

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

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

6 In the matter of:) DOCKET NO. S-03507A-02-0000
7)
7 RALPH SHAUL and LESLIE SHAUL,) **NOTICE OF OPPORTUNITY FOR HEARING**
husband and wife) **REGARDING PROPOSED ORDER TO**
8 Post Office Box 9760) **CEASE AND DESIST, FOR RESTITUTION,**
9 Phoenix, Arizona 85068,) **FOR ADMINISTRATIVE PENALTIES, AND**
Respondents.) **FOR OTHER AFFIRMATIVE ACTION**
10 _____)

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

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

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

17 **I.**

18 **JURISDICTION**

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

21 **II.**

22 **RESPONDENTS**

23 2. Respondent RALPH SHAUL (“SHAUL”) at all times material hereto was a married
24 man and a resident of Arizona. At all times material hereto, SHAUL was licensed to sell insurance
25 in the state of Arizona, but was not registered as a securities salesperson or an investment advisor
26 representative in Arizona.

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

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

16 11. ATC was presented to the public as the sales organization for Alpha. In early 1999,
17 ATC engaged Strategic Partnership Alliance, L.L.C., a Nevada limited liability company, and/or
18 SPA Marketing, L.L.C., a Nevada limited liability corporation, (collectively "SPA") as its
19 independent marketing and sales firm(s). SPA thereafter was responsible for hiring, training, and
20 supervising sales agents who were selling the telephone contracts. After SPA came on board, ATC
21 remained as the processing center for the contracts, while Alpha continued to perform the service
22 and maintenance of the phones.

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

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

10 14. SHAUL presented Alpha to prospective customers as a stable, profitable, and
11 innovative company that had been in business since 1985. Alpha was said to be selling and
12 providing a “turn-key” operation.

13 15. SHAUL was paid set commissions with respect to each Alpha investment contract
14 he sold.

15 16. Pursuant to this commission schedule, SHAUL sold Alpha investment contracts
16 involving at least 131 telephones to at least 28 individuals or entities within or from the state of
17 Arizona from June 1, 2000 through April 30, 2001, for a total sales amount of at least \$655,000.00.
18 SHAUL earned commissions on these sales in an amount not less than \$98,760.00.

19 17. Alpha has a long regulatory history in which state securities regulators have found that
20 these purchases of pay telephones and accompanying service contracts were unregistered securities in
21 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
22 Alpha and those working with it to cease and desist. On information and belief, SHAUL did not
23 reveal these orders to the majority of the investors with whom he dealt. The orders that SHAUL could
24 have revealed include:

25 ...

26 ...

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

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

- 14 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of
15 Securities;
- 16 b. August 27, 2001, Temporary Restraining Order issued by United States
17 District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No.
18 CV 01-1283 PA
- 19 c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities
20 Department in *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.
- 21 d. September 6, 2001, Preliminary Injunction issued by United States District
22 Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No.
23 CV 01-1283 PA.
- 24 e. February 7, 2002, Final Judgment of Permanent Injunction issued by United
25 States District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*,
26 No. CV 01-1283 PA.

1 f. March 13, 2002, Final Order to Cease and Desist issued by Washington
2 Department of Financial Institutions in *In the Matter of Alpha Telcom, Inc., et*
3 *al.*, No. SDO-21-02.

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

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

13 **IV.**

14 **VIOLATION OF A.R.S. § 44-1841**

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

16 20. From on or about June 1, 2000, SHAUL offered or sold securities in the form of
17 investment contracts in Alpha, within or from Arizona.

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

20 22. This conduct violates A.R.S. § 44-1841.

21 **V.**

22 **VIOLATION OF A.R.S. § 44-1842**

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

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

26 24. This conduct violates A.R.S. § 44-1842.

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1 **VI.**

2 **VIOLATION OF A.R.S. § 44-1991**

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

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

- 11 a) SHAUL failed to advise purchasers of the state regulatory actions against Alpha and
12 of the potential consequences of those orders with respect to their investment;
- 13 b) SHAUL represented to purchasers that their investment and/or the pay telephones
14 they purchased from Alpha were fully insured, when they were not, in fact, insured
15 by any insurance company authorized to provide insurance in Arizona or in any state
16 in which the pay telephones were located;
- 17 c) SHAUL represented to purchasers that monies they would receive as a result of their
18 investment in Alpha were derived from profits on pay telephones, when in fact the
19 returns paid to investors came from purchases by subsequent investors.

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

21 **VII.**

22 **REQUESTED RELIEF**

23 The Division requests that the Commission grant the following relief against
24 RESPONDENTS:

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

1 Hood, Executive Assistant to the Executive Secretary, voice phone number 602/542-3931, e-mail
2 shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the
3 accommodation.

4 **IX.**

5 **ANSWER REQUIREMENT**

6 Pursuant to A.A.C. R14-4-305, if any RESPONDENT requests a hearing, within 30
7 calendar days after the date of service of this Notice of Opportunity for Hearing, that
8 RESPONDENT or that RESPONDENT's attorney must deliver or mail an answer to this Notice to
9 Docket Control, Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona
10 85007. A docket Control cover sheet must accompany the answer. A cover sheet form and
11 instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
12 Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

13 Additionally, the RESPONDENT or the RESPONDENT's attorney must serve the answer
14 upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by
15 mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd
16 Floor, Phoenix, Arizona 85007, addressed to Kathleen Coughenour DeLaRosa.

17 The answer shall contain an admission or denial of each allegation in this Notice and the
18 original signature of the RESPONDENT or the RESPONDENT's attorney. A statement of a lack
19 of sufficient knowledge or information shall be considered a denial of an allegation. An allegation
20 not denied shall be considered admitted.

21 When a RESPONDENT intends in good faith to deny only a part or a qualification of an
22 allegation, the RESPONDENT shall specify that part or qualification of the allegation and shall
23 admit the remainder. The RESPONDENT waives any affirmative defense not raised in the
24 answer.

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