BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Request of: AURANGZEB RASHID PIRZADA (aka ZEB PIRZADA); PIRZADA COSMETICS & AROMATHERAPY, INC.; PIRZADA COSMETICS & AROMATHERAPY, LLC; SUNNOOR CORPORATION; SUN-NOOR CORPORATION, et al. Respondent.	OAH No. N2000100368

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Department of Corporations as its Decision in the above-entitled matter.

This Decision shall become effective on Nov. 25, 2002

IT IS SO ORDERED Nov. 25, 2002

Commissioner of Corporations

By _____

OAH 15 (Rev. 6/84)

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In the Matter of the Request of: AURANGZEB RASHID PIRZADA (aka ZEB PIRZADA); PIRZADA COSMETICS & AROMATHERAPY, INC.; PIRZADA COSMETICS & AROMATHERAPY, LLC; SUNNOOR CORPORATION; SUN-NOOR CORPORATION, et al. Respondents, For a Hearing Pursuant to California Corporations Code Section 25532.	OAH No. N2000100368

PROPOSED DECISION

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings heard this matter on December 11, 2000, in San Jose, California and on December 18-20, 2000, and September 24-26, 2001, in Oakland, California.

Joan E. Kerst, Senior Trial Counsel, represented the complainant William Kenefick, Acting Commissioner of the Department of Corporations (Department).

Thomas M. Morlan, Attorney at Law, 4555 El Camino Real, Suite H, Atascadero, California 93422, represented the respondents Aurangzeb Rashid Pirzada, a.k.a. Zeb Pirzada, Pirzada Cosmetics & Aromatherapy, Inc., Pirzada Cosmetics & Aromatherapy, LLC, Sunnoor Corporation, Sun-Noor Corporation.

The record was held open to permit the parties to file post-hearing briefs in lieu of oral closing argument. On November 7, 2001, complainant's Closing Brief was received and marked as Exhibit 109 for identification. On November 27, 2001, respondents' Defense to the Statement of Issues was received and marked as Exhibit T for identification. On December 14, 2001, complainant's Reply Brief was received and marked as Exhibit 110 for identification. Whereupon the matter was deemed submitted on December 14, 2001.

On December 28, 2001, the record was reopened following receipt of an ex parte communication from respondent Aurangzeb Rashid Pirzada, a.k.a. Zeb Pirzada. In a voicemail message Pirzada advised that Thomas Morlan was no longer his attorney and that he planned to send additional information that Morlan had not included in his brief. In separate letters dated January 3, 4 and 7, 2002, Pirzada presented additional argument regarding the merits of the case. Pursuant to Government Code section 11430.50, these ex parte communications were collectively marked as Exhibit U for identification and made a part of the record. The communications were then disclosed to opposing counsel Joan Kerst by letter dated January 10, 2002, and she was given 10 days from receipt of the letter to respond. A response was received from Kerst on January 22, 2002, and was marked as Exhibit 111 for identification. Whereupon, the matter was deemed submitted.

FACTUAL FINDINGS

1. The Department is the agency responsible for enforcement of the Corporate Securities Law, California Corporations Code section 25000 et seq.

2. On July 19, 2000, William Kenefick, Acting Commissioner of the Department of Corporations (complainant), issued a Desist and Refrain Order against respondents Aurangzeb Rashid Pirzada (aka Zeb Pirzada), Pirzada Cosmetics & Aromatherapy, Inc. and Pirzada Cosmetics & Aromatherapy, LLC. The Order demanded that said respondents desist and refrain from further offer or sale of common stock, certificates of interest, investment contracts and/or any other securities of Pirzada Cosmetics & Aromatherapy, Inc. or Pirzada Cosmetics & Aromatherapy, LLC, because in the opinion of the Commissioner such activity constituted the offer or sale of unqualified securities. (Corp. Code, § 25532.)[1] The Order further demanded that said respondents desist and refrain from the offer or sale of any securities, including those issued by Pirzada Cosmetics & Aromatherapy, Inc. or Pirzada Cosmetics & Aromatherapy, LLC, by means of material false statements and/or misleading omissions. (Corp. Code, § 25401.)

Complainant also issued a Desist and Refrain Order against Sunnoor Corporation, The Sun-Noor Corporation and D' Sun-Noor Corporation on July 19, 2000. The Order demanded that said respondents desist and refrain from acting as a broker-dealer in violation of Corporations Code section 25210, and from acting as an unlicensed investment adviser in violation of Corporations Code section 25230.

3. On August 14, 2000, respondents made a timely request for a hearing.

4. On or about October 18, 2000, complainant made and filed a Statement of Issues in his official capacity as Acting Commissioner of the Department of Corporations.

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[1] Corporations Code section 25532 provides: "(a) If, in the opinion of the commissioner, the sale of any security is subject to qualification under this law and it is being offered or sold without first being qualified, the commissioner may order the issuer or offeror of such security to desist and refrain from further offer or sale of such security unless and until qualification has been made under this law."

5. Respondent Aurangzeb Rashid Pirzada (Pirzada) has been a stockbroker since 1978 or 1979. In approximately 1984 he passed the Series 24-General Securities Principal examination, which, according to Pirzada, qualified him to engage in investment banking. Pirzada states he is an investment banker by profession. Pirzada worked for various brokerage firms before he began forming his own companies. Pirzada does and has done business under a variety of names and through several entities, including Pirzada Cosmetics and Aromatherapy, LLC, Pirzada Cosmetics and Aromatherapy, Inc.,[2] The Sun-Noor Corporation (and variations of that name such as Sunnoor Corporation), Pasha Research Inc., A.R. Pirzada Securities, Inc. (formerly known as ARP Investments Inc.) and Erudite Investments, Inc. Each of the named entities was created by and has at all times been owned, operated and controlled by Pirzada. Pirzada is and was the only officer authorized to execute documents on behalf of these entities. As a general rule, entities formed by Pirzada were poorly capitalized and had few assets. Funding to operate the entities was typically obtained from "investors" and funds from the different entities were frequently commingled and/or used for operation of the other entities. Accordingly, all acts undertaken by Pirzada and each of the above named respondent entities are deemed attributable to each of the other respondents.

CERTO'S RETIREMENT FUNDS

6. On March 20, 2000, respondent Pirzada contacted Sanderling Biomedical Venture Capital and spoke with Christine Certo, an executive assistant at the company. Pirzada was seeking venture capital for Pirzada Cosmetics and Aromatherapy, Inc. (Pirzada Cosmetics) in order to produce and market products from a plant known as "Blue Curls." After briefly discussing his proposed venture with Certo, Pirzada advised her he would send further materials and a sample of his product to her at Sanderling. He also referred her to his website for further information.

7. On March 23, 2000, Certo received a package from Pirzada in the mail. The package contained a cover letter, a "Stock Offering Memorandum" dated January 27, 2000, a sample of product (a bottle of Blue Curls oil) and Pirzada's business card. Certo began reading the Offering Memorandum, which contained the following biographical information regarding Pirzada:

> "Mr. Zeb Pirzada, who is the Principal of the Company, is an Investment banker by profession, a stockbroker, a General Securities Principal and has his own brokerage company, has dedicated three years to the research and development of this plant and its farming aspect. . . . He has worked with several leading botanist, chemists and Aromatherapy experts and distillers in the country to evaluate the successful viability of the uses of Blue curls. . . . " (Errors in original)

[2] Pirzada Cosmetics & Aromatherapy, Inc. was originally incorporated as Pirzada Cosmetics & Aromatherapy, LLC. According to Pirzada the two corporations merged but he has never filed the formal paperwork.

The Offering Memorandum also advised:

"THE SERIES "A" SHARES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") OR APPLICABLE STATE SECURITIES LAW, . . . THE SERIES "A" SHARES ARE OFFERED PURSUANT TO AN EXEMPTION PROVIDED BY SECTION 4(2) OF THE ACT, REGULATION D THEREUNDER, CERTAIN STATE SECURITIES ACTS AND CERTAIN RULES AND REGULATIONS PROMULGATED PURSUANT THERETO. . . ."

8. Pirzada contacted Certo the day she received the package to confirm its receipt and inquire whether she had shown the package to her boss. During the course of the conversation Certo mentioned that she was seeking other employment opportunities and that she would like to explore the possibility of selling Pirzada's product. (The Offering Memorandum indicated Pirzada planned to hire a commissioned sales force to sell his product.) Pirzada told Certo he would be happy to have her work for him and on March 28, 2000, he faxed her a "Letter of Intent" outlining potential terms of employment. The letter indicated Certo would receive up to $50,000 worth of Series "A" Preferred Sock options upon completion of underwriting of the stock. That same day Pirzada invited Certo to his office in King City so that he could show her the property where he planned to grow the Blue Curls plant.

9. On March 31, Certo and her chiropractor Dr. Jeffrey Miller traveled to King City, California to see Pirzada's property. When they arrived Pirzada told them they could not view the property because his daughter was sick and he did not want to expose them to her virus. Instead Pirzada, Certo, and Miller spent several hours discussing the product's potential and each one's possible role in marketing the product. During the course of the meeting Pirzada represented himself as an investment banker who owned a trading house. He also mentioned that he had taken companies public in the past, had managed other companies funds and that he had made a lot of money. Pirzada additionally provided Miller and Certo with a copy of the Offering Memorandum for Pirzada Cosmetics. However, it became clear during the meeting that Pirzada did not have a current business plan, his company was not yet operational and that he would need substantial outside funding in order to successfully market his product. During the course of the meeting Pirzada repeatedly asked Miller if he had relatives or friends who might be interested in investing in Pirzada Cosmetics. Miller said no and explained he felt the venture was too speculative and risky. At no point during the conversation did Certo express an interest in investing in Pirzada Cosmetics, although she continued to express an interest in becoming a salesperson for the company.

10. On April 2 and again on April 4, 2000, Certo spoke with Pirzada about the viability of his company and the possibility of her working as a salesperson for him. It was during this latter conversation that Pirzada first suggested that she transfer her 401(k)

retirement funds into an IRA account under his care.[3] At the time Certo was heavily invested in the stock of her former employer Applied Materials. Pirzada told her she should sell the stock and invest in superior stocks (e.g., Ballard Power Systems) that he would recommend. He pointed out that he was a securities broker and investment banker, told her his clients were very happy with the returns he got for them and assured her he could obtain a better return for her than her current discount brokerage house, Fidelity Investments (Fidelity).

11. Following the April 4 conversation Pirzada began to call Certo on nearly a daily basis to talk about his new company and the possibility of Certo coming to work for him. Invariably, the conversation turned to Certo's 401(k) account and the possibility of Pirzada managing those funds for her. At some point Certo mentioned she had difficulty understanding the account statement she received from Fidelity. Pirzada volunteered to help her clear up any confusion and had her get her Fidelity agent on the telephone. Pirzada directed Certo to tell the agent he was her financial adviser, and she did so. During the conversation with the Fidelity agent Pirzada also referred to himself as Certo's financial adviser. The agent told Certo and Pirzada that she had a balance of $117,000 in her retirement account. Thereafter Pirzada began calling Certo almost daily to discuss her future employment with him and to recommend that she transfer her funds to an IRA account under his care.

12. On the weekend of April 8 and 9 Certo traveled to King City to obtain some of Pirzada's product, obtain marketing literature and discuss Pirzada's plans for his business. Afterwards Pirzada took Certo to his property in Lockwood, California and gave her a quick tour. He told her he owned 400 acres and indicated the property was worth $10 million dollars. He also again pointed out that he was a very successful investment banker.

13. On April 12 Pirzada called Certo to once again urge her to transfer her 401 (k) funds to an IRA under his care. Certo was ultimately worn down by Pirzada's persistence and decided to give him an opportunity to manage a portion of her funds. Despite a gut reluctance to do so, Certo yielded to Pirzada's urging to sell her Applied Materials stock (which had always performed well). At Pirzada's direction she called her Fidelity agent and, as directed by Pirzada, told him Pirzada was her financial adviser. Upon Pirzada's recommendation Certo sold $35,513.91 worth of Applied Materials stock and $2,102.03 worth of Fidelity Equity Income mutual fund shares. Total proceeds of the two sales transactions were $37,615.94. On April 13, 2000, under Pirzada's direction Certo transferred her 401(k) account, consisting of the $37,615.94 from the two sales transactions and her remaining Applied Materials stock, into an IRA account in her name at Fidelity.

14. On April 17, at Pirzada's urging Certo again contacted Fidelity with Pirzada's assistance. Once again Pirzada directed Certo to advise the Fidelity agent he was her financial adviser, and Certo did so. On April 18, at Pirzada's direction Certo completed the necessary paperwork and sold an additional 400 shares of Applied Materials stock, realizing

[3] Pirzada became aware Certo had a retirement portfolio during the course of their many discussions and asked her detailed questions regarding her account.

$38,607.70. After this transaction the total in Certo's Fidelity IRA Rollover account was $76,280.02. That same day Pirzada called her and told her he was sending her on an all expense paid trip to AromaCamp in the South of France at a cost of $10,00.00. Certo was impressed by Pirzada's willingness to invest in her.

15. Certo's last day at Sanderling was April 20, 2000, and she began to look forward to working for Pirzada. Pirzada had invited her to spend time with his family, and had told her she "was family now." Certo even attended church services with Pirzada's family. Pirzada also began calling Certo "princess" whenever they talked. During this entire time period Pirzada continued to urge Certo to transfer her retirement funds into an account under his management.

16. On April 24 Pirzada drove approximately 2-1/2 hours one way in order to accompany Certo when she transferred her retirement funds into an account under his management. At Pirzada's direction Certo again advised the Fidelity agent he was her financial adviser. Certo's funds ($76,280.02) were transferred by wire into an account designated by Pirzada that same day. It was Certo's understanding that the funds were being transferred into an IRA account Pirzada was setting up for her. Throughout the many conversations between Certo and Pirzada, as well as during the various conversations with the Fidelity agents, the parties had always discussed and confirmed that the funds were to be transferred into an IRA account. This was particularly important to Certo because she wanted to avoid tax penalties for early withdrawal of retirement funds. Pirzada did not receive a commission for the services he provided to Certo.

17. The day after the transfer Pirzada called Certo and insisted that she come to King City for a sales meeting. Certo agreed to come on April 28. On April 26 Certo called Pirzada and requested a statement confirming the wire transfer. Pirzada never provided the requested statement. On April 28, 2000, Certo traveled to King City to meet with Pirzada. Although the meeting initially focused on the role Certo would play in marketing the product, Pirzada soon turned the discussion to Certo's retirement funds. Pirzada then surprised Certo by telling her he wanted to use her money for 60 days. Certo replied "absolutely not" but Pirzada continued to pressure her to agree. Certo resisted. She asked Pirzada to allow her the weekend to think it over. He refused. She asked for time to call and consult with friends. Pirzada refused. She pleaded with Pirzada to simply return her money. He refused. Certo explains she did not simply walk out of the meeting because she realized she did not have any documentation regarding the transfer of her funds and she wanted to try to get some type of writing from Pirzada acknowledging receipt of those funds. The parties argued back and forth with Certo trying to convince Pirzada to return her money and Pirzada insisting that she let him use her funds. The meeting lasted from approximately 10:00 a.m. to 2:00 p.m.

During the course of the meeting Pirzada gave Certo a business card which bore the words "Sun-noor Corporation Investment Banking, Member NASD, Member SIPC, Zeb Pirzada President." After handing Certo the card Pirzada explained he was an investment banker who managed company 401(k) plans, including a 401(k) plan for attorneys in a law

firm. He also told her he was a member of the National Association of Securities Dealers (NASD) and that he could lose his Sun-Noor license if he did not perform as promised. As further incentive to persuade Certo to loan him her retirement funds Pirzada told her she could put a lien on his property if he did not pay her back, that he would spend a maximum of $10,000.00 of her money, and that the balance of her money would be used to simply show a balance in his account.

18. What Pirzada did not tell Certo during their April 28 meeting was that neither he nor The Sun-noor Corporation was currently licensed as a broker-dealer in California and that neither was a member in good standing with NASD or SIPC. Nor did Pirzada tell Certo that he had filed bankruptcy in 1992 and 1997, or that he was still in bankruptcy at the time he solicited her "investment" on April 28. Pirzada also failed to mention that his property was worth around $1 million, not $10 million, and was encumbered and at risk of foreclosure or that he had a number of judgment liens and a number of complaints with stipulated judgments against him. Pirzada's prior claim that he had taken companies public was also false and Pirzada was not a qualified IRA trustee.

19. The parties ultimately signed a "Memorandum of Understanding and Agreement" in which Certo agreed to "invest" $77,000.00 with "Zeb Pirzada" for 60 days. Pirzada promised to "redeem her investment of $77,000 in cash" in 60 days and to pay her 12 percent interest on the use of her funds. The agreement additionally provided that Certo's "investment" was secured by $100,000 worth of Series A stock of Pirzada Cosmetics and Aromatherapy, Inc., that the investment was guaranteed by Pirzada Cosmetics and Aromatherapy, Inc., and that Pirzada, president of the corporation, was responsible for repayment of the $77,000.

20. After breaking for lunch at 2:00 p.m. the parties also drafted a formal employment agreement for Certo as Director of Sales of Pirzada Cosmetics and Aromatherapy, Inc. Pursuant to the agreement Certo was to receive a base salary of $2000.00 per month. Pirzada wrote Certo a check for $2000.00 on April 28, which Certo later cashed. Certo subsequently accepted an offer of employment from another company and never actually worked for Pirzada.

21. Certo consulted an attorney after signing the agreement with Pirzada because she felt she had been coerced into agreeing to let Pirzada use her funds. Upon advice of counsel she contacted Pirzada and demanded an immediate return of funds. Instead she got a letter dated May 3, 2000, terminating her employment. On May 15 Cero received certified mail from Pirzada containing a letter dated May 8, 2000, and a photocopy of a stock certificate for 4,082 shares of Pirzada Cosmetics and Aromatherapy, Inc. Preferred Stock in the name "FBO/Christine Certo IRA." The letter stated the stock was to be "placed as security" and requested Certo to advise where she wanted the stock sent. When Pirzada issued the stock certificate to Certo he had not obtained a permit to issue securities as required by Corporations Code section 25102, subsection (n). On advice of counsel Certo did not accept the stock certificate. On or about May 31, 2000, Certo filed suit against Pirzada seeking a return of her funds. Certo has never received repayment of the funds

transferred to Pirzada's checking account. She has however served a writ of attachment against the Lockwood property owned by Pirzada.

22. Bank records reflect that on April 24, 2000, a wire transfer in the amount of $76,265.02 ($76,280.02 minus a $15.00 wire transfer fee) was deposited into the checking account for Pirzada Cosmetics and Aromatherapy, LLC at Community Bank of Central California (Community Bank). Pirzada is the only authorized signator on the account. Prior to the transfer the balance in the account was a negative $567.02.

Between September 24 and May 31 a number of checks were written against the wire transfer deposit, including numerous checks to cover Pirzada's personal expenses and a check to cover the membership premium for SIPC. Funds were also transferred to brokerage accounts at Emmett A. Larkin Company Inc. (Larkin), a brokerage clearing house. On April 27, 2000, Pirzada obtained a $10,000 cashiers check payable to Larkin using the funds in his Community Bank checking account (i.e., Certo's funds). This check was deposited into Pirzada's "Sunnoor Corporation Miscellaneous Account" on May 8, 2000. On May 5, 2000, Pirzada obtained a cashier's check for $40,000 payable to Larkin using Certo's funds. On May 10 the $40,000 check was deposited into Pirzada's Larkin account held in the name Pirzada Cosmetics. Pirzada had previously executed a clearing agreement with Larkin, and had also executed a margin agreement that enabled him to trade securities on margin. On May 22, 2000, Pirzada began using the funds in his accounts to make trades and generate commissions for himself. Pirzada indicated at hearing that he believed he would be able to make enough profit from trading to repay Certo; however, the stock market suffered a downturn and Pirzada lost money on the trades. By May 31, 2000, the balance in Pirzada's Community Bank checking account was .04 cents and all of the funds transferred from Certo's IRA were gone. None of the funds had been transferred to an IRA account for Certo.

23. At all times prior and up to transfer of her funds to Pirzada, Certo was a single mother in her forties with a net worth of less than $250,000. She had virtually no prior experience concerning transfer of retirement funds, and although she had made a couple of personal loans to friends and obtained a loan from her brother, she did not consider herself sophisticated in financial transactions. Certo was never provided or asked to complete an investor suitability form or a purchaser questionnaire during any of her transactions with Pirzada. Certo maintains it was always her understanding prior to and upon transfer of her IRA funds to Pirzada that her funds would be placed into an IRA account which Pirzada would manage on her behalf. Certo vehemently denies that she ever had any intention of investing in Pirzada's company or of loaning her retirement funds to him personally or to any of his companies prior to being coerced to do so on April 28,2000.

OTHER INVESTORS

24. Testimony, as well as investor declarations and other evidence presented at hearing, establishes that in order to obtain access to investors' funds, especially IRA funds, it was Pirzada's standard practice to contact potential investors constantly and pressure them to invest. During those contacts he would inflate his level of financial expertise and represent

to the investors that he could obtain a better return on their investment. Frequently, he would first offer and issue shares of stock and then replace them with promissory notes. For example, Donald Felich, who still has a current business relationship with Pirzada, testified that in 1984 or 1985 Pirzada convinced him to invest almost $300,000 in A.R. Pirzada Securities, Inc. in exchange for stock certificates. The money was invested over time, often in response to representations by Pirzada that if Felich did not provide him with additional capital Felich would lose his entire investment. Approximately $145,000 of the money invested by Felich was from his IRA account. Pirzada told Felich he could get him a better return on investment for his IRA and that he would personally guarantee the $145,000 from the IRA. Felich never received any of his money back as a shareholder. Felich has also invested money with Pirzada in connection with several other business transactions. He has received several promissory notes in exchange, but has never collected any principal or interest payments on the notes. The main means used by Pirzada to obtain additional funds from Felich was the threat that all prior funds would be lost if he did not receive additional capital. In 1995 Felich sued Pirzada for breach of contract, fraud and deceit. Pirzada cross-complained and the matter was ultimately settled.

In a lawsuit filed in 1995, investor Minnie Rodriguez alleged Pirzada induced her to buy shares in A.R. Securities, Inc. for $30,000 and promised to repurchase those shares. He then failed to repurchase the shares and instead gave her a promissory note in which he promised to pay 12 % interest. Pirzada defended the Rodriguez action by claiming the interest rate was usurious. (A similar defense was used in the Felich lawsuit.) There are other examples of similar conduct by Pirzada in the record. None of Pirzada's investors have been repaid. Most (but not Certo) have been named as creditors in Pirzada's bankruptcy action.

THE SUN-NOOR CORPORATION

25. The Sun-noor Corporation (Sun-noor) was formed by Pirzada in 1997.[4] It is an active California Corporation. Pirzada owns all of the stock of Sun-noor and is the president of the corporation. On or about May 16, 2000, (subsequent to receipt of Certo's retirement funds) Sun-noor filed an application for Notification registration as a broker-dealer in California. Pirzada signed the application on behalf of the corporation.

26. An individual or corporation that is registered as a broker-dealer with the Securities and Exchange Commission (SEC) can seek licensure in California by filing a Notification. A Notification filing is not required to be as complete as an original application for licensure because the Department checks and relies upon the information that is provided to the SEC. The SEC information is maintained in a centralized computer bank known as the Central Registration Depository (CRD) which is operated by the National Association of Securities Dealers Regulation, Inc. (NASD/NASDR). In order to qualify for Notification filing an applicant must have filed with the SEC and be a member in good standing with at

[4] Although "The Sun-noor Corporation" is the official name of the corporation, Pirzada has used several variations of hat name including Sunnoor Corporation, Sun-Noor Corporation and Sunnoor.

least one of four self-regulatory organizations (e.g., NASD/NASDR or SPIC). The Notification form requires the applicant and its control affiliate (which would include its president/sole shareholder) to disclose any changes from the original SEC application, including name, address, officer or shareholder changes, bankruptcies, customer complaints, lawsuits and judgment liens. Changes occurring subsequent to the Notification filing must be promptly reported by amendment to the Notification.

27. When Pirzada filed for Notification registration on behalf of Sun-noor he failed to include material information required as part of the application. He failed to include required information regarding his bankruptcies, civil actions filed against him or unsatisfied judgments and liens, all of which occurred subsequent to his original filing with the SEC. Pirzada also failed to disclose each type of business engaged in by the applicant (Sun-noor) and its control affiliate (Pirzada), other business names and businesses, or the clearing arrangement he had with Emmett Larkin. When the Department filed the Desist and Refrain Orders that form the basis for the subject proceeding, Pirzada failed to promptly amend Sun-noor's Notification to reflect this regulatory action.

28. On May 23, 2000, the Department issued a broker-dealer's license to Sun-noor. Pirzada claims the Department verbally approved Sun-noor's broker-dealer application a day earlier on May 22, 2000 (which is the day Pirzada actually began trading through his brokerage account). As of commencement of the hearing in this matter on September 21, 2001, Sun-noor had not amended its SEC or Notification filings to reflect bankruptcies, lawsuits, complaints or the desist and refrain order from the Department against Pirzada, its control affiliate.

29. Pirzada maintains that when he submitted the broker-dealer application for Sun-noor it was his belief, due to an ambiguity in the application, that he was only required to provide information with respect to Sun-noor's activities. He claims he did not understand that as the control affiliate he was required to provide information regarding his personal litigation history or bankruptcies. His assertions lack credibility, especially when viewed in light of his self reported extensive experience as a stockbroker and investment banker.

ALLEGED VIOLATIONS

Unlicensed Investment Adviser

30. Corporations Code section 25230 makes it unlawful to conduct business as an investment adviser without first obtaining a certificate authorizing the adviser to act in that capacity or unless the investment adviser is exempt. An investment adviser is defined as "Any person who, for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities." (Corp. Code, § 25009.)

31. Complainant alleges Pirzada, individually and using the name the Sunnoor Corporation, acted as an unlicensed investment adviser when he advised Certo to sell her

Applied Material stock and recommended purchase of an alternate stock, represented to Certo he would get a better return on her money than she was then receiving, represented himself to be Certo's financial adviser, directed Certo to advise others he was her financial adviser and/or induced Certo to withdraw her retirement funds and place them under his control.

32. Pirzada maintains he was not Certo's financial adviser because she never paid him a commission as her financial adviser and never entered into a written agreement with him whereby he agreed to provide financial advice in exchange for compensation. Pirzada admits that he represented himself as Certo's financial adviser in transactions with her brokerage house Fidelity Investments, but states the representation was based on his status as a stockbroker and was only made upon the sale of stock. Pirzada also admits The Sun-noor Corporation has never been licensed as an investment adviser in California.

33. Pirzada's contention that he did not act as Certo's investment adviser lacks merit. Although Pirzada did not receive a formal "commission" or enter a written agreement to serve as Certo's financial adviser, he was compensated because he was able to obtain access to, and subsequently spend, Certo's retirement funds by providing the services normally provided by a financial adviser. He advised Certo on investing in, purchasing and selling securities and promised her a better return on her investment as an inducement to permit him to manage her funds. (For example, Pirzada recommended to Certo that she sell her Applied Materials stock and that she purchase an alternate stock such as Ballard Power Systems in order to achieve a better return on investment.) Certo also testified she expected to compensate Pirzada in the form of a commission for managing her IRA. In addition, Pirzada admits he represented himself as Certo's financial advisor during interactions with her Fidelity agents. Although Pirzada maintains Certo relied upon the advice of the Fidelity agents in their capacity as broker/dealers, a review of tape recorded conversations between Pirzada, Certo and the Fidelity agents reveals she primarily relied upon Pirzada's financial advice in making decisions to sell and in effecting sales of stock. The recordings also reveal that Pirzada represented himself as Certo's financial adviser on numerous occasions, not just during the sale of stock. At no time while he was providing financial advice to Certo was Pirzada or The Sun-noor Corporation licensed as an investment advisor. Respondents offered no evidence at hearing that either Pirzada or The Sun-noor Corporation was exempt from Corporations Code section 25230. Accordingly it is found that Pirzada, individually and using the name The Sun-noor Corporation, acted as an unlicensed investment adviser in violation of Corporations Code section 25230 in his dealings with Certo.

Unlicensed Broker-Dealer

34. Corporations Code section 25210 prohibits a broker-dealer from effecting any transaction in, or inducing or attempting to induce the purchase or sale of any security unless the broker-dealer has a certificate authorizing that person to act in that capacity, or unless exempt. Corporations Code section 25004 defines a broker-dealer as any person engaged in the business of effecting transactions in securities in California for the account of others.

35. Complainant alleges Pirzada acted as a broker-dealer in 2000 while not licensed to do so in violation of Corporations Code section 25210. Complainant notes that although the Commissioner of Corporations did not issue any of the respondents a broker-dealer license until May 23, 2000, the Stock Offering Memorandum for Pirzada Cosmetics and Aromatherapy, Inc. dated January 27, 2000, states Pirzada is a stockbroker, general securities principal and has his own brokerage company. In discussions with third parties (e.g., Certo and her chiropractor Miller) prior to May 23 Pirzada represented that he owned a securities brokerage firm, The Sun-noor Corporation. He also provided Certo with a business card showing he was president of Sun-noor Corporation and told her he managed retirement funds for attorneys at a law firm. In early May 2000 Pirzada established brokerage accounts with Emmett A. Larkin Company, Inc. On May 22, 2000, he began trading in his account, generating commissions for himself.

36. Pirzada admits he began trading in his Larkin account on May 22, one day before issuance of a broker-dealer certificate to The Sun-noor Corporation. However, he maintains he received verbal telephone authorization from a Department employee to conduct business on May 22. Pirzada denies he or any of the other respondents engaged in broker-dealer activities prior to May 22, 2000. He specifically denies he acted as a broker-dealer for Certo. Pirzada points out that Certo never had an account with him or any other respondent to trade securities, that her stock was sold within her Fidelity IRA, that cash from the sales was transferred to the checking account of Pirzada Cosmetics and Aromatherapy, and that a loan agreement for use of Certo's funds was subsequently negotiated between Certo and Pirzada. Pirzada also argues that Certo's testimony that she never intended to invest in Pirzada Cosmetics and Aromatherapy, was never offered or signed a subscription agreement, never accepted shares of stock in exchange for her retirement funds, and considered the note a personal loan with a negotiated interest rate of 12% demonstrates Pirzada was not acting as a broker dealer. Pirzada asserts, without citation to legal authority, that in order to have a contract to buy or sell securities there must be mutual assent of the parties.

37. Pirzada's assertions are not persuasive. The evidence indicates that Pirzada, individually and using the name The Sun-noor Corporation, acted as a broker-dealer prior to issuance of a certificate of authorization by the Commissioner of Corporations (Commissioner). Pirzada admitted such activity when he represented to third parties that he owned a stock brokerage firm, and that in that capacity he managed 401(k) accounts. In addition, Pirzada induced or attempted to induce the purchase or sale of a security when he solicited Certo to let him manage her retirement funds so that he could obtain a better return on her investment through the purchase and sale of stock. Pirzada's assertion that a Department employee authorized him to act as a broker-dealer over the telephone and that he relied upon that verbal authorization to conduct business is not credible. Even if Pirzada had received such verbal authorization, the law prohibits anyone from acting as a broker-dealer prior to issuance of certificate of authorization by the Commissioner. Pirzada admits he made stock trades a day before issuance of his broker-dealer certificate. The evidence establishes that Pirzada, individually and using the name The Sun-noor Corporation, acted as a broker-dealer while not licensed to do so.

Unqualified Offer and Sale of Securities

38. Corporations Code section 25110 makes it unlawful for any person to offer or sell any security unless such sale has been qualified or unless such security or transaction is exempt or not subject to qualification. The term security has been broadly defined to include investment contracts, notes, evidences of indebtedness and stock pledge agreements in the form of certificates of interest. (Corp. Code, § 25019.) A broad definition of the term security is consistent with the purpose of the securities law, which is to protect the public against spurious schemes to attract risk capital; it is the substance of the transaction, rather than its form, which governs whether an investment is a security. (*Moreland v. Dept. of Corporations* (1987) 194 Cal.App.3d 506, 512; *Silver Hills County Club v. Sobieski* (1961) 55 Cal.2d 811, 814; *People v. Simon* (1995) 9 Cal.4th 493, 499-500.)

39. Complianant alleges the shares of Series A Preferred Stock in Pirzada Cosmetics and Aromatherapy and the Memorandum of Understanding and Agreement executed by Pirzada to repay Certo were securities subject to qualification, and that such securities were being offered and sold without first being qualified. Complainant notes the January 27, 2000, Stock Offering Memorandum for Pirzada Cosmetics and Aromatherapy, which was distributed to the general public by Pirzada, offered Series A Preferred Stock at $24.50 per share. Proceeds from sale of the stock were to be used for the company's business operations. Complainant also suggests the agreement between Certo and Pirzada constitutes either a promissory note or an investment contract and maintains that under either definition it constitutes a security. It is undisputed that Pirzada did not qualify the offer of stock in Pirzada Cosmetics and Aromatherapy, Inc. or the agreement executed upon receipt of Certo's funds.

40. Pirzada admits he solicited investors and offered stock in Pirzada Cosmetics and Aromatherapy using a prospectus that had not been qualified, that he did not file a notice of exemption for the offering and that he did not have a permit to offer stock in Pirzada Cosmetics and Aromatherapy in California. However, he argues his actions were mitigated and constitute a technical violation without damage since no securities were sold to any investor, and no money was transferred with the expectation of obtaining shares in the corporation. Pirzada characterizes the agreement executed with Certo as evidence of personal loan and maintains it was not a security. Pirzada also asserts he solicited investors without first obtaining qualification because he mistakenly believed he did not have to qualify for an exemption until he actually commenced selling and transferring shares.

41. The agreement between Certo and Pirzada constitutes a security. When Pirzada sought funds from Certo he was allegedly seeking capital for Pirzada Cosmetics and Aromatherapy, a business venture or enterprise that was being offered to the public at large. Certo was substantially powerless to effect the success of the business or enterprise since she had no voice in decisions regarding or management of the corporation, and her money was substantially at risk because it was secured by the very corporation for which venture capital was sought. (See *Silver Hills County Club v. Sobieski, supra,* 55 Cal.2d 811; *People v. Simon*

(1995) *supra,* 9 Cal. 4th 493.) In addition, the agreement itself refers to Certo's "investment" and guarantees repayment of that investment. There is no mention of a personal loan.

Pirzada initially claimed that he was exempt from the requirement that he qualify the Pirzada Cosmetics stock prior to sale pursuant to federal Regulation D and/or Corporations Code section 25102, subdivision (n). However, at hearing Pirzada admitted he had not filed the necessary forms to obtain either the federal or state exemption. Pirzada also admitted he solicited investors and offered stock in Pirzada Cosmetics and Aromatherapy using a prospectus that had not been qualified. The evidence establishes Pirzada engaged in the unqualified offer and/or sale of securities when he executed an agreement promising to repay Certo and when he offered her the shares of stock in Pirzada Cosmetics and Aromatherapy, Inc.

Misrepresentation or Omission of Material Fact in the Offer or Sale of Securities

42. Corporations Code section 25401 makes it unlawful for any person to offer or sell a security by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statement not misleading. Claimant alleges Pirzada made numerous oral misrepresentations and omissions to Certo and Miller in connection with the offer or sale of securities. For example, Pirzada represented he was a successful investment banker, when in fact he was currently in bankruptcy, had a previous bankruptcy and had been the subject of numerous civil actions resulting in several large judgment liens against him. Pirzada claimed he had a securities brokerage firm, The Sun-noor Corporation, when in fact he lacked the required broker-dealer certificate from the Commissioner or Corporations. Pirzada claimed he was a member of NASD and SIPC, when in fact he was not in good standing with these organizations. Pirzada claimed to have successfully managed the accounts of others, including their IRAs, when in fact he was not a qualified IRA trustee. Complainant maintains Pirzada's misrepresentations and omissions were material in that they would likely have been considered significant by a reasonable investor in making a decision regarding the investments offered by Pirzada.

43. Although Pirzada admits he engaged in "puffing," he denies making any material misrepresentations or omissions that were relied upon by anyone in connection with the offer or sale of securities. He maintains the funds invested by Certo were a personal loan to him and that no funds were invested in Pirzada Cosmetics and Aromatherapy.

44. Pirzada's contentions lack merit. As previously indicated, the agreement executed by Pirzada to guarantee repayment of Certo's funds constituted a security. Corporations Code section 25401 prohibits misrepresentation or omission of a material fact in the offer or sale of a security. It is clear from a review of all the evidence that Pirzada's misrepresented and omitted material facts in connection with the offer or sale of securities to Certo.

Fraud, Deceit and Manipulations

45. Corporations Code section 25235 makes it unlawful for any investment advisor to employ any device, scheme or artifice to defraud a client or prospective client. It also makes it unlawful for any investment advisor to engage in any transaction, practice or course of business which operates as a fraud or deceit upon a client or prospective client or which is fraudulent, deceptive or manipulative. Claimant alleges Pirzada engaged in such fraudulent and deceitful conduct in order to obtain the retirement funds of Christine Certo.

46. Pirzada maintains no coercion, trickery, pressure, or fraudulent scheme or device was involved in the transfer of Certo's funds to his control. According to Pirzada, Certo was very excited about the possibility of working for him and investing in his company. He claims Certo initially wanted to invest in his company, but had a change of heart at their last meeting and decided she wanted to loan him the money instead. Pirzada also insists that Certo was a knowledgeable investor who had the opportunity to investigate and did investigate Pirzada prior to investing. He admits, however, that he never qualified her as an investor pursuant to Corporations Code section 25102, subdivision (n).

47. A review of the totality of the evidence reveals Pirzada engaged in a fraudulent scheme or device in order to obtain Certo's retirement funds. Respondent touted his status as a stockbroker, inflated his experience and constantly called Certo in order to convince her to let him manage her IRA funds. In a further effort to persuade Certo to transfer her IRA funds to his control Pirzada led her to believe he would manage her funds in a qualified IRA account and would obtain a better return on her investment than she was then receiving. He also invited her to spend time with his family and became very involved in her interactions with her Fidelity agents, ultimately arranging a series of transactions that resulted in Certo transferring in excess of $76,000 of her IRA to a checking account on which he was the sole signatory. The account was not an IRA account. Pirzada then isolated Certo and through intimidation and bullying convinced her to sign an agreement in which she agreed to invest her retirement funds with him for 60 days. As an inducement to get Certo to sign the agreement Pirzada assured her he would spend no more than $10,000 of her money and would only use the rest to show a balance. He also agreed to pay 12% interest. Pirzada did not tell Certo he was overdrawn on his checking account, was currently in bankruptcy, had a previous bankruptcy and had been the subject of numerous civil actions resulting in several large judgment liens against him. Nor did he tell her he had engaged in a similar pattern of conduct in the past in order to obtain funds from "investors" and that none of these individuals had been repaid. Certo transferred her funds to Pirzada's checking account on April 24, 2000. By May 31, 2000, Pirzada had spent all of those funds and none had been placed in an IRA for Certo. The evidence clearly established that Pirzada engaged in a fraudulent scheme or device in order to obtain Certo's retirement funds.

False Statements to the Commissioner

48. Corporations Code section 25245 makes it unlawful to willfully make an untrue statement of a material fact in any application, notice or report, or to omit a material fact in an application, notice or report filed with the Commissioner. Complainant contends that Pirzada's failure to disclose his bankruptcies, or the judgments, liens and civil actions against him, as well as his failure to disclose other required information in his Sun-noor Notification filing, rendered the filing incomplete and untrue and constituted a false statement to the Commissioner. Pirzada maintains he acted in good faith in failing to disclose the required information and that at most his conduct constituted negligence, not fraud or willful misconduct.

49. Pirzada's claims are not credible. The application expressly requires disclosure by the applicant and the control affiliate. Prior to August 2000 (when Sun-noor sought registration as a broker-dealer) the application also contained instructions which defined control affiliate; the definition clearly would have included Pirzada as the president and sole shareholder of Sun-noor. The definition of a control affiliate is also contained in the applicable regulations, and an applicant/control affiliate is required to know the regulations. The fact that only negative information was omitted from the Notification filing also makes Pirzada's claim of mere negligence suspect. After considering all of the evidence it is found that Pirzada willfully omitted material facts in an application, notice or report filed with the Commissioner.

RESTITUTION AND DAMAGES

50. Corporations Code section 25254 provides for restitution and other relief to individuals harmed by an act or practice which is the subject of an administrative proceeding initiated by the Commissioner. Complainant requests that respondents, individually and collectively, be ordered to make restitution to Certo, and that she be awarded interest and other ancillary relief as damages. The evidence established that as of September 24, 2001, Certo had experienced losses totaling $153,343.14 as a result of Pirzada's wrongful actions. Those losses consist of the following:

Wire transfer to Community Bank	$76,265.02
Wire transfer fee	15.00
Miscellaneous out of pocket	396.54
Attorney fees (for civil action)	36,350.25
Tax liability (IRS)	29,408.00
Interest	10,908.33
Total	$153,343.14

51. Pirzada argues that whether the agreement between Certo and Pirzada constituted a loan or a security investment, Certo could have avoided tax liability by merely placing the shares of stock offered by Pirzada in her IRA. However, no legal authority or

evidence (other than Pirzada's testimony) in support of this contention was offered at hearing.

ADMINISTRATIVE PENALTIES AND COSTS

52. The Department requests that the respondents, collectively and individually, be ordered to pay administrative penalties pursuant to Corporations Code section 25252. That section authorizes penalties of one thousand dollars ($1,000) for the first violation and not more than two thousand five hundred dollars ($2,500) for each subsequent violation against any person, other than a broker-dealer or investment adviser, who willfully violates a rule or order. (Corp. Code, § 25252, subd. (a).) If a broker dealer or investment adviser willfully violates a rule or order the penalties increase to five thousand dollars ($5,000) for the first violation, not more than ten thousand dollars ($10,000) for the second violation and not more that fifteen thousand dollars ($15,000) for each subsequent violation. (Corp. Code, § 25252. subd. (b).)

53. The Department also requests costs, which may include reasonable attorney's fees and investigative expenses (Corp. Code, § 25254, subd. (b)), but has failed to provide any evidence of such costs.

LEGAL CONCLUSIONS

1. Cause for issuance of the Department's DESIST AND REFRAIN ORDERS was established pursuant to Corporations Code sections 25532 and 25230 in that Pirzada, individually and using the name The Sun-noor Corporation, acted as an investment adviser while not licensed as an investment adviser in the State of California. (Findings 13-16 and 33).

2. Cause for issuance of the Department's DESIST AND REFRAIN ORDERS was established pursuant to Corporations Code sections 25532 and 25210 in that respondents acted as a broker-dealer, and were subject to licensing as a broker-dealer pursuant to Corporations Code section 25210, and were not licensed as a broker-dealer in the State of California. (Findings 7, 9, 17, 22 and 37.)

3. Cause for issuance of the Department's DESIST AND REFRAIN ORDERS was established pursuant to Corporations Code sections 25532 and 25245 in that respondents willfully made untrue statements of material facts in their initial application and failed to file accurate amendments to their application on a timely basis. (Findings 25, 27-28 49).

4. Cause for issuance of the Department's DESIST AND REFRAIN ORDERS was established pursuant to Corporations Code sections 25532 and 25110 in that respondents offered and/or sold a security subject to qualification pursuant to the Code without first being qualified. (Findings 7-9, 19, 21 and 41.)

5. Cause for issuance of the Department's DESIST AND REFRAIN ORDERS was established pursuant to Corporations Code sections 25532 and 25401 in that respondents

offered and sold a security by means of written or oral communications which included an untrue statement of material fact and omitted a material fact. (Findings 7-9, 17-19, 21 and 44.)

6. Cause for issuance of the Department's DESIST AND REFRAIN ORDERS was established pursuant to Corporations Code sections 25532 and 25235 in that respondents engaged in fraudulent, deceptive and manipulative acts and/or course of business in order to obtain Christine Certo's funds. (Findings 7-23 and 47).

7. The evidence established that respondents, through their principal Aurangzeb Rashid Pirzada (aka Zeb Pirzada), violated numerous statutory provisions. Pirzada used deceptive and fraudulent practices to obtain access to Certo's IRA funds, acted as an unlicensed investment adviser and an unlicensed broker dealer, offered and/or issued unqualified securities, misrepresented or omitted material facts in the offer/sale of those securities and made false statements to the Commissioner in Sun-noor's Notification filing. The evidence also established Pirzada has a pattern and practice of obtaining access to investors' funds, especially IRA funds, by pressuring them to invest, inflating his level of financial expertise and representing to the investors that he can obtain a better return on their investment. He then fails to repay funds placed in his care. In addition, Pirzada's testimony at hearing was not very credible. It was disjointed, confusing and often contradicted by other independent evidence. After considering all of the evidence, it is determined that the DESIST AND REFRAIN ORDERS are essential to protect the public interest and should be affirmed. A consideration of all of the evidence also dictates that respondents, jointly and collective, be required to reimburse Certo for her losses. The evidence established such losses through the time of hearing as $153,343.14. Payment of penalties to the Department of Corporations to further deter willful and fraudulent conduct by respondents is also deemed appropriate. The Department has alleged and established six violations of applicable law. A penalty of $1,000 each is imposed for violation of Corporations Code sections 25230, 25210, 25110 and 25401, and a penalty of $5,000 each is imposed for violation of Corporations Code sections 25245 and 25235, for a total penalty of $14,000.

ORDER

1. The appeal of respondents Aurangzeb Rashid Pirzada, a.k.a. Zeb Pirzada, Pirzada Cosmetics & Aromatherapy, Inc., Pirzada Cosmetics & Aromatherapy, LLC, Sunnoor Corporation and Sun-Noor Corporation is denied

2. The Desist and Refrain Orders issued by the Commissioner of Corporations against respondents Aurangzeb Rashid Pirzada, a.k.a. Zeb Pirzada, Pirzada Cosmetics & Aromatherapy, Inc., Pirzada Cosmetics & Aromatherapy, LLC, Sunnoor Corporation, The Sun-Noor Corporation and D' Sun-Noor Corporation are affirmed.

3. Respondents Aurangzeb Rashid Pirzada, a.k.a. Zeb Pirzada, Pirzada Cosmetics & Aromatherapy, Inc., Pirzada Cosmetics & Aromatherapy, LLC, Sunnoor Corporation and Sun-Noor Corporation are ordered to reimburse Christine Certo the sum of $153,343.14.

4. Respondents Aurangzeb Rashid Pirzada, a.k.a. Zeb Pirzada, Pirzada Cosmetics & Aromatherapy, Inc., Pirzada Cosmetics & Aromatherapy, LLC and Sunnoor Corporation, Sun-Noor Corporation shall pay the Department of Corporations penalties in the amount of $14,000.00

5. No award of attorney fees has been made against respondents Aurangzeb Rashid Pirzada, a.k.a. Zeb Pirzada, Pirzada Cosmetics & Aromatherapy, Inc., Pirzada Cosmetics & Aromatherapy, LLC and Sunnoor Corporation, Sun-Noor Corporation since the Department of Corporations did not provide evidence on this issue.

DATED: 10/11/02

CHERYL TOMPKIN
Administrative Law Judge
Office of Administrative Hearings