

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
Chairman
3 JIM IRVIN
Commissioner
4 MARC SPITZER
Commissioner
5

6 In the matter of:

) Docket No. S-03215A-01-0000

7 RICHARD DEAN CARRINGTON
a/k/a Richard Dean Frank
8 d/b/a Carrington Estate Planning Services
d/b/a Carrington Investment Services
9 7600 East Doubletree Ranch Road, Ste. 130
Scottsdale, AZ 85258

) Decision No. _____

) **ORDER TO CEASE AND DESIST,
ORDER OF RESTITUTION, ORDER FOR
PENALTIES AND CONSENT TO SAME
BY: ROBERT WITT**

10 ROBERT WITT
11 a/k/a Harry Robert Witt
12 7600 East Doubletree Ranch Road, Ste. 130
Scottsdale, AZ 85258,

) **(ALJ Stern)**

13 Respondents.
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15 Respondent ROBERT WITT elects to permanently waive any right to a hearing and
16 appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*
17 (“Securities Act”) with respect to this Order To Cease And Desist, Order of Restitution, Order for
18 Penalties and Consent to Same (“Order”). ROBERT WITT admits the jurisdiction of the Arizona
19 Corporation Commission (“Commission”); neither admits nor denies the Findings of Fact and
20 Conclusions of Law contained in this Order; and consents to the entry of this Order by the
21 Commission.

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I.

FINDINGS OF FACT

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3 1. ROBERT WITT (“WITT”), whose last known business address is 7600 East
4 Doubletree Ranch Road, Suite 130, Scottsdale, AZ 85258, was employed by RICHARD
5 CARRINGTON as a customer service representative and salesman from April 1997 until October
6 2001.

7 2.. From on or around April 1997 to October 10, 2001 (the “Termination Date”), WITT
8 offered and sold viatical settlement contracts and investment contracts within or from Arizona on
9 behalf of RICHARD CARRINGTON, doing business as Carrington Estate Planning Services
10 (“CEPS”), and Carrington Investment Services (“CIS”) (RICHARD CARRINGTON, CEPS and
11 CIS are collectively referred to as “CARRINGTON”).

12 3. CARRINGTON solicited investors through newspaper and radio advertising. The
13 ads offered investors an opportunity to earn “12-18% returns” with “no risk to principal.” The ads
14 stated that the opportunity provided for a “short term” of “6-24 months,” with tax advantages and
15 qualification for IRA accounts.

16 4. Investors who inquired about the program received a brochure explaining the
17 investment (“the brochure”). The brochure presented CARRINGTON as “Viatical Settlement
18 Specialists.” The brochure stated that the investment opportunity involved the purchase of the
19 right to benefits from terminally ill individuals who sold their policies to CEPS at a discount.

20 5. The brochure stated that (a) terminally ill insured individuals had contacted
21 CARRINGTON expressing a desire to sell their life insurance policies; (b) CARRINGTON would
22 be granted access to the individual’s medical records; and (c) CARRINGTON would then
23 determine the life expectancy of the insured based on the insured’s own physician’s estimate, and
24 based on an independent physician review obtained by CARRINGTON.

25 6. The brochure stated that based on the estimated life expectancy, CARRINGTON
26 would determine a “fair amount” to pay for the policy. According to CARRINGTON, the amount

1 paid to the insured would be as high as 88% of the face amount for policies when the estimated life
2 expectancy of the insured was low, such as 6 to 12 months.

3 7. The brochure stated that CARRINGTON would purchase and own the policy.
4 CARRINGTON would then sell the death benefits of the policy to a group of investors at a higher
5 price than CARRINGTON paid to acquire the policy. CARRINGTON thus received a profit on
6 the transaction up front. CARRINGTON would assign an irrevocable right to the benefits of the
7 policy to the investors. Investors would receive a return on their investment when the policy
8 “matured,” that is, upon the death of the insured. The brochure stated that investors would be
9 helping somebody “who *really* needs the help.” The investor would be providing a “humanitarian
10 service.” The brochure also stated, “It’s truly an investment you can feel good about.”

11 8. The brochure stated that CARRINGTON imposed “legal standards” on policies it
12 purchased, including that the policies must be beyond the two-year “contestability” period. The
13 brochure included no explanation of “contestability.” In fact, most insurance companies include a
14 contract provision allowing the insurance company to cancel a policy within two years of purchase
15 (the “contestability period”), if the policy application has been found to be fraudulent or otherwise
16 subject to cancellation. Policies that are within the contestability period carry high risks to
17 investors due to potential cancellation.

18 9. The brochure stated that (a) policies would be purchased from insurance companies
19 whose rating was “A” or better according to the industry’s leading insurance rating firms; and (b)
20 CARRINGTON would place funds in escrow for payment of premiums and would instruct the
21 escrow company to keep premiums current. According to CARRINGTON, the money to pay
22 continuing premiums would be withheld from the amount paid to the insured person to buy the
23 policy.

24 10. The brochure stated that CARRINGTON’s fees were paid by the insured person,
25 thus there were “no loads or commissions applied to Viatical Settlements.”

26 11. The brochure stated that returns of 10 to 20% could be earned “safely.”

1 12. The brochure stated that CARRINGTON usually purchased policies from AIDS
2 patients, because there was “a high degree of accuracy in projecting the life expectancy of a
3 terminally ill AIDS sufferer.”

4 13. The brochure stated that premiums due to keep policies in force until maturity
5 would be paid by CARRINGTON from funds withheld from the insured.

6 14. Individuals who decided to invest were given a one-page “Policy Purchase
7 Agreement” (“the Agreement”) to sign. The Agreement stated that the investor was to make a
8 check out to Arizona Escrow & Financial Corporation (“Arizona Escrow”). Investors were told
9 that funds would be pooled at Arizona Escrow until CARRINGTON found a policy to purchase for
10 the benefit of investors. Investors were not told how long CARRINGTON would maintain an
11 account at Arizona Escrow before a policy would be purchased.

12 15. The Agreement stated that CARRINGTON would provide to the investor medical
13 and other pertinent information on “the applicants for Viatical Funding” prior to the investor’s
14 purchase of a policy. In fact, investors were given only sample information, with no specifics on
15 actual policies that they might evaluate for purchase.

16 16. The Agreement stated that an attached addendum labeled “Attachment A” would
17 provide investors with a “policy breakdown” and the percent of interest acquired. In fact, no
18 Attachment A was given to investors until after CARRINGTON had used their money to purchase
19 a policy. At that time, the investor found out how many other investors were on the same policy,
20 as well as the interests of each. While CARRINGTON initially provided investors with other
21 investor names and addresses on each policy after the policy was funded, he later began to black
22 out all names so that investors had no way of knowing or contacting other investors who held a
23 portion of the same benefits as the investor.

24 17. Investors were told that either CARRINGTON or Arizona Escrow would own the
25 policy, while the investor would be named as an irrevocable beneficiary, entitled to receive a pro
26 rata portion of the face value upon death of the insured.

1 18. Investors were provided with no background or financial information on CEPS or its
2 “division”, CIS. Investors were given no basis for projections that the “rate of return varies from
3 11 – 26%.”

4 19. The ultimate return to investors was a *fixed* amount based on maturity of the policy.
5 However, the ultimate *annual* rate of return to an investor was significantly dependent on
6 CARRINGTON’s ability to accurately determine life expectancy in selecting a policy.

7 20. The brochure stated that CARRINGTON took several steps to “insure” that the
8 predicted life expectancy was as accurate as possible, including obtaining both an attending and
9 secondary physician opinion on life expectancy. However, CARRINGTON failed to provide
10 investors with any information that would allow them to verify that such reviews had been done.

11 21. Investors were asked to sign an “Agency Agreement and Special Power of
12 Attorney” (“POA”) once they decided to invest. The POA required CARRINGTON to purchase
13 policies that were beyond the contestability period from insurance companies with a rating of “A”
14 or better.

15 22. On or around mid-1996, the national news media announced breakthroughs in the
16 treatment of AIDS, with the advent of protease inhibitors. Deaths from AIDS began to drop
17 substantially. As other “cocktail” medicines entered the market, many AIDS patients, whose
18 medical diagnoses had previously reflected “full blown AIDS,” began to see their health improve
19 to levels that made the prospect of survival beyond earlier predicted time periods not only a
20 possibility, but a reality. As a result, life expectancy became highly difficult to predict.

21 23. The life expectancy of an AIDS patient formed the fundamental basis for calculation
22 of an investor’s expected annual return. As life expectancy became highly speculative, so the
23 projections of annual returns to investors became highly speculative.

24 24. CARRINGTON continued to provide a written brochure to potential investors that
25 failed to reflect the risk to investors that medical breakthroughs might make determination of life
26 expectancy highly unreliable. In fact, CARRINGTON utilized sample “case histories” in the

1 brochure to demonstrate the calculation of annual return to investors. The samples were all based
2 on death of the insured occurring before the predicted life expectancy had expired. The samples
3 reflected annual returns to investors of 21% to 88%. The brochure continued to state, “there is no
4 hope of survival for current Full Blown Aids [sic] patients.”

5 25. In May 1997, the Commission ordered CARRINGTON, along with other agents, to
6 temporarily cease and desist from the fraudulent sale of promissory notes, another product offered
7 along with viatical settlement contracts. From May 1997 to the Termination Date, CARRINGTON
8 and WITT failed to tell investors that CARRINGTON had been subject to the cease and desist
9 order.

10 26. On or around the end of 1997 through the beginning of 1999, CARRINGTON
11 engaged in a practice known as “clean-sheeting” in the insurance industry. CARRINGTON
12 located AIDS patients who were willing to apply for life insurance policies that could then be sold
13 to CARRINGTON. CARRINGTON entered into an agreement with the AIDS patient whereby the
14 patient would apply for a policy and deny on the application that the patient had AIDS. The face
15 value of the policy was below \$100,000, generally an amount that would not trigger a requirement
16 for a medical exam before the policy could be issued.

17 27. CARRINGTON paid each AIDS patient a nominal amount for the fraudulent
18 policies, usually 10% of the face value. Some AIDS patients applied to several different insurance
19 companies in order to sell multiple policies to CARRINGTON. The policies were contestable for a
20 period of two years.

21 28. Within a short time after CARRINGTON purchased the “clean-sheeted” policies,
22 CARRINGTON’s agents sold the policy benefits to investors as viatical settlement contracts.
23 Because CARRINGTON had paid such a small amount to purchase the policies, CARRINGTON
24 realized a substantial profit in re-selling the policy benefits to investors. However,
25 CARRINGTON’s agents, including WITT, continued to tell investors that the insured received a
26 fair amount for the policy allowing the insured to “live out their life free of monetary concerns.”

1 29. CARRINGTON and his agents did not tell investors that they were placed in “clean-
2 sheeted” policies that had been fraudulently obtained. Investors were not told the meaning of the
3 term, nor explained the specific risks caused by the purchase of a “clean-sheeted” policy.

4 30. Many insurance companies discovered the fraudulent policy applications within the
5 two-year contestability period. The insurance companies cancelled the policies returning
6 premiums paid to CARRINGTON. CARRINGTON kept the returned premiums and the profits
7 from the original sale of the contestable policies to investors. Investors were left with no
8 investment in the policy.

9 31. CARRINGTON and WITT sent letters to investors telling them that their policies
10 had been cancelled. CARRINGTON did not return investor funds nor allow investors to rescind
11 their investment. CARRINGTON instead placed investors into other policies. Some of these
12 policies had already been sold to earlier investors and the estimated life expectancy had been told
13 to those investors in order to establish profits on the policy. CARRINGTON provided some new
14 investors with the same estimated life expectancy that had already been running for earlier
15 investors.

16 32. In late 1998 through some time in 2000, CARRINGTON’s agents, including WITT
17 began using a revised offering brochure to solicit viatical investments (“the new brochure”). In
18 the new brochure, CARRINGTON continued to promote viaticals as offering “high returns” with
19 “low risk.” CARRINGTON added new categories to the investment options including “senior
20 settlements” (policies from persons over 65 years old) and life insurance policies on other terminal
21 illnesses, such as cancer and Lou Gehrig’s disease. The new brochure offered total “rates of
22 return” at between 26% and 100%. The new brochure stated that policies would be purchased
23 from insureds whose insurance company was rated “B” or better.

24 33. At the time that the new brochure began to be utilized, CARRINGTON and WITT
25 were aware that CARRINGTON’s track record in the business of viaticals had produced results far
26 below the expectations given to investors. CARRINGTON’s predictions of life expectancy had

1 proven to be very inaccurate. For instance, by the end of 1998, only one out of every five policies
2 sold to investors had matured within the predicted life expectancy. CARRINGTON and WITT did
3 not disclose this information to investors.

4 34. The new brochure offered investors an opportunity to invest in viatical settlements
5 through “The Contestable Program.” It stated that investing in contestable policies would provide
6 investors with “substantially higher returns” with “some additional risk if the insured should pass
7 away before the end of the two-year Contestable period.” The new brochure stated that the
8 Contestable Program “has become extremely popular.”

9 35. The new brochure did not disclose that CEPS’ viatical program had failed to
10 provide timely returns to investors and that a majority of investors were still waiting for any return
11 at all.

12 36. Investors were told that they would receive regular updates on the condition of the
13 insured, however, many investors have received no updates, and if investors called for an update,
14 many received a standard letter from WITT stating that the condition of the insured was “as good
15 as could be expected under the circumstances.” In fact, WITT failed to tell investors that in many
16 cases, the condition of the insured had improved substantially, such that the life expectancy given
17 to investors was no longer accurate.

18 37. The new brochure no longer provided that the investor would be assigned a
19 beneficial interest in a policy. Instead, CARRINGTON would be the owner of the policy, and
20 Arizona Escrow would become the beneficiary. Upon maturity, Arizona Escrow would receive the
21 face value and distribute it to investors pro rata. Thus, investors were wholly reliant on a
22 contractual agreement between CARRINGTON and Arizona Escrow. Investors held no equity
23 interest in a policy, nor did they have any ability to get information from any insurance company
24 about the policy, without being a named owner or beneficiary. Investors were not told of this risk.

25 38. In August 2000 new Arizona statutes took effect providing for an exemption from
26 registration for the sale of viatical settlement contracts. The statutes required that certain

1 information be filed with the Commission before viatical settlement contracts could be sold within
2 or from Arizona. After the new law took effect, CARRINGTON did not file for an exemption to
3 allow CARRINGTON to sell viatical settlement contracts within or from Arizona. WITT
4 continued to offer and sell viatical settlement contracts within and from Arizona, including strongly
5 encouraging investors to invest again if their policy matured.

6 39. WITT continued to offer and sell viatical settlement contracts up to the Termination
7 Date, without providing investors with material facts, including CARRINGTON's historical and
8 continuing failure to produce results as represented to investors.

9 40. In connection with the offer or sale of securities within or from Arizona, WITT directly
10 or indirectly made untrue statements of material fact or omitted to state material facts which were
11 necessary in order to make the statements made not misleading in light of the circumstances under
12 which they were made. The above conduct includes, but is not limited to, the following:

13 a) WITT represented life expectancy as a reliable basis for determining investor
14 returns, when in fact, a majority of CARRINGTON's estimates of life expectancy were inaccurate
15 and misleading.

16 b) WITT represented that investors would pay no "loads, fees, or commissions,"
17 because such amounts would be paid by the insured, when in fact, "commissions, fees and loads"
18 were paid from investor money.

19 c) WITT failed to tell investors that if an insurance company cancelled a
20 contestable policy, investors would receive no reimbursement; however, CARRINGTON, as owner
21 of the policy, would receive reimbursement of all premiums paid with investor money, along with
22 the profits he had already realized in the initial sale of the policy to investors.

23 d) WITT represented that CARRINGTON would conduct a separate medical
24 evaluation of the insured; however, WITT failed to provide investors with any information that
25 would allow them to verify the source and independence of any medical evaluation, the existence of
26 such evaluation, or the accuracy of the medical condition as stated on the application for insurance.

1 e) WITT failed to provide investors with an accurate track record, including
2 CARRINGTON's failure to produce timely returns in the viatical investment program.

3 f) WITT misrepresented the investment in the brochure as "absolutely safe"; the
4 new brochure stated that there was "some degree of risk"; however, WITT failed to specify several
5 risks, including but not limited to:

- 6 i. the risk that the investor would be wholly dependent on the continuing
7 economic viability of CARRINGTON for funding and payment of
8 insurance premiums, and for monitoring of the investment;
- 9 ii. the risk that medical advisors may have misdiagnosed or
10 miscalculated the extent and gravity of an insured's condition;
- 11 iii. the risk that the insured may have provided misleading information to
12 medical personnel;
- 13 iv. the risk that new medical developments may significantly impact life
14 expectancy with a corresponding detrimental effect on profits;
- 15 v. the risk that third party providers or brokers of policies or medical
16 evaluations may not provide accurate information;
- 17 vi. the risk that the insured person, having received payment for the
18 policy, may fail to keep up continued contacts with CARRINGTON,
19 and may even become impossible to locate;
- 20 vii. the risk that the investment may not be suitable for persons who have a
21 need for a regular income from their investments; and
- 22 viii. the risk that an investment made with IRA funds may require
23 mandatory withdrawals before the investment itself matures, thereby
24 causing tax issues for the investor.

25 g) WITT failed to disclose the specific costs paid by investors, called "acquisition
26 costs," including how much was paid to the insured for purchase of the policy, the amount allocated

1 for future premium payments, the amounts paid in fees and commissions, and the profit to
2 CARRINGTON.

3 h) WITT failed to tell investors who invested after the fact that CARRINGTON had
4 been ordered by the Arizona Corporation Commission in May 1997 to cease and desist in the sale of
5 unregistered securities, specifically promissory notes. Further, WITT failed to tell investors that a
6 final Order to Cease and Desist was entered on February 9, 1998, finding that CARRINGTON had
7 sold promissory notes in violation of the securities laws totaling \$1,875,102.

8 41. This conduct violates A.R.S. § 44-1991.

9 **II.**

10 **CONCLUSIONS OF LAW**

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

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

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

17 4. WITT violated A.R.S. § 44-1842 by offering or selling securities while neither
18 registered as a dealer or salesman nor exempt from registration.

19 5. WITT violated A.R.S. § 44-1991 by making untrue statements of material fact or
20 omissions of material fact.

21 6. WITT's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
22 2032.

23 7. WITT's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

24 8. WITT's conduct is grounds for administrative penalties under A.R.S.
25 § 44-2036.

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1 obligations. If WITT pays restitution in full, the administrative penalty shall be reduced to \$2,000.
2 For the purposes of this Order, a bankruptcy filing by WITT shall be an act of default on WITT's
3 restitution obligations.

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
13 Capitol, in the City of Phoenix, this _____ day of
14 _____, 2002.

15 _____
16 BRIAN C. McNEIL
17 Executive Secretary

18
19 _____
20 DISSENT

21 This document is available in alternative formats by contacting Shelly M. Hood, Executive
22 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
23 shood@cc.state.az.us.

CONSENT TO ENTRY OF ORDER

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1. RESPONDENT ROBERT WITT admits the jurisdiction of the Commission over the subject matter of this proceeding. ROBERT WITT acknowledges that he has been fully advised of his right to a hearing to present evidence and call witnesses and ROBERT WITT knowingly and voluntarily waives any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. ROBERT WITT acknowledges that this Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same (“Order”) constitutes a valid final order of the Commission.

2. ROBERT WITT knowingly and voluntarily waives any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. ROBERT WITT acknowledges and agrees that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. ROBERT WITT acknowledges that he has been represented by counsel in this matter, he has reviewed this Order with his attorney and understands all terms it contains.

5. ROBERT WITT neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order.

6. By consenting to the entry of this Order, ROBERT WITT agrees not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual basis. However, nothing in this Order will in any way limit ROBER WITT’s ability to conduct himself, or to take any contrary position of fact or law in any subsequent litigation or other proceedings in which the Commission is not a party.

1 7. While this Order settles this administrative matter between ROBERT WITT and the
2 Commission, ROBERT WITT understands that this Order does not preclude the
3 Commission from instituting other administrative proceedings based on violations that are
4 not addressed by this Order.

5 8. ROBERT WITT understands that this Order does not preclude the Commission
6 from referring this matter to any governmental agency for administrative, civil, or criminal
7 proceedings that may be related to the matters addressed by this Order.

8 9. ROBERT WITT understands that this Order does not preclude any other agency or
9 officer of the state of Arizona or its subdivisions from instituting administrative, civil or
10 criminal proceedings that may be related to matters addressed by this Order.

11 10. ROBERT WITT agrees that he will not apply to the state of Arizona for registration
12 as a securities dealer or salesman or for licensure as an investment adviser or investment
13 adviser representative until such time as all payments under this Order are paid in full.
14 Further ROBERT WITT agrees that he will not offer or sell viatical settlement contracts
15 within or from Arizona until such time as all restitution and penalties are paid in full.

16 11. ROBERT WITT agrees that he will not exercise any control over any entity that
17 offers or sells securities or provides investment advisory services, within or from Arizona
18 until such time as all restitution and penalties under this Order are paid in full.

19 12. ROBERT WITT agrees that until payments under this Order are paid in full,
20 ROBERT WITT will notify the Director of the Securities Division within 30 days of any
21 change in home address or any change in ROBERT WITT's ability to pay amounts due
22 under this Order.

23 13. ROBERT WITT understands that default shall render him liable to the Commission
24 for its costs of collection and interest at the maximum legal rate.

25 14. ROBERT WITT agrees that he will continue to cooperate with the Securities
26 Division including, but not limited to, providing complete and accurate testimony at any

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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.

15. ROBERT WITT consents to the entry of this Order and agrees to be fully bound by its terms and conditions. If ROBERT WITT breaches any provision of this Order, the Commission may vacate this Order and restore this case to its active docket.

ROBERT WITT

SUBSCRIBED AND SWORN TO BEFORE me this ____ day of _____, 2002.

NOTARY PUBLIC

My Commission Expires:
