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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

In the matter of:)	DOCKET NO. S-03529A-03-0000
WESLEY KARBAN WYATT and JANE)	NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, FOR RESTITUTION, FOR ADMINISTRATIVE PENALTIES, AND FOR OTHER AFFIRMATIVE ACTION
DOE WYATT, husband and wife,)	
d/b/a THE FINANCIAL GREENHOUSE)	
c/o Harry N. Stone, Attorney at Law)	
3030 North Third Street, Suite 200 Phoenix, Arizona 85012)	
Respondents.)	

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) alleges that respondent WESLEY KARBAN WYATT (“WYATT”) has 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. At all times material hereto, WYATT was a part-time resident of the state of Arizona. WYATT did acts within or from Arizona out of which the claims in this action arose. At

1 all times relevant hereto, WYATT was licensed to sell insurance in the state of Arizona. WYATT
2 was not registered to sell securities within or from the state of Arizona.

3 3. At all times material hereto, WYATT was doing business as THE FINANCIAL
4 GREENHOUSE (“TFG”). TFG is registered with the state of Pennsylvania as an entity with a
5 fictitious name, but not as a corporation or a limited liability company.

6 4. JANE DOE WYATT was at all relevant times the spouse of WYATT. JANE DOE
7 WYATT is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the
8 liability of the marital community.

9 5. At all times relevant, WYATT and JANE DOE WYATT were acting for their own
10 benefit, and for the benefit or in furtherance of the marital community.

11 6. WYATT may also be referred to herein as “RESPONDENT.” JANE DOE WYATT
12 may also be referred to herein as “RESPONDENT SPOUSE.”

13 **III.**

14 **FACTS**

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

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

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

26 10. ATC was organized by Rubera and operated in conjunction with and as an alter ego

1 of Alpha. The two companies were controlled by Rubera and his associates.

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

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

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

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

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

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

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

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

21 18. Pursuant to this commission schedule, WYATT sold Alpha investment contracts
22 involving at least 289 telephones to at least 46 individuals or entities within or from the state of
23 Arizona from March, 1999 through July, 2001, for a total sales amount of at least \$1,445,000.
24 WYATT earned commissions on these sales in an amount, on information and belief, not less than
25 \$260,100.

26 19. On information and belief, WYATT also received “override” commissions as a result

1 of having recruited other individuals to sell Alpha investment contracts. WYATT received sales and
2 override commissions in an amount not presently known, but that will be proven at the hearing herein.

3 6. Alpha has a long regulatory history in which state securities regulators have found that
4 these purchases of pay telephones and accompanying service contracts were unregistered securities in
5 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
6 Alpha and those working with it to cease and desist. On information and belief, WYATT did not
7 reveal these orders to the majority of the investors with whom he dealt. The orders that WYATT
8 could have revealed included:

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

7. Among actions that have proceeded most recently against Alpha, after the time
WYATT ceased selling the investments, are the following:

...

- 1 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of Securities;
- 2 b. August 27, 2001, Temporary Restraining Order issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA
- 3
- 4 c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities Department in *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.
- 5
- 6 d. September 6, 2001, Preliminary Injunction issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
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- 8 e. February 7, 2002, Final Judgment of Permanent Injunction issued by United States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA.
- 9
- 10 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.
- 11

12 The SEC's Complaint in the United States District Court, District of Oregon, alleged that Alpha
13 and its affiliates engaged in a Ponzi-like scheme that never generated enough income to pay
14 expenses, and that the money paid to existing investors always came from sales to new investors.
15 Several days before the Temporary Restraining Order was issued on August 27, 2001, Alpha
16 sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-
17 appointed receiver subsequently took over the remaining operations of Alpha. Alpha consented on
18 October 19, 2001 to entry of the Final Judgment of Permanent Injunction against it, but did not
19 admit the allegations of the Complaint.

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

21 **IV.**

22 **VIOLATION OF A.R.S. § 44-1841**

23 **(Offer or Sale of Unregistered Securities)**

24 21. From on or about March 1, 1999, RESPONDENT offered or sold securities in the
25 form of investment contracts, within or from Arizona.

26 22. The securities referred to above were not registered pursuant to Articles 6 or 7 of the

1 Securities Act.

2 23. This conduct violates A.R.S. § 44-1841.

3 **V.**

4 **VIOLATION OF A.R.S. § 44-1842**

5 **(Transactions by Unregistered Dealers or Salesmen)**

6 24. RESPONDENT offered or sold securities within or from Arizona while not
7 registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

8 25. This conduct violates A.R.S. § 44-1842.

9 **VI.**

10 **VIOLATION OF A.R.S. § 44-1991**

11 **(Fraud in Connection with the Offer or Sale of Securities)**

12 8. In connection with the offer or sale of securities within or from Arizona,
13 RESPONDENT directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii)
14 made untrue statements of material fact or omitted to state material facts which were necessary in
15 order to make the statements made not misleading in light of the circumstances under which they
16 were made; or (iii) engaged in transactions, practices or courses of business which operated or
17 would operate as a fraud or deceit upon offerees and investors. RESPONDENT's conduct includes,
18 but is not limited to, the following:

19 a) RESPONDENT failed to advise purchasers of the state regulatory actions
20 against Alpha and of the potential consequences of those orders with respect
21 to their investment;

22 b) RESPONDENT represented to purchasers that their investment and/or the
23 pay telephones they purchased from Alpha were fully insured, when they
24 were not, in fact, insured by any insurance company authorized to provide
25 insurance in Arizona or in any state in which the pay telephones were
26 located;

1 c) RESPONDENT represented to purchasers that monies they would receive as
2 a result of their investment in Alpha were derived from profits on pay
3 telephones, when in fact the returns paid to investors came from purchases by
4 subsequent investors.

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

6 **VII.**

7 **REQUESTED RELIEF**

8 The Division requests that the Commission grant the following relief:

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

11 2. Order RESPONDENT to take affirmative action to correct the conditions resulting
12 from his acts, practices or transactions, including a requirement to make restitution pursuant to
13 A.R.S. § 44-2032;

14 3. Order RESPONDENT to pay the state of Arizona administrative penalties of up to
15 five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

16 4. Order that the marital community of RESPONDENT WYATT and JANE DOE
17 WYATT be subject to any order of restitution, rescission, administrative penalties, or other
18 appropriate affirmative action pursuant to A.R.S. § 25-215; and

19 5. Order any other relief that the Commission deems appropriate.

20 **VIII.**

21 **HEARING OPPORTUNITY**

22 RESPONDENT, including RESPONDENT SPOUSE, may request a hearing pursuant to
23 A.R.S. § 44-1972 [44-3212] and A.A.C. R14-4-306. **If any respondent requests a hearing,**
24 **respondent must also answer this Notice.** A request for hearing must be in writing and received
25 by the Commission within 10 business days after service of this Notice of Opportunity for Hearing.
26 Each respondent must deliver or mail the request to Docket Control, Arizona Corporation

1 Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must
2 accompany the request. A cover sheet form and instructions may be obtained from Docket Control
3 by calling (602) 542-3477 or on the Commission's Internet web site at
4 www.cc.state.az.us/utility/forms/index.htm.

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

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

15 IX.

16 ANSWER REQUIREMENT

17 Pursuant to A.A.C. R14-4-305, if RESPONDENT or RESPONDENT SPOUSE requests a
18 hearing, RESPONDENT or RESPONDENT SPOUSE must deliver or mail an Answer to this
19 Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W.
20 Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this
21 Notice. A Docket Control cover sheet must accompany the Answer. A cover sheet form and
22 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
23 Commission's Internet web site at 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 each RESPONDENT or RESPONDENT's attorney. A statement of a lack of
4 sufficient knowledge or information shall be considered a denial of an allegation. An allegation
5 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 and
9 RESPONDENT SPOUSE waive 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 17th day of March, 2003.

13
14 /s/ Mark Sendrow
15 Mark Sendrow
16 Director of Securities
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