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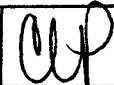
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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAY 30 2002

DOCKETED BY 

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF:

DOCKET NO. S-03329A-01-0000

EARLY DETECTION CENTERS, INC.
251 Jeanell Drive, Ste. 3
Carson City, NV 89703-2129

DECISION NO. 64849

JOHNATHON ROBERTS, INC.
nka AAA INVESTMENT COMPANY
251 Jeanell Drive, Ste. 3
Carson City, NV 89703-2129

DAVID HITZIG
634 West Flower Avenue
Mesa, AZ 85202

PAUL C. WOODCOCK
10710 E. Sunnyside Drive
Scottsdale, AZ 85259,

Respondents.

OPINION AND ORDER

DATE OF HEARING: January 15, 2002
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Philip J. Dion
APPEARANCES: Ms. Kathryn McCormick, Securities Division, on behalf
of the Arizona Corporation Commission;
John Augustine, on behalf of David Hitzig

BY THE COMMISSION:

On March 20, 2001, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties and for Other Affirmative Action ("Notice") against Early Detection Centers, Inc. ("EDC"), Johnathon Roberts, Inc. ("JRI"), David Hitzig and Paul C. Woodcock (collectively "Respondents") in which the Division alleged multiple

1 violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in
2 the form of investment contracts.

3 The Respondents were duly served with a copy of the Notice.

4 On April 2, 2001, Respondents Hitzig and Woodcock filed a request for a hearing.

5 On June 28, 2001, the Commission issued Decision No. 63854 against Respondents EDC and
6 JRI. In that Decision, EDC and JRI were held jointly and severally liable for restitution in the
7 amount of \$150,000, plus interest. Each corporation was also ordered to pay an administrative
8 penalty of \$30,000, plus any applicable interest.
9

10 In November of 2001, Respondent Paul Woodcock entered into a Consent Order that was
11 approved by the Commission in Decision No. 64204 (November 8, 2001). In that Decision, Mr.
12 Woodcock agreed to pay \$75,000 in restitution and an administrative fee of \$5,000. Both sums were
13 due at the signing of the Order. Mr. Woodcock has complied with those provisions.
14

15 On November 27, 2001, Respondent Hitzig and the Division filed stipulated Findings of Fact
16 and Conclusions of Law for consideration in the adjudication of this matter.

17 On January 15, 2001, a full public hearing was commenced before a duly authorized
18 Administrative Law Judge at the Commission's offices in Phoenix, Arizona. Both parties appeared
19 with the assistance of counsel. The parties presented arguments advocating their positions regarding
20 the appropriate administrative penalty and restitution amounts that should be ordered in this matter.
21 The Division argued that, due to Mr. Hitzig's placing his name in the advertisement that solicited
22 investors, his face to face meetings with investors, his signature appearing on all of the contracts with
23 investors, and the overall nature of his involvement, Mr. Hitzig should be assessed an administrative
24 fine of between \$20,000 and \$25,000. The Respondent argued that Mr. Woodcock was assessed a
25 penalty of \$5,000, and argued that Mr. Hitzig should, at a minimum, be treated equally. The
26 Respondent further argued that the Commission should consider imposing an even lower penalty.
27
28

1 The Respondent noted that unlike Mr. Woodcock, Mr. Hitzig will be found in violation of the Act
2 and will also have to pay interest at the legal rate of 10 percent on the restitution amount that is due.
3 Respondent argued that Mr. Hitzig is going to pay substantially more money than Mr. Woodcock,
4 due to the amount of interest that will accrue. The Respondent also requested that if a penalty is
5 imposed in the case, it should be paid at the end of the restitution period so that the investors' money
6 is returned first. The parties agreed that the restitution in this matter should be determined to be
7 \$75,000 plus interest.
8

9 Based upon the arguments presented at the hearing and upon the two prior Decisions related
10 to this matter, Respondent Hitzig should pay an administrative penalty of \$5,000. Mr. Hitzig's
11 participation in this case is comparable to Mr. Woodcock's. Based upon that participation and
12 because Mr. Hitzig will be responsible for interest payments and the additional penalty of being
13 found in violation of the Act, the fine of \$5,000 assessed to Mr. Hitzig is just and reasonable.
14

15 * * * * *

16 Having considered the entire record herein and being fully advised in the premises, the
17 Commission finds, concludes, and orders that:
18

19 **FINDINGS OF FACT¹**

20 1. David Hitzig ("Hitzig") whose last known address is 634 West Flower, Mesa, Arizona
21 85202, was at all times relevant, the Statutory Agent, "Cashier" and Authorized Agent for Johnathon
22 Roberts, Inc. ("Johnathon Roberts"). During the same period of time, Hitzig was the administrator
23 and "Cashier" of Early Detection Centers, Inc. ("EDC"). In holding these positions, Hitzig acted as a
24 salesperson on behalf of EDC and Johnathon Roberts along with Paul C. Woodcock ("Woodcock")
25 who was at all times relevant, a "Cashier" for EDC. Both companies had bank accounts in Arizona,
26 on which Hitzig was an authorized signer. Further, during all relevant times, Hitzig was conducting
27

28 ¹ The parties submitted a Motion that stipulated to Findings of Fact 1 - 32 in this matter.

1 business involving the offer and sale of securities within or from the state of Arizona.

2 2. During the period of January 1997 through November 1997, Hitzig offered for sale
3 and sold securities within or from the state of Arizona in the form of investment contracts issued by
4 EDC through Johnathon Roberts. Johnathon Roberts held itself out as a specifically disclosed and
5 authorized agent of EDC. The investments were offered through general solicitations verbally by
6 Hitzig and in the newspaper, in the form of a classified ad. Hitzig was not a registered securities
7 dealer in the state of Arizona. The investment contracts in EDC were not registered for sale in the
8 state of Arizona, nor offered in reliance upon an available exemption from registration, nor pursuant
9 to a notice of filing.

10 3. On or about February 14, 1997, Investor One responded to a newspaper ad regarding
11 an opportunity for an "absentee only" investor. The ad promised a \$144,000 return the first year on
12 an investment of \$100,000. The ad instructed interested investors to call Hitzig at Johnathon Roberts.
13 On or about February 14, 1997, Investor One met with Hitzig. Before any disclosure was made,
14 Hitzig required Investor One to sign a "Confidentiality and Non-Compete Agreement." After
15 signing, Hitzig disclosed information regarding the EDC investment.

16 4. Hitzig told Investor One that EDC intended to open centers throughout the metro
17 Phoenix area. The centers were designed to conduct tests for the early detection of cancer. Hitzig
18 explained that EDC together with Investor One would form a corporation to operate a medical service
19 business in the state of Arizona. Investor One received a pro forma statement of how the financial
20 return to investors was calculated. It showed that the business would return \$144,000 each year on a
21 \$100,000 investment.

22 5. Hitzig discussed information relating to finances and the locations for centers that
23 EDC intended to open during a second meeting with Investor One. Also discussed was information
24 about cancer testing. Investor One was provided with a document labeled "Proforma" that listed the
25 expected operating costs and profits.

26 6. Investor One and EDC entered into an Agreement of Incorporation ("Agreement") on
27 March 27, 1997. At that time, Investor One provided a \$100,000 check made payable to EDC.
28 Hitzig accepted the check. Investor One understood that the money was to be put into escrow and

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1 used to finance the opening of the first EDC center. In fact, the money was not put into escrow, but
2 deposited into an EDC bank account at Norwest Bank.

3 7. Hitzig signed the Agreement as an agent for Johnathon Roberts on behalf of and with
4 the consent of EDC. The Agreement required Investor One and EDC to form a corporation under
5 which they would operate a medical service business. The corporation had to be formed within 30
6 days of the execution date of the Agreement. The Agreement required Investor One to pay a "fee" of
7 \$100,000 to EDC for 50% ownership in the business. The Agreement specified that EDC would
8 provide all necessary equipment, personnel contracts and cover expenses of the center for the first
9 four months of operation. From the fifth month on, EDC would pay all expenses other than
10 advertising and telephone, which would be expenses shared between Investor One and EDC.

11 8. The Agreement provided Investor One with the right to demand that the contract
12 become void if a center was not in place before 45 days following the close. This was a clause
13 Investor One required in the Agreement. The close date was the date the Agreement was signed,
14 March 27, 1997. Hitzig requested an addendum to the Agreement in April, to extend the date for the
15 opening of the center. The document, entitled "Addendum to Purchase Contract," specifies that a
16 corporation was formed according to the terms of the Agreement, and that the filing of the
17 corporation was postponed so an exact address could be determined. In addition, EDC and Investor
18 One agreed to extend the opening date of the center by fifteen days to consider an alternate location
19 for the center. Hitzig signed the addendum as agent of Johnathon Roberts on behalf of and with the
20 consent of EDC.

21 9. On May 6, 1997, both parties signed another addendum to the Agreement. The May
22 addendum specifies that the center would be located in Mesa and that the center would open on or
23 before June 16, 1997. Hitzig signed the addendum as agent of Johnathon Roberts on behalf of and
24 with the consent of EDC. Investor One made the investment in reliance on representations and
25 agreements set forth in the information provided by Hitzig.

26 10. The center did not open. Investor One insisted the contract had become void and
27 demanded repayment of his \$100,000 investment. Hitzig refused to refund the \$100,000 investment.
28 No money was ever refunded.

1 11. Hitzig failed to provide a disclosure document and failed to provide essential
2 information regarding the offering. Information withheld included, but was not limited to, risk
3 factors, capitalization, plan of distribution, actual use of proceeds, federal tax aspects, and
4 redemptions. The offering did not include materials disclosing information about the officers and key
5 personnel of either EDC or Johnathon Roberts, directors of either company, or principal stockholders.

6 12. In or about March 1997, Investor Two's son saw an ad in the newspaper regarding the
7 sale of a chiropractic clinic. He called about the clinic and arranged a meeting with Hitzig to discuss
8 the purchase of the clinic. The meeting occurred in approximately March 1997 at the office of
9 Johnathon Roberts. Investor Two's son did not purchase the clinic but did receive a telephone call
10 approximately one month later from Hitzig regarding an investment in EDC. Hitzig said that EDC
11 would offer a good return on an investment. Hitzig explained that the minimum investment was
12 \$50,000 and one investor from Mesa had already invested. Investor Two's son contacted his father
13 (Investor Two) and mother.

14 13. In or about May 1997, Investor Two met with Hitzig and another EDC representative,
15 at the office of Johnathon Roberts. Investor Two was told about the EDC offering including the
16 claim that EDC would have locations in Scottsdale, Mesa, Sun City, Phoenix, and possibly one
17 additional, unnamed location. Investor Two could choose any location he desired.

18 14. Hitzig presented a projection chart that predicted EDC would perform 10-15 tests for
19 cancer each day at a cost of \$399 per test. Hitzig told Investor Two that he would receive \$99.75 or
20 25% of each test. Investor Two understood that he was not required to do any work or be involved in
21 the management of EDC. All he had to do was stay home and wait for his checks to arrive. Hitzig
22 and another EDC representative told Investor Two that he could make a minimum profit of \$100,000
23 during the first year and that investing in EDC was better than investing in the stock market. Risks
24 associated with the investment were never discussed.

25 15. A second meeting occurred on or about May 7, 1997. This was approximately a week
26 to a week and a half after the first meeting. Investor Two wrote a check for \$10,000 to EDC from his
27 personal savings account. He gave the check to Hitzig, which was later deposited into the EDC bank
28 account at Norwest Bank. Hitzig drafted an Agreement to Incorporate ("Agreement") on his personal

1 computer.

2 16. The Agreement is the same as the one entered into by Investor One, with the following
3 distinctions. Investor Two would own 25% of the shares, EDC would own 50% and an investor to be
4 named at a later date would own 25%. The Agreement with Investor Two does not include the first
5 right of refusal to purchase each new location (Section 2.1, of Investor One's Agreement) and does
6 not include the right to demand the contract become void if a center is not in place on or before 45
7 days following the close (Section 3.3, of Investor One's Agreement). Exhibit "A" to Investor Two's
8 Agreement specified that the EDC center would be located in Sun City, Arizona and that the planned
9 opening date for this center was June 16, 1997.

10 17. As with the Agreement entered by Investor One, Hitzig signed the Agreement as an
11 agent for Johnathon Roberts on behalf of and with the consent of EDC. The Agreement required
12 Investor Two and EDC to form a corporation under which they would operate a medical service
13 business. The corporation had to be formed within 30 days of May 7, 1997, the execution date of the
14 Agreement. The Agreement required Investor Two to pay a "fee" of \$50,000 to EDC for 25%
15 ownership in the business. The Agreement specified that EDC would provide all necessary
16 equipment, personnel contracts and cover expenses of the center for the first four months of
17 operation. From the fifth month on, EDC would pay all expenses other than advertising and
18 telephone, which would be expenses shared between Investor Two and EDC. Investor Two made the
19 investment in reliance on representations and agreements set forth in the information provided by
20 Hitzig.

21 18. Hitzig told Investor Two's son that if he referred anyone who made an investment in
22 EDC, Hitzig would pay a referral fee. An investment of \$50,000 paid a 5% referral fee. A \$100,000
23 investment would earn a 10% referral fee.

24 19. Hitzig omitted or otherwise failed to disclose that all testing would be performed by
25 outside laboratories.

26 20. On May 22, 1997, Investor Two wrote a second personal check of \$40,000 payable to
27 EDC. The money was from an individual retirement account. The check was deposited into the EDC
28 account at Norwest Bank. Hitzig was a signatory on this account.

1 21. Hitzig told Investor Two that the EDC clinic would be up and running within two
2 months. When two months passed and the center did not open, Investor Two began to ask questions.
3 Hitzig and another EDC representative gave Investor Two different excuses for failure to open the
4 clinic. Finally, in January 18, 1998, Hitzig told Investor Two that EDC had been dissolved on
5 November 21, 1997 due to a lack of business.

6 22. Hitzig failed to tell Investor Two that the original Agreement with Investor One to
7 open a clinic had to be amended twice because the scheduled date of the opening could not be
8 complied with. Investor One had an addendum May 6, 1997, requiring a clinic to open on or before
9 June 16, 1997. Hitzig took money from Investor Two on May 7, 1997 and May 22, 1997 without
10 telling Investor Two about the unopened clinic.

11 23. Hitzig failed to provide Investor Two with a disclosure document and failed to provide
12 essential information regarding the offering. Information withheld included, but was not limited to,
13 risk factors, capitalization, plan of distribution, actual use of proceeds, federal tax aspects, and
14 redemptions. The offering did not include materials disclosing information about the officers and key
15 personnel of either EDC or Johnathon Roberts, directors of either company, or principal.

16 24. Investor One claims he was never given a first right of refusal to purchase each new
17 location to be opened in the future. Unknown to Investor One, Hitzig entered into an Agreement to
18 Incorporate with Investor Two.

19 25. EDC did open a clinic in Sun City. EDC made arrangement for two osteopathic
20 doctors to administer a test called the AMAS test at a cost of \$399 per test. The doctors were told
21 that \$200 would be used to cover laboratory costs of testing and \$199 would be split between EDC
22 and the doctor performing the test. The center remained opened for approximately six to eight
23 months and 12 - 20 people visited the center for cancer testing.

24 26. Hitzig provided information regarding profits from each test that was not supported by
25 fact. Investors were told that the cost of each test was \$399. Investor One was told that the expenses
26 included \$242.90 to the laboratory and \$20 to the physician doing the test. Investor One expected a
27 return of 50% of the gross profit of \$136.10 or \$68.05 per test. In fact, the doctors hired at the Sun
28 City clinic stated the cost of AMAS testing was approximately \$200 per test, leaving \$199 gross

1 profit that the doctor and EDC would divide, 50% to each of them. The money from the testing
2 conducted at the Sun City clinic was not returned to either investor.

3 27. Notwithstanding agreements to open clinics with both Investors One and Two's
4 investment, no such clinics were ever opened.

5 28. Hitzig opened a bank account for EDC at Norwest Bank Arizona on March 26, 1997.
6 The address for EDC was listed as 634 West Flower Avenue, Mesa, Arizona 85202. This is the
7 residence address for Hitzig and the address listed on his personal bank account. The signatories on
8 the account were Hitzig and another EDC representative.

9 29. A financial analysis shows that of the \$150,000 provided by investors and deposited
10 into the account, approximately 25% was actually spent on a business expense, advertising. The
11 remaining funds were transferred to other entities. Investors were never informed that these other
12 entities would receive funds from EDC, nor were they informed of any role that any of the companies
13 played in the EDC venture.

14 30. Hitzig failed to tell investors about the relationship between EDC and Johnathon
15 Roberts.

16 31. The funds sent to the Johnathon Roberts account from the EDC bank account totaled
17 approximately \$29,500. The Johnathon Roberts bank account, at Norwest Bank in Phoenix, was
18 opened January 10, 1997. The company listed an address at 2150 E. Camelback Road, Scottsdale,
19 Arizona 85251. The signatories on the account included Hitzig.

20 32. Respondent Hitzig permanently waived his right to a hearing and appeal under
21 Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* with respect to a finding
22 in this matter as he and the Securities Division agreed to submit this stipulated Finding of Fact and
23 Conclusions of Law to the Administrative Law Judge for consideration in the adjudication of this
24 matter.

25 33. Based upon the foregoing, Respondent Hitzig shall be assessed an administrative of
26 \$5,000.

27 34. Based on the foregoing, the Commission finds that Respondent Hitzig shall pay
28 restitution of \$75,000.

1 35. Respondent Hitzig has submitted cashiers checks to the Securities Division for
2 repayment of restitution. The total amount paid to date is \$17,000.²

3 CONCLUSIONS OF LAW³

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

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

8 3. Hitzig violated A.R.S. § 44-1841 by offering or selling securities that were neither
9 registered nor exempt from registration.

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

12 5. Hitzig violated A.R.S. § 44-1991 by offering or selling securities within or from
13 Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or
14 misleading omissions of material facts, and (c) engaging in transactions, practices or courses of
15 business which operate or would operate as a fraud or deceit.

16 6. Hitzig's conduct was grounds for a cease and desist order pursuant to A.R.S. § 44-
17 2032.

18 7. Hitzig's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2132.

19 8. Hitzig's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

20 ORDER

21 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission in §
22 44-2032, Respondent David Hitzig shall cease and desist from his actions described hereinabove in
23 violation of A.R.S. §§ 44-1841, 44-1842 and 44-1991.

24 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission, under
25 A.R.S. § 44-2036, Respondent David Hitzig shall pay an administrative penalty in the amount of
26 \$5,000, payable to the "State of Arizona" no later than December 31, 2002, for the violations of

27 ² While the Respondent has submitted the Cashier's Checks totaling \$17,000, those checks have not been cashed by the
28 Division.

³ The parties submitted a Motion that stipulated to Conclusions of Law 1 - 8 in this matter.

1 A.R.S. §§ 44-1841, 44-1842 and 44-1991.

2 IT IS FURTHER ORDERED that the administrative penalties ordered hereinabove shall bear
3 an interest rate of 10 percent per year for any outstanding balance after January 1, 2003.

4 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under
5 A.R.S. § 44-2032, Respondent David Hitzig shall make restitution to the investors shown on the
6 records of the Commission in the amount of \$75,000, subject to any legal set-offs by any other
7 Respondent and confirmed by the Director of Securities, said restitution is to be made by October 31,
8 2002.

9 IT IS FURTHER ORDERED that the restitution ordered hereinabove shall bear interest at the
10 rate of 10 percent per year for a period from the date of investments to the date of payment of
11 restitution by Respondent.

12 IT IS FURTHER ORDERED that all restitution payments ordered hereinabove shall be
13 deposited into an interest bearing account(s), if appropriate, until distribution is made.

14 IT IS FURTHER ORDERED that any payments received from Mr. Hitzig will be first applied
15 towards the balance of the restitution until it is paid in full. After the restitution in this matter is paid
16 in full, then the payments made by Mr. Hitzig will be applied toward the administrative penalty in
17 this matter.

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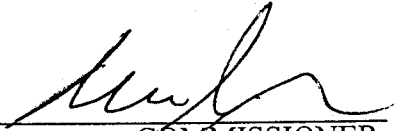
1 IT IS FURTHER ORDERED that Mr. Hitzig shall contact the Securities Division by June 1,
2 2002, to establish a payment plan that delineates how Mr. Hitzig will repay the restitution and pay the
3 administrative fee in the timeframe as described in this Decision.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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7 CHAIRMAN




8 COMMISSIONER

COMMISSIONER

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation 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 30th day of MAY, 2002.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
PJD:mlj

1 SERVICE LIST FOR: EARLY DETECTION CENTERS, INC.

2 DOCKET NO. S-03329A-01-0000

3
4 John R. Augustine, Jr. P.C.
5 The Citadel, Ste. 300
6 2727 North Third Street
7 Phoenix, AZ 85004-1106

8 EARLY DETECTION CENTERS, INC.
9 251 Jeanell Drive, Ste. 3
10 Carson City, NV 89703-2129

11 JOHNATHAN ROBERTS, INC.
12 nka AAA INVESTMENT COMPANY
13 251 Jeanell Drive, Ste. 3
14 Carson City, NV 89703-2129

15 W. Mark Sendrow, Director
16 Securities Division
17 ARIZONA CORPORATION COMMISSION
18 1300 West Washington Street
19 Phoenix, Arizona 85007

20 Moira McCarthy
21 Assistant Attorney General
22 1275 West Washington Street
23 Phoenix, AZ 85007

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