

OPEN MEETING ITEM 8/21/03



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



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ARIZONA CORPORATION COMMISSION

SECURITY CONFIDENTIAL
DOCUMENT CONTROL

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ORIGINAL

MEMORANDUM

TO: Marc Spitzer, Chairman
Jim Irvin
William A. Mundell
Jeff Hatch-Miller
Mike Gleason

FROM: Matt Neubert *myu*
Acting Director of Securities

DATE: August 5, 2003

RE: Proposed Default Order Against Respondents Global Trusts, L.L.C., and Clyde F. Wagon and Martha E. Wagon, husband and wife, *In the matter of Global Trusts L.L.C., et al.* (Docket No. S-03508A-02-0000)

CC: James G. Jayne, Interim Executive Secretary

Arizona Corporation Commission
DOCKETED

AUG 07 2003

DOCKETED BY *CAR*

Attached is a proposed Default Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and for Other Affirmative Action Re: Respondent Global Trusts, L.L.C. ("Global") and Respondents Clyde F. Wagon ("Wagon") and Martha E. Wagon (collectively the "Defaulted Respondents") (the "Order"). The Order requires Global and Wagon to cease and desist from violations of the Securities Act of Arizona, orders the Defaulted Respondents to pay restitution to investors in the amount of \$585,000.00, and orders Global and Wagon to pay administrative penalties of \$25,000.00 each, for a total penalty of \$50,000.

This is the first Order to come before you in connection with the sales in Arizona of Alpha Telcom, Inc. ("Alpha") pay telephone investment contracts. The order itself sets forth the history of the operations of Alpha and its subsidiaries. These Defaulted Respondents, who were licensed to sell insurance but not registered to sell securities, sold 117 pay telephones investment contracts, at \$5,000 each, to a total of nine investors, for a total sales amount of \$585,000.00.¹ Based on information available to the Division, most or all of the investors to whom they sold these pay telephones were or had been customers of the Defaulted Respondents in their insurance business.

¹ This figure works out to an average of 13 contracts per investor, or \$65,000 per investor.

The Defaulted Respondents originally were served by certified mail. The Division subsequently personally served the Notice of Opportunity for Hearing on the Defaulted Respondents. They did not request a hearing or otherwise respond to the Notice, and the Division filed an Application for Entry of Default. Defaulted Respondents' only response to that Application was to file a Notice of Bankruptcy. Again, they did not request a hearing or otherwise respond to the Notice. The Division thereupon filed a motion seeking an order confirming entry of default against the Defaulted Respondents. The Hearing Division granted that motion by Procedural Order dated July 18, 2003, and ordered the Division to submit a proposed Default Order to the Commission.

The Division recommends this proposed Default Order on the following grounds: The order provides for full restitution to the investors to whom the Defaulted Respondents sold investment contracts. It also provides for penalties considered adequate to deter the Defaulted Respondents from further violations of the Securities Act.

Originator: Kathleen Coughenour DeLaRosa

1 subsequently filed a Motion for Entry of Default Order to Cease and Desist, for Restitution, for
2 Administrative Penalties, and for Other Affirmative Action Re: Respondents Global Trusts,
3 L.L.C., and Clyde F. Wagnon and Martha E. Wagnon, Husband and Wife (“Default Motion”).
4 Upon due consideration, the Hearing Officer granted the Default Motion by Procedural Order
5 entered on or about July 18, 2003. The Commission therefore enters this Default Order To Cease
6 and Desist, Order of Restitution, Order for Administrative Penalties and for Other Affirmative
7 Action Re: Respondent Global Trusts, L.L.C., and Respondents Clyde F. Wagnon and Martha E.
8 Wagnon, Husband and Wife (“Order”).

9 I.

10 FINDINGS OF FACT

11 1. Respondent GLOBAL is an Arizona limited liability company organized on or about
12 December 28, 1998, and doing business in Pima County, Arizona. GLOBAL is not currently
13 registered and has not in the past been registered in Arizona as a securities dealer or as an investment
14 advisor.

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

18 3. At all times material hereto, WAGNON was married to MARTHA E. WAGNON.
19 All of WAGNON’s acts referred to herein were done in furtherance of and for the benefit of the
20 marital community of WAGNON and MARTHA E. WAGNON. MARTHA E. WAGNON was
21 joined in this action, pursuant to A.R.S. § 44-2031(C), solely to determine the liability of the marital
22 community for the violations alleged.

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

25 5. At all times material hereto, American Telecommunications Company, Inc.
26 (“ATC”) was a Nevada corporation formed as a wholly owned subsidiary of Alpha on or about

1 September 17, 1998. Originally named ATC, Inc., the name was changed to American
2 Telecommunications Company, Inc., sometime in the first half of 2000. Its address was the same
3 as Alpha's, but was later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900
4 Vine Street, Suite J, Grants Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants
5 Pass, Oregon 97526.

6 6. At all times material hereto, Paul S. Rubera ("Rubera") was the president and
7 control person of Alpha, and the control person of ATC.

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

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

1 9. ATC's primary role was marketing the contracts. Alpha's main focus was on
2 obtaining phone sites and installing, servicing, and managing the phones.

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

10 11. WAGNON and GLOBAL entered into agreements with Alpha, ATC, and/or SPA,
11 pursuant to which WAGNON and GLOBAL sold investment contracts involving Alpha pay
12 telephones (the "Alpha investment contracts") within or from the state of Arizona. All Alpha
13 investment contracts WAGNON and GLOBAL sold were Level 4 contracts.

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

24 13. WAGNON and GLOBAL presented Alpha to prospective customers as a stable,
25 profitable, and innovative company that had been in business since 1985, selling and providing a
26 "turn-key" operation.

1 14. WAGNON and GLOBAL sold Alpha investment contracts involving 117 telephones
2 to nine investors within or from the state of Arizona from November 18, 1999 through March 22,
3 2001, for a total sales amount of \$585,000.00. Most or all of the investors to whom WAGNON and
4 GLOBAL sold Alpha investment contracts were or had been clients of WAGNON and GLOBAL in
5 connection with their insurance sales.

6 15. WAGNON and GLOBAL received commissions of more than \$116,080.00 as a
7 result of their sales of Alpha investment contracts.

8 16. Alpha has a long regulatory history in which state securities regulators have found that
9 these purchases of pay telephones and accompanying service contracts were unregistered securities in
10 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
11 Alpha and those working with it to cease and desist. WAGNON and GLOBAL did not reveal these
12 orders to most investors with whom they dealt. The orders WAGNON and GLOBAL could have
13 revealed include:

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

1 h. October 24, 2000, Desist and Refrain Order issued by California Department
of Corporations.

2 17. Actions that have proceeded against Alpha since WAGNON and GLOBAL
3 stopped selling the Alpha investment contracts include:

4 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of
5 Securities;

6 b. August 27, 2001, Temporary Restraining Order issued by United States
7 District Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No.
CV 01-1283 PA

8 c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities
9 Department, *In the Matter of Alpha Telecom, Inc., et al.*, No. 01-36-S.

10 d. September 6, 2001, Preliminary Injunction issued by United States District
11 Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No. CV 01-1283
12 PA.

13 e. February 7, 2002, Final Judgment of Permanent Injunction issued by United
14 States District Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No.
CV 01-1283 PA.

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

18 The SEC's Complaint in the United States District Court, District of Oregon (the "Oregon
19 District Court"), alleged that Alpha and its affiliates engaged in a Ponzi-like scheme that never
20 generated enough income to pay expenses, and that the money paid to existing investors always
21 came from sales to new investors. The Oregon District Court issued a Temporary Restraining
22 Order ("TRO") on August 27, 2001. Prior to issuance of the TRO, Alpha sought bankruptcy
23 protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-appointed receiver
24 subsequently took over the remaining operations of Alpha. Alpha consented on October 19,
25 2001 to entry of the Final Judgment of Permanent Injunction against it by the Oregon District
26 Court, but did not admit the allegations of the Complaint. On February 7, 2002, the Oregon
District Court 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.

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

2 II.

3 CONCLUSIONS OF LAW

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

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

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

10 4. WAGNON and GLOBAL violated A.R.S. § 44-1842 by offering or selling
11 securities while neither registered as dealers or salesmen nor exempt from registration.

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

16 6. The conduct of WAGNON and GLOBAL conduct is grounds for a cease and desist
17 order pursuant to A.R.S. § 44-2032.

18 7. The conduct of WAGNON and GLOBAL is grounds for an order of restitution
19 pursuant to A.R.S. § 44-2032.

20 8. The conduct of WAGNON and GLOBAL is grounds for administrative penalties
21 under A.R.S. § 44-2036.

22 9. The marital community of WAGNON and MARTHA E. WAGNON is liable for
23 the acts of WAGNON pursuant to A.R.S. § 44-2031(C).

24 ...

25 ...

26 ...

1 **III.**

2 **ORDER**

3 THEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, the
4 Commission finds that the following relief is appropriate, in the public interest, and necessary for
5 the protection of investors:

6 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that WAGNON and GLOBAL, their
7 agents, employees, successors and assigns, permanently cease and desist from violating the
8 Securities Act.

9 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that DEFAULTED
10 RESPONDENTS, including the marital community of WAGNON and MARTHA E. WAGNON,
11 shall, jointly and severally, pay restitution to investors shown on the records of the Commission in
12 the amount of \$585,000.00, plus interest at the rate of 10% per annum from the date of this order
13 until paid in full. Payment shall be made by cashier's check or money order payable to the "State
14 of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona
15 Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to
16 investors. If all investors are paid in full, any excess funds shall revert to the state of Arizona.

17 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that WAGNON and
18 GLOBAL shall each pay an administrative penalty in the amount of \$25,000, payable to the "State
19 of Arizona." Payment shall be made in full by cashier's check or money order on the date of this
20 Order. If WAGNON and GLOBAL do not comply with this order for administrative penalties,
21 any outstanding balance may be deemed in default and shall be immediately due and payable.

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

2 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

3
4
5 CHAIRMAN

COMMISSIONER

COMMISSIONER

6 COMMISSIONER

COMMISSIONER

7 IN WITNESS WHEREOF, I, JAMES G. JAYNE, Interim
8 Executive Secretary of the Arizona Corporation
9 Commission, have hereunto set my hand and caused the
10 official seal of the Commission to be affixed at the
11 Capitol, in the City of Phoenix, this _____ day of
12 _____, 2003.

13 _____
14 JAMES G. JAYNE
15 Interim Executive Secretary

16 _____
17 DISSENT

18 This document is available in alternative formats by contacting Shelly M. Hood, Executive
19 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
20 shood@cc.state.az.us.

21 Global Trusts Default Order.doc (KCD)