaulted
19 Notes, and the increasing commissions owed to DAVIS and TESTINO resulting
20 from rollovers.

21 f) Failing to disclose the background and financial condition of the principals and the
22 project, including but not limited to the following:

23 (1) That DECKER filed bankruptcy in 1989.

24 (2) That on January 21, 1994, the NASD censured STEDMAN, barred
25 STEDMAN from associating with any NASD member in any capacity,
26 and fined STEDMAN \$20,000, for conduct “inconsistent with just and

1 equitable principles of trade,” because STEDMAN had failed to timely
2 and fully respond to a request for information from the NASD
3 concerning a complaint alleging that he had misappropriated \$175,000
4 from the customer’s account.

5 (3) That TESTINO was terminated on September 15, 1998, by his former
6 dealer, SunAmerica Securities, Inc. (“SAS”), upon allegations relating
7 to his sale of these Notes, specifically, that “Without SAS knowledge
8 or approval, Testino facilitated the lending of money via promissory
9 notes from a number of individuals to a person who was subsequently
10 determined by the firm to be subject to an industry bar;” and that
11 TESTINO was under investigation by the NASD for violations of
12 NASD Rules as a result of his unauthorized activity.

13 g) Failing to disclose that RESPONDENTS were selling the Notes to investors who
14 were not accredited investors.

15 **II.**

16 **CONCLUSIONS OF LAW**

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

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

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

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

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

1 order to make the statements made, in the light of the circumstances under which they were made,
2 not misleading.

3 6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. §
4 44-2032.

5 7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
6 2032.

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

9 **III.**

10 **ORDER**

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

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

16 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall,
17 jointly and severally, pay restitution to investors shown on the records of the Commission in the
18 amount of no less than \$5,286,160, plus interest at the rate of 10% per annum from the date of each
19 investment until paid in full, to be reduced by any distribution payments made to date. If additional
20 investments in Notes are later discovered, RESPONDENTS shall pay claims of those investors
21 under the terms of this Order. Payment shall be made by cashier's check or money order payable to
22 the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the
23 Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata
24 basis to investors. Any funds that the Attorney General is unable to disburse shall revert to the state
25 of Arizona.

1 IT IS FURTHER ORDERED that, until full restitution is made to all Note investors,
2 RESPONDENTS shall subordinate all rights and interests in the Dacono Project property, described
3 in paragraph 10 above, and any contractual rights and interests to income or payment from the
4 development and/or sale of the Dacono Project property.

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

10 IT IS FURTHER ORDERED that RESPONDENTS shall notify the Commission of any
11 change in ownership of the Dacono Project property; any change in liens on the property; and the
12 opening or closing of any escrow for funding a construction loan or for sale of the Dacono Project or
13 the Dacono Project property. In addition, if construction of the project commences, RESPONDENTS
14 shall provide the Commission quarterly reports reflecting all expenses related to the property and the
15 project.

16 IT IS FURTHER ORDERED that the Commission shall retain jurisdiction in this matter to
17 investigate the activities of the RESPONDENTS pursuant to A.R.S. § 44-1822 to address issues
18 relating to restitution in accordance with A.R.S. § 44-2032.

19 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that DECKER, OXFORD, and
20 CNT, jointly and severally, shall pay administrative penalties in the amount of \$50,000. Payment

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1 shall be made in full by cashier's check or money order on the date of this Order, payable to the
2 "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from
3 the date of this Order until paid in full.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
10 Executive Secretary of the Arizona Corporation
11 Commission, have hereunto set my hand and caused the
12 official seal of the Commission to be affixed at the Capitol,
13 in the City of Phoenix, this _____ day of June, 2001.

14 _____
15 BRIAN C. McNEIL
16 Executive Secretary

17 _____
18 DISSENT

19 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,
20 voice phone number 602-542-3931, E-mail shood@cc.state.az.us.

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CONSENT TO ENTRY OF ORDER

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

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

20 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action or
21 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
22 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual
23 basis. RESPONDENTS will undertake steps necessary to assure that all of their agents and
24 employees understand and comply with this agreement.

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

1 in paragraph 10 of the Order, to the investors shown on the records of the Commission.
2 RESPONDENTS further agree to take all steps necessary to subordinate all of their contractual
3 rights and interests, both currently existing or existing in the future, related to the development
4 project known as the Dacono Factory Stores and located near Dacono, Weld County, Colorado, to
5 the investors shown on the records of the Commission.

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

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

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

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

17 12. RESPONDENTS agree that they will not apply to the state of Arizona for registration as
18 a securities dealer or salesman or for licensure as an investment adviser or investment adviser
19 representative at any time in the future.

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

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

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

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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' officers, directors, agents, heirs, employees, assigns, representatives, beneficiaries or other successors in interest of any kind.

19. DECKER represents that he is Managing Member of OXFORD, and President of CNT, and has been authorized by OXFORD and CNT to enter into this Order for and on behalf of them.

WENDELL T. DECKER, JR.

SUBSCRIBED AND SWORN TO BEFORE me this ____ day of _____, 2001.

NOTARY PUBLIC

My Commission Expires:

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OXFORD DEVELOPMENT, L.L.C.

By: Wendell T. Decker, Jr., Managing Member

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

NOTARY PUBLIC

My Commission Expires:

CNT FAMILY FUN OUTLETS, INC.

By: Wendell T. Decker, Jr., President

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

NOTARY PUBLIC

My Commission Expires:
