

COPY FOR  
CERTIFICATION

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MICHAEL K. JEVES, CLERK  
By P. Valmala  
Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

LARA PIU,

Plaintiff,

vs.

ROBERT E. DOUD and JANE DOE DOUD,  
husband and wife; ABC Corporations I-X; XYZ  
Partnerships I-X; John Does I-X and Jane Does  
I-X, husbands and wives, respectively,

Defendants.

No. CV 2007-018304

**DEFAULT JUDGMENT**

This matter having come before the Court on Plaintiff's Notice of Hearing Re: Default Judgment, and the record showing that: (i) on November 10, 2007, Defendant Robert E. Doud was served with a copy of the Summons, Complaint and Certificate on Compulsory Arbitration, (ii) Defendant failed to appear or file any responsive pleading, (iii) on December 6, 2007, Defendant's default was entered by the Clerk, (iv) Defendant failed to appear or file any other responsive pleading, (v) pursuant to Rule 55, Arizona Rules of Civil Procedure, the default against Defendant has become effective, (vi) on April 21, 2008, Defendant was mailed a copy of the Notice of Hearing Re: Default Judgment, setting this matter for default judgment hearing on

1 May 22, 2008 at 1:30 p.m. before Commissioner Barbara Hamner, Room 001 at the Old  
2 Courthouse of the Superior Court, 125 W. Washington in Phoenix, Arizona, and the Plaintiff, Lara  
3 Piu, being present at the default hearing with her attorney, Paul M. Levine, and the Court having  
4 considered the testimony of the Plaintiff, Lara Piu, and having reviewed the Exhibits presented in  
5 support of Plaintiff's Default Judgment, and good cause appearing, the Court finds as follows:

6 1. The Plaintiff, Lara Piu, and Defendant, Robert E. Doud ("Doud"), entered  
7 into a partnership concerning the Flowerama Franchise located at 12204 N. 51<sup>st</sup> Avenue in  
8 Glendale, Arizona (the "Business");

9 2. On July 21, 2005, Plaintiff paid Doud \$65,000.00 for a 17% interest in the  
10 Business;

11 3. Prior to Piu's purchase of her interest in the Business, Doud represented to  
12 her that the total net value of the Business was \$382,000.00, which was net of liabilities. Based on  
13 Doud's representations to the Plaintiff regarding the value of the Business, Plaintiff paid Doud  
14 \$65,000.00 for a 17% interest in the Business;

15 4. As of July 21, 2005, Plaintiff and Doud were co-owners of the Business,  
16 owning 17% and 83%, respectively, of the Business;

17 5. Pursuant to A.R.S. § 29-1034, as a partner in the Business. Doud owed  
18 Plaintiff a fiduciary duty of loyalty, which include the duties to account to the Partnership and  
19 Plaintiff and hold as trustee for her any property, profit or benefit derived by him in the conduct and  
20 winding up of the Partnership Business;

21 6. Pursuant to A.R.S. § 29-1034, as a partner in the Business, Doud owed a  
22 duty of care in the conduct and winding up of the Partnership Business to refrain from engaging in  
23 grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law;  
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1           7. Pursuant to A.R.S. § 29-1034, as a partner in the Business, Doud had an  
2 obligation to Plaintiff to exercise all of his rights and obligations consistent with the obligation of  
3 good faith and fair dealing;

4           8. Pursuant to A.R.S. § 29-1031, as partners in the Partnership, Doud had an  
5 obligation to use or possess Partnership property only on behalf of the Partnership and not for any  
6 personal or non-Partnership purposes or uses;

7           9. Pursuant to A.R.S. § 29-1033, as a partner in the Business, Doud had a duty  
8 to provide Plaintiff access to all Partnership books and records and any information concerning the  
9 Partnership Business and affairs;

10           10. On or about February 14, 2006, Doud removed \$25,000.00 in cash from the  
11 Business register and, with Kevin Jamros, counted the money. Doud deposited the money to an  
12 account at Arrowhead Community Bank located at 75<sup>th</sup> Avenue and Bell Road in Glendale,  
13 Arizona;

14           11. The Business did not have any bank accounts at Arrowhead Community  
15 Bank;

16           12. Doud did not account to the Business or Plaintiff for the \$25,000.00;

17           13. At the time the Business was sold, there remained \$7,000.00 in the Business  
18 bank account;

19           14. Doudt knowingly and intentionally removed Business proceeds from the  
20 Business and deposited the funds into a non-business account. Doud intentionally and knowingly  
21 withheld Business proceeds from the Business and Doud breached his duty of loyalty and care to  
22 the Plaintiff by failing to account to the partnership/Business and the Plaintiff and hold as trustee  
23 for it and her, respectively, any property, profit or benefit derived in the conduct of the Business.  
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1 Doud engaged in intentional misconduct and breached his duty of good faith and fair dealing owed  
2 to the Plaintiff;

3 15. On or about March 6, 2007, Defendant sold the business to Cut The Tie,  
4 LLC. The sales price was \$525,000.00. Pursuant to the Seller's Closing Statement, the net  
5 proceeds due to the Seller was \$178,730.08. However, the Court finds that the following  
6 deductions should not have been made from the sales proceeds and should be accounted for by  
7 Doud to Plaintiff:

8	Loan Payoff – CIT:	\$ 156,119.06
9	American Express:	\$ 11,500.00
10	Arrowhead Bank:	\$ 56,130.14
11	US Airways:	\$ 25,763.37
12	Federal Income Taxes re: Doud:	\$ 12,660.00
	Arizona State Taxes re: Doud:	\$ 940.00
	Holdback: Outstanding Bills:	<u>\$ 20,000.00</u>
13	<b>Total:</b>	<b><u>\$ 283,112.57</u></b>

14 16. Based on the testimony of the Plaintiff and the Seller's Closing Statement,  
15 the total sum of \$461,842.65 (\$178,730.08 plus \$283,112.57) should have been available for  
16 distribution to the partners, with 83% (\$383,329.40) of the proceeds payable to Doud and 17%  
17 (\$78,513.25) payable to Plaintiff;

18 17. The Plaintiff is entitled to 17% (\$4,250.00) of the \$25,000.00 in cash that  
19 was removed from the Business and deposited to a bank account at Arrowhead Community Bank;

20 18. Plaintiff is entitled to 17% of the remaining balance in the Business bank  
21 account (\$7,000.00), for a total sum of \$1,190.00;

22 19. Plaintiff paid \$5,500.00 in 2005 and \$2,000.00 in 2006 as a partial  
23 distribution of Business profits;  
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1                   20.     According to Doud's 2005 Federal Income Tax Return, Schedule C, the  
2 Business had gross sales in 2005 of \$573,092.00 and its net profit was \$79,429.00, which equates  
3 to \$6,619.08 per month. Of that amount (\$6,619.08), Plaintiff is entitled to 17% ( $\$6,619.08 \times 17\%$ )  
4 of the profits for the period August through December 2005, for a total sum of \$5,626.22  
5 ( $\$1,125.24 \times 5$ ). The remaining amount due to Plaintiff for 2005 is \$126.22 ( $\$5,500.00$  less  
6  $\$4,000.00$ );

7                   21.     According to Doud's 2006 Profit and Loss Statement, the Business had gross  
8 sales from January through October 2006 of \$581,481.66 and its net income for the period January  
9 through October 2006 was \$102,584.09, which equates to \$10,258.90 per month. Of that amount  
10 ( $\$10,258.40$ ), Plaintiff is entitled to 17% ( $\$10,258.40 \times 17\%$ ) of the net income for the period  
11 January through December 2006, for a total sum of \$20,927.15 ( $\$1,743.93 \times 12$ ). The remaining  
12 amount due to Plaintiff for 2006 is \$18,927.15 ( $\$20,927.15$  less  $\$2,000.00$ );

13                   22.     Plaintiff received property valued at \$25,000.00 which was to be credited to  
14 Doud when the Business sold;

15                   23.     Doud failed to account to Plaintiff for all of the net proceeds of the sale of  
16 the Business;

17                   24.     Doud breached his fiduciary duty of loyalty and his duty of care to Plaintiff  
18 by reason of his conduct, as set forth in the Court's findings;

19                   25.     Doud's conduct, as set forth in the Court's findings, was willful and  
20 malicious and caused damage to Plaintiff;

21                   26.     Doud's conduct was guided by an evil hand and his conduct was intentional,  
22 malicious and intended to injure Plaintiff;

1 Based on the forgoing Findings of Fact and the testimony of Plaintiff and the  
2 Exhibits submitted at the Default Judgment hearing, and good cause appearing.

3 **IT IS HEREBY ORDERED** granting Judgment in favor of the Plaintiff, Lara Piu,  
4 against Defendant Robert E. Doud, as follows:

5 (a) For the sum of \$78,006.62, plus interest at the rate of 10% per annum from  
6 this date until paid in full.

7 (b) For the sum of \$ 661.40, as taxable costs, plus interest at the rate of 10%  
8 per annum from this date until paid in full.

9  
10 **IT IS FURTHER ORDERED** that Plaintiff, Lara Piu, have judgment against  
11 Defendant, Robert E. Doud in the sum of \$ 50000, plus interest at the rate of 10% per  
12 annum from this date until paid in full, as and for punitive damages, based on this Court's findings  
13 that the Defendant's conduct was guided by an evil mind, was malicious and that Defendant  
14 breached his statutory and common law duties to his partner;

15 **IT IS FURTHER ORDERED** that it is the intent of this Court that this Judgment  
16 shall be non-dischargeable in bankruptcy pursuant to § 523 of the Bankruptcy Code.

17 **DONE IN OPEN COURT** this 22 day of May, 2008.

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21 Commissioner Barbara Hamner