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BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JIM IRVIN
Commissioner
MARC SPITZER
Commissioner

In the matter of:)	DOCKET NO. S-03509A-02-0000
)	
EVELYN BAUMGARDNER)	NOTICE OF OPPORTUNITY FOR HEARING
DBA Your Living Trust)	REGARDING PROPOSED ORDER TO
7141 North 51st Avenue, Suite B-2)	CEASE AND DESIST, FOR RESTITUTION,
Glendale, Arizona 85301,)	FOR ADMINISTRATIVE PENALTIES, AND
)	FOR OTHER AFFIRMATIVE ACTION
JOHN DOE BAUMGARDNER)	
7141 North 51 st Avenue, Suite B-2)	
Glendale, Arizona 85301)	
)	
Respondents.)	

NOTICE: RESPONDENTS HAVE 10 DAYS TO REQUEST A HEARING (See VIII)

NOTICE: RESPONDENTS HAVE 30 DAYS TO FILE AN ANSWER (See IX)

The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) alleges that respondents have engaged in acts, practices and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”).

I.
JURISDICTION

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

II.
RESPONDENTS

2. Respondent EVELYN BAUMGARDNER (“BAUMGARDNER”) at all times material hereto was a resident of Arizona. At all times material hereto, BAUMGARDNER was licensed to sell insurance in the state of Arizona, but was not registered as a securities salesperson or

1 an investment advisor representative in Arizona.

2 3. At all times material hereto, EVELYN BAUMGARDNER was married to JOHN
3 DOE BAUMGARDNER. All acts done by EVELYN BAUMGARDNER were done in
4 furtherance of and for the benefit of the marital community of EVELYN BAUMGARDNER and
5 JOHN DOE BAUMGARDNER. JOHN DOE BAUMGARDNER therefore is joined in this action,
6 pursuant to A.R.S. § 44-2031(C), to determine the liability of the marital community for the
7 violations alleged herein. The true name of JOHN DOE BAUMGARDNER is presently unknown
8 to the Division; the Division will seek leave to amend this Notice to allege that true name upon
9 ascertaining that name.

10 4. EVELYN BAUMGARDNER and JOHN DOE BAUMGARDNER may be
11 collectively referred to as “RESPONDENTS.” JOHN DOE BAUMGARDNER may be referred to
12 as “RESPONDENT SPOUSE.”

13 **III.**

14 **FACTS**

15 **Alpha Telcom, Inc.**

16 5. At all times material hereto, Alpha Telcom, Inc. (“Alpha”) was an Oregon
17 corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

18 6. At all times material hereto, American Telecommunications Company, Inc.
19 (“ATC”) was a Nevada corporation formed as a wholly owned subsidiary of Alpha on or about
20 September 17, 1998. Originally named ATC, Inc., the name was changed to American
21 Telecommunications Company, Inc., sometime in the first half of 2000. Its address was the same
22 as Alpha’s, but was later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900
23 Vine Street, Suite J, Grants Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants
24 Pass, Oregon 97526.

25 7. At all times material hereto, Paul S. Rubera (“Rubera”) was the president and
26 control person of Alpha, and the control person of ATC.

1 8. ATC was organized by Rubera and operated in conjunction with and as an alter ego
2 of Alpha. The two companies were controlled by Rubera and his associates.

3 9. At all times material hereto, Alpha and ATC, and their affiliates, sold pay
4 telephones with telephone service agreements pursuant to which the investor would share in the
5 profits of the pay telephone. Investors would enter into two agreements, a purchase agreement, and
6 a service agreement with Alpha to manage the phone. The two agreements were presented and
7 promoted simultaneously. The telephones were presented to potential investors with four options
8 in the way of service contracts, each varying in the amount of service provided. The four options
9 varied from Level 1, which included a minimum of service, to Level 4, which provided full service
10 to the purchaser, including choosing a site and installing the telephone, collecting all revenue from
11 the telephone's operation, repairing the telephone when necessary, and even repurchasing or
12 buying back the telephone at the investor's option. Under Level 4, Alpha would split the net
13 proceeds with the investor on a 70/30 basis, with Alpha retaining 70% and the investor receiving
14 30%. The price of the pay telephones was the same regardless of the service option chosen,
15 \$5,000.00 per telephone. Although investors were given a choice of using a company other than
16 Alpha to manage the phone, no known Arizona investor picked a company other than Alpha to
17 manage their phones. A "typical return" on each pay telephone was touted as 14% per year. In
18 practice, all purchasers received \$58.34 per month per pay telephone purchased, which amounted
19 to exactly 14% per annum.

20 10. ATC's primary role was marketing the contracts. Alpha's main focus was on
21 obtaining phone sites and installing, servicing, and managing the phones.

22 11. ATC was presented to the public as the sales organization for Alpha. In early 1999,
23 ATC engaged Strategic Partnership Alliance, L.L.C., a Nevada limited liability company, and/or
24 SPA Marketing, L.L.C., a Nevada limited liability corporation, (collectively "SPA") as its
25 independent marketing and sales firm(s). SPA thereafter was responsible for hiring, training, and
26 supervising sales agents who were selling the telephone contracts. After SPA came on board, ATC

1 remained as the processing center for the contracts, while Alpha continued to perform the service
2 and maintenance of the phones.

3 12. BAUMGARDNER, directly or indirectly, entered into agreements with Alpha,
4 ATC, and/or SPA, pursuant to which BAUMGARDNER sold investment contracts involving
5 Alpha pay telephones (the "Alpha investment contracts") within or from the state of Arizona. All
6 Alpha investment contracts BAUMGARDNER sold were Level 4 contracts.

7 13. BAUMGARDNER told prospective investors their investments were insured. The
8 insurer named varied. Mentioned most often was the Northern and Western Insurance Company of
9 Grand Turk, Turks and Caicos Islands, British West Indies ("N&W"). Also mentioned were
10 Lloyd's of London and four other insurance companies listed as re-insurers. N&W was a captive
11 insurance company wholly owned by Rubera, the President and control person of Alpha, and
12 Robert S. Harrison of Richmond, Texas. N&W is not authorized to write insurance in Arizona.
13 On information and belief, N&W was not authorized to write insurance in any state in which the
14 Alpha pay telephones were located. In a letter dated August 15, 2001, Harrison stated: "There is
15 not now, nor was there ever any insurance coverage for Alpha Telcom, Inc."

16 14. BAUMGARDNER presented Alpha to prospective customers as a stable, profitable,
17 and innovative company that had been in business since 1985. Alpha was said to be selling and
18 providing a "turn-key" operation.

19 15. On information and belief, sales agents were paid commissions from 12% to 19%
20 per telephone sold.

21 16. Pursuant to this commission schedule, BAUMGARDNER sold Alpha investment
22 contracts involving at least 123 telephones to at least 12 individuals or entities within or from the state
23 of Arizona from August 1, 2000 through May 31, 2001, for a total sales amount of at least
24 \$615,000.00.

25 17. Alpha has a long regulatory history in which state securities regulators have found that
26 these purchases of pay telephones and accompanying service contracts were unregistered securities in

1 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
2 Alpha and those working with it to cease and desist. On information and belief, BAUMGARDNER
3 did not reveal these orders to the majority of the investors with whom she dealt. The orders that
4 BAUMGARDNER could have revealed include:

- 5 a. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities
6 Commission, *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.
- 7 b. November 17, 1999, Cease and Desist Order issued by North Carolina
8 Secretary of State, *In the Matter of the North Carolina Securities Division v.*
9 *ATC, Inc., Paul Rubera, et al.*, No. 99-038-CC.
- 10 c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary
11 of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
- 12 d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary
13 of State, *In the Matter of Alpha Telcom, Inc.*, No. 9900201, in which Alpha
14 agreed to offer rescission to all Illinois purchasers.
- 15 e. November 24, 1999, Cease and Desist Order issued by Wisconsin
16 Department of Financial Institutions, *In the Matter of Alpha Telcom, Inc.*
17 *and Paul S. Rubera, et al.*, No. S-99225(EX).
- 18 f. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode
19 Island Department of Business Regulation, *In the Matter of Alpha Telcom,*
20 *Inc. and ATC, Inc.*
- 21 g. July 18, 2000, Florida Department of Banking and Finance filed
22 administrative action against Alpha and others, seeking a Cease and Desist
23 Order.
- 24 h. October 24, 2000, Desist and Refrain Order issued by California Department
25 of Corporations.

26 18. Among actions that have proceeded most recently against Alpha are the
following:

- 27 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of
28 Securities;
- 29 b. August 27, 2001, Temporary Restraining Order issued by United States
30 District Court, District of Oregon, *SEC v. Alpha Telcom, Inc., et al.*, No.
31 CV 01-1283 PA
- 32 c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities
33 Department, *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.

- d. September 6, 2001, Preliminary Injunction issued by United States District Court, District of Oregon, *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- e. February 7, 2002, Final Judgment of Permanent Injunction issued by United States District Court, District of Oregon, *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- f. March 13, 2002, Final Order to Cease and Desist issued by Washington Department of Financial Institutions in *In the Matter of Alpha Telcom, Inc., et al.*, No. SDO-21-02.

The SEC's Complaint in the United States District Court, District of Oregon, alleged that Alpha and its affiliates engaged in a Ponzi-like scheme that never generated enough income to pay expenses, and that the money paid to existing investors always came from sales to new investors. Several days before the Temporary Restraining Order was issued on August 27, 2001, Alpha sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-appointed receiver subsequently took over the remaining operations of Alpha. Alpha consented on October 19, 2001 to entry of the Final Judgment of Permanent Injunction against it, but did not admit the allegations of the Complaint. On February 7, 2002, the United States District Court for the District of Oregon filed its final opinion in connection with the trial of Rubera. In that opinion, the court verified that the Alpha investment contracts are securities subject to regulation, and that Alpha operated a Ponzi-type scheme in connection with sales of the Alpha investment contracts.

19. Alpha's monthly payments to investors ceased prior to August, 2001.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

20. From on or about August 1, 2000, BAUMGARDNER offered or sold securities in the form of investment contracts in Alpha, within or from Arizona.

21. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

1 when in fact the returns paid to investors came from purchases by subsequent
2 investors.

3 26. This conduct violates A.R.S. § 44-1991.

4 **VII.**

5 **REQUESTED RELIEF**

6 The Division requests that the Commission grant the following relief against
7 RESPONDENTS:

8 1. Order RESPONDENTS to permanently cease and desist from violating the
9 Securities Act, pursuant to A.R.S. § 44-2032;

10 2. Order RESPONDENTS, jointly and severally, including the marital community of
11 EVELYN BAUMGARDNER and JOHN DOE BAUMGARDNER, to take affirmative action to
12 correct the conditions resulting from their acts, practices or transactions, including a requirement to
13 make restitution pursuant to A.R.S. § 44-2032;

14 3. Order RESPONDENTS, jointly and severally, including the marital community of
15 EVELYN BAUMGARDNER and JOHN DOE BAUMGARDNER, to pay the state of Arizona
16 administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities
17 Act, pursuant to A.R.S. § 44-2036; and

18 4. Order any other relief that the Commission deems appropriate.

19 **VIII.**

20 **HEARING OPPORTUNITY**

21 RESPONDENTS, including RESPONDENT SPOUSE JOHN DOE BAUMGARDNER,
22 may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If any RESPONDENT**
23 **requests a hearing, that RESPONDENT must also answer this Notice.** A request for hearing
24 must be in writing and received by the Commission within 10 business days after service of this
25 Notice of Opportunity for Hearing. Each RESPONDENT must deliver or mail the request to Docket
26 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A

1 Docket Control cover sheet must accompany the request. A cover sheet form and instructions may
2 be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site
3 at www.cc.state.az.us/utility/forms/index.htm.

4 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
5 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
6 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission
7 may, without a hearing, enter an order against each RESPONDENT granting the relief requested by
8 the Division in this Notice of Opportunity for Hearing.

9 Persons with a disability may request a reasonable accommodation such as a sign language
10 interpreter, as well as request this document in an alternative format, by contacting Shelly M.
11 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail
12 shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the
13 accommodation.

14 IX.

15 ANSWER REQUIREMENT

16 Pursuant to A.A.C. R14-4-305, if RESPONDENT or RESPONDENT SPOUSE requests a
17 hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer to this
18 Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W.
19 Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of
20 service of this Notice of Opportunity for Hearing. A Docket Control cover sheet must
21 accompany the Answer. A cover sheet form and instructions may be obtained from
22 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at
23 www.cc.state.az.us/utility/forms/index.htm.

24 Additionally, RESPONDENT or RESPONDENT SPOUSE must serve the Answer upon
25 the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing
26 or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor,

1 Phoenix, Arizona, 85007, addressed to Kathleen Coughenour DeLaRosa.

2 The Answer shall contain an admission or denial of each allegation in this Notice and the
3 original signature of RESPONDENT, RESPONDENT SPOUSE, or RESPONDENT's attorney. A
4 statement of a lack of sufficient knowledge or information shall be considered a denial of an
5 allegation. An allegation not denied shall be considered admitted.

6 When RESPONDENT or RESPONDENT SPOUSE intends in good faith to deny only a
7 part or a qualification of an allegation, RESPONDENT or RESPONDENT SPOUSE shall specify
8 that part or qualification of the allegation and shall admit the remainder. RESPONDENT or
9 RESPONDENT SPOUSE waives any affirmative defense not raised in the answer.

10 The officer presiding over the hearing may grant relief from the requirement to file an
11 Answer for good cause shown.

12 DATED this ____ day of _____, 2002.

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14 _____
15 Mark Sendrow
16 Director of Securities
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