

OPEN MEETING ITEM 5/6/04



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COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: accsec@ccsd.cc.state.az.us

BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Marc Spitzer, Chairman
William A. Mundell
Jeff Hatch-Miller
Mike Gleason
Kristin K. Mayes

Arizona Corporation Commission

DOCKETED

APR 22 2004

FROM: Matthew J. Neubert
Director of Securities

DOCKETED BY [Signature]

DATE: April 20, 2004

RE: *In the Matter of Elliot Crosby, et ux.*, Docket No. S-03510A-02-0000

CC: Brian C. McNeil, Executive Secretary

RECEIVED
2004 APR 22 P 1:01
AZ CORP COMMISSION
DOCUMENT CONTROL

Attached is a proposed Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same by Elliot Crosby ("Consent Order"). This order is another of the orders negotiated to resolve claims regarding sales of pay telephone investment contracts involving phones offered by Alpha Telcom, Inc. ("Alpha") and related entities, generally through sales by licensed insurance professionals.

Alpha recruited salespersons for these pay phone contracts, including Crosby, by various means. Alpha provided these salespersons with legal opinions stating that the investment contracts in question were not securities (these opinions, however, did not address Arizona law regarding investment contracts). During the period when most of the insurance salespersons were selling these contracts, however, a number of jurisdictions already had begun to take action against Alpha and its affiliates for illegal securities sales (although certain other jurisdictions had concluded the contracts were not securities). Had the salespersons checked further regarding the legality of the sales, they therefore could have determined that some jurisdictions had concluded the investments should have been registered as securities.

The proposed Consent Order calls for Crosby to cease and desist from further violations of the Arizona Securities Act, and orders Crosby to disgorge \$100,000 of the commissions he received from sales of Alpha pay telephone contracts, and pay an administrative penalty of \$10,000.

The Securities Division recommends approval of this Consent Order. Although the Order does not reflect full disgorgement of all commissions paid to Crosby, Crosby received a full discharge in a Chapter 7 bankruptcy proceeding in which he named all investors to whom he had sold the Alpha investment contracts. As a result, it is unclear whether the Division would be able to obtain an enforceable order for restitution absent Crosby's consent. As a result, a disgorgement of \$100,000 of those commissions is a fair compromise. The penalty reflects an appropriate penalty for the activity.

Originated by: Kathleen Coughenour DeLaRosa

MJN/kcd

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

In the matter of
ELLIOT CROSBY
10253 East Jerome
Mesa, Arizona 85208,
MARSHA CROSBY
2898 East Harwell Road
Gilbert, Arizona 85234-1476,
Respondent.

DOCKET NO. S-03510A-02-0000

DECISION NO. _____

**ORDER TO CEASE AND DESIST, ORDER
OF RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME
BY: ELLIOT CROSBY**

RESPONDENT ELLIOT CROSBY ("CROSBY") elects to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same by: Elliot Crosby ("Order"). CROSBY admits the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1. Respondent CROSBY at all times material hereto was a resident of Arizona. At all times material hereto, CROSBY was licensed to sell insurance in the state of Arizona, but was not registered as a securities salesperson or an investment advisor representative in Arizona.

Alpha Telcom, Inc.

2. At all times material hereto, Alpha Telcom, Inc. ("Alpha") was an Oregon corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

1 3. At all times material hereto, American Telecommunications Company, Inc.
2 (“ATC”) was a Nevada corporation formed as a wholly owned subsidiary of Alpha on September
3 17, 1998. Originally named ATC, Inc., the name was changed to American Telecommunications
4 Company, Inc., sometime in the first half of 2000. Its address was the same as Alpha’s, but was
5 later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900 Vine Street, Suite J,
6 Grants Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants Pass, Oregon 97526.

7 4. At all times material hereto, Paul S. Rubera was the president and control person of
8 Alpha, and the control person of ATC.

9 5. ATC was organized by Rubera and operated in conjunction with and as an alter ego
10 of Alpha. The two companies were controlled by Rubera, and there was in reality no real
11 difference between the two companies.

12 6. ATC was presented to the public as the sales organization for Alpha. CROSBY,
13 directly or indirectly, entered into agreements with Alpha and/or ATC pursuant to which CROSBY
14 sold investment contracts involving Alpha pay telephones (the “Alpha investment contracts”)
15 within or from the state of Arizona.

16 7. At the time CROSBY entered into agreements to sell the Alpha investment
17 contracts, Alpha and/or ATC and/or their affiliates or associates advised CROSBY that the
18 investments in question were not required to be registered as securities under Arizona law, and
19 provided him with copies of attorney opinion letters advising that the investments were not
20 securities.

21 8. At all times material hereto, Alpha sold pay telephones with telephone service
22 agreements pursuant to which the investor would share in the profits of the pay telephone. The
23 telephones were presented to potential investors with four options in the way of service contracts,
24 each varying in the amount of service provided. The four options varied from Level 1, which
25 included a minimum of service, to Level 4, which provided full service to the purchaser, including
26 choosing a site and installing the telephone, collecting all revenue from the telephone’s operation,

1 repairing the telephone when necessary, and even repurchasing or buying back the telephone at the
2 investor's option. Under Level 4, Alpha would split the net proceeds with the investor on a 70/30
3 basis, with Alpha retaining 70% and the investor receiving 30%. The price of the pay telephones
4 was the same regardless of the service option chosen, \$5,000.00 per telephone. CROSBY sold
5 only investment contracts under Level 4. A "typical return" on each pay telephone was projected
6 as 14% per year. In practice, all purchasers received \$58.34 per month per pay telephone
7 purchased, which amounted to exactly 14% per annum.

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

18 10. CROSBY presented Alpha to prospective customers as a stable profitable and
19 innovative company that had been in business since 1985. Alpha was said to be selling and
20 providing a "turn-key" operation.

21 11. Sales agents were paid commissions from 12% to 19% per telephone sold.

22 12. Pursuant to this commission schedule, CROSBY sold Alpha investment contracts to
23 [number] of individuals or entities within or from the state of Arizona from June, 2000 through May,
24 2001, for a total purchase amount of \$2,130,000, and earned commissions in an amount exceeding
25 \$100,000.

26 13. Alpha has a long regulatory history in which state securities regulators have found that

1 these purchases of pay telephones and accompanying service contracts were unregistered securities in
 2 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
 3 Alpha and those working with it to cease and desist. The majority of Arizona investors, and possibly
 4 all Arizona investors, were not aware of these orders. The orders that could have been disclosed to
 5 investors include:

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

21 14. Actions that have proceeded against Alpha since CROSBY ceased selling the
 22 Alpha investment contracts include:

- 23 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of
 24 Securities;
- 25 b. August 27, 2001, Temporary Restraining Order issued by United States
 26 District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No.
 CV 01-1283 PA

- c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities Department in *In the Matter of Alpha Telecom, Inc., et al.*, No. 01-36-S.
- d. September 6, 2001, Preliminary Injunction issued by United States District Court, District of Oregon, in *SEC v. Alpha Telecom, 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, in *SEC v. Alpha Telecom, 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 Telecom, 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.

15. Some other jurisdictions had entered orders that the Alpha investment contracts, or similar pay telephone investments, were not securities.

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

II.

CONCLUSIONS OF LAW

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

2. CROSBY offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. CROSBY violated A.R.S. § 44-1841 by offering or selling securities that were

1 neither registered nor exempt from registration.

2 4. CROSBY violated A.R.S. § 44-1842 by offering or selling securities while neither
3 registered as a dealer or salesman nor exempt from registration.

4 5. CROSBY's conduct is grounds for a cease and desist order pursuant to A.R.S.
5 § 44-2032.

6 6. CROSBY's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
7 2032.

8 7. CROSBY's conduct is grounds for administrative penalties under A.R.S.
9 § 44-2036.

10 **III.**

11 **ORDER**

12 **THEREFORE**, on the basis of the Findings of Fact, Conclusions of Law, and CROSBY's
13 consent to the entry of this Order, the Commission finds that the following relief is appropriate, in
14 the public interest, and necessary for the protection of investors:

15 **IT IS ORDERED**, pursuant to A.R.S. § 44-2032, that CROSBY, and any of CROSBY's
16 agents, employees, successors and assigns, permanently cease and desist from violating the
17 Securities Act.

18 **IT IS FURTHER ORDERED**, pursuant to A.R.S. § 44-2032, that CROSBY shall pay
19 restitution to investors shown on the records of the Commission in the amount of \$100,000.00,
20 plus interest at the rate of 10% per annum from the date of this order until paid in full. Payment
21 shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in
22 an interest-bearing account maintained and controlled by the Arizona Attorney General, with the
23 initial payment of \$1,000.00 due and payable on the date of this Order, and \$1,000.00 per month
24 due and payable on the first day of each month, beginning the first day of the month following the
25 date of entry of this Order, until the restitution amount is paid in full. The Arizona Attorney
26 General shall disburse the funds on a pro rata basis to investors. Any funds that the Attorney

1 General is unable to disburse shall revert to the state of Arizona.

2 If CROSBY does not comply with this order of restitution, any outstanding balance shall
3 be in default and shall be immediately due and payable.

4 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that CROSBY shall pay an
5 administrative penalty in the amount of \$10,000. Payment shall be made by cashier's check or
6 money order, payable to the "State of Arizona," in installments of \$1,00.00 per month, with the
7 initial installment being due on the first day of the month following the final payment of restitution
8 as herein provided.

9 IT IS FURTHER ORDERED that this Order shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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13 CHAIRMAN

COMMISSIONER

COMMISSIONER

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15 COMMISSIONER

COMMISSIONER

16 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
17 Executive Secretary of the Arizona Corporation
18 Commission, have hereunto set my hand and caused the
official seal of the Commission to be affixed at the
Capitol, in the City of Phoenix, this _____ day of
_____, 2004.

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21 BRIAN C. McNEIL
Executive Secretary

22
23 DISSENT

CONSENT TO ENTRY OF ORDER

1
2 1. ELLIOT CROSBY ("CROSBY"), an individual, admits the jurisdiction of the
3 Commission over the subject matter of this proceeding. CROSBY acknowledges that he has been
4 fully advised of his right to a hearing to present evidence and call witnesses and CROSBY
5 knowingly and voluntarily waives any and all rights to a hearing before the Commission and all
6 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. CROSBY acknowledges that this Order To Cease And Desist, Order of
8 Restitution, Order for Administrative Penalties and Consent to Same by: Elliot Crosby ("Order")
9 constitutes a valid final order of the Commission.

10 2. CROSBY knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. CROSBY acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. CROSBY acknowledges that he has been represented by counsel in this matter, he
16 has reviewed this Order with his attorney and understands all terms it contains.

17 5. CROSBY neither admits nor denies the Findings of Fact and Conclusions of Law
18 contained in this Order.

19 6. By consenting to the entry of this Order, CROSBY agrees not to take any action or
20 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
21 Fact or Conclusion of Law in this Order or creating the impression that this Order is without
22 factual basis. CROSBY will undertake steps necessary to assure that all of his agents and
23 employees, if any, understand and comply with this agreement.

24 7. While this Order settles this administrative matter between CROSBY and the
25 Commission, CROSBY understands that this Order does not preclude the Commission from
26 instituting other administrative proceedings based on violations that are not addressed by this

1 Order.

2 8. CROSBY understands that this Order does not preclude the Commission from
3 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
4 that may be related to the matters addressed by this Order.

5 9. CROSBY understands that this Order does not preclude any other agency or officer
6 of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
7 proceedings that may be related to matters addressed by this Order.

8 10. CROSBY agrees that he will not apply to the state of Arizona for registration as a
9 securities dealer or salesman or for licensure as an investment adviser or investment adviser
10 representative until such time as all restitution and penalties under this Order are paid in full.

11 11. CROSBY agrees that he will not exercise any control over any entity that offers or
12 sells securities or provides investment advisory services, within or from Arizona.

13 12. CROSBY agrees that until restitution and penalties are paid in full, CROSBY will
14 notify the Director of the Securities Division within 30 days of any change in home address or any
15 change in CROSBY's ability to pay amounts due under this Order.

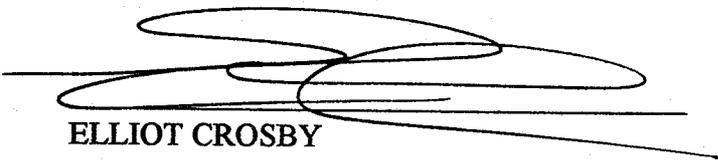
16 13. CROSBY understands that default shall render him liable to the Commission for its
17 costs of collection and interest at the maximum legal rate.

18 14. CROSBY agrees that he will continue to cooperate with the Securities Division
19 including, but not limited to, providing complete and accurate testimony at any hearing in this
20 matter and cooperating with the state of Arizona in any related investigation or any other matters
21 arising from the activities described in this Order.

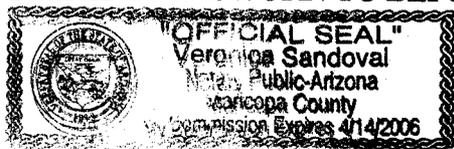
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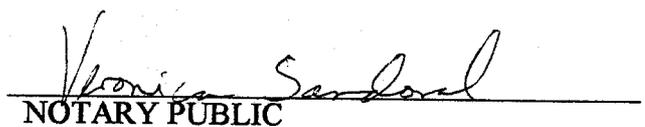
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15. CROSBY consents to the entry of this Order and agrees to be fully bound by its terms and conditions. If CROSBY breaches any provision of this Order, the Commission may vacate this Order and restore this case to its active docket.


ELLIOT CROSBY

SUBSCRIBED AND SWORN TO BEFORE me this 13th day of April, 2004.




NOTARY PUBLIC

My Commission Expires:

4/14/2006

