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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
DOCKET CONTROL

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

In the matter of: THEODORE J. HOGAN & ASSOCIATES, LLC a.k.a. TED HOGAN AND ASSOCIATES, an Arizona limited liability company, THEODORE J. HOGAN a.k.a. TED KILLS IN THE FOG, a married man and CHRISTINA L. DAMITIO a.k.a. CHRISTINA HOGAN, a married woman Respondents.	DOCKET NO. S-20714A-09-0553 **NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES AND FOR OTHER AFFIRMATIVE ACTION**

Arizona Corporation Commission
DOCKETED
DEC -8 2009
DOCKETED BY

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 respondents THEODORE J. HOGAN & ASSOCIATES, LLC, a.k.a. TED HOGAN AND ASSOCIATES, THEODORE J. HOGAN a.k.a. TED KILLS IN THE FOG, and CHRISTINA L. DAMITIO a.k.a. CHRISTINA HOGAN have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division further alleges THEODORE J. HOGAN and CHRISTINA L. DAMITIO, are persons controlling THEODORE J. HOGAN & ASSOCIATES, LLC, within the meaning of A.R.S. § 44-1999, so that they are jointly and severally liable under A.R.S. § 44-1999 to the same extent as THEODORE J. HOGAN & ASSOCIATES, LLC for violations of the 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. THEODORE J. HOGAN & ASSOCIATES, LLC a.k.a. TED HOGAN AND ASSOCIATES ("HOGAN & ASSOCIATES") is an Arizona limited liability company organized on August 5, 2002. According to the Articles of Organization, HOGAN & ASSOCIATES is a member-managed limited liability company. At the first meeting of the members of HOGAN & ASSOCIATES, held on August 5, 2002, the members were listed as THEODORE J. HOGAN as "Chairman pro tem" and HOGAN's daughter as "Secretary pro tem." Also at the first meeting of the members of HOGAN & ASSOCIATES, THEODORE J. HOGAN was voted "Managing Member" and "Chief Executive Officer." At the same meeting, CHRISTINA L. DAMITIO was elected "Vice-Managing Member."

3. THEODORE J. HOGAN a.k.a. TED KILLS IN THE FOG ("HOGAN") was, at all relevant times, a resident of Sedona, Arizona. HOGAN is an enrolled member of the Crow Tribe.

4. CHRISTINA L. DAMITIO a.k.a. CHRISTINA HOGAN ("DAMITIO") was, at all relevant times, a resident of Sedona, Arizona. In addition to being the "Vice-Managing Member," DAMITIO represented on real estate loan documents that she was "Vice-president" and/or "owner/vp" of HOGAN & ASSOCIATES. DAMITIO and HOGAN were married in July of 2004.

5. HOGAN & ASSOCIATES and HOGAN may be referred to collectively as "Respondents."

6. At all times relevant, HOGAN and DAMITIO were acting for their own benefit and for the benefit or in furtherance of their marital community.

III.

FACTS

7. Since at least 2001, HOGAN & ASSOCIATES and HOGAN, while in Arizona, sought investors in Arizona and elsewhere. HOGAN & ASSOCIATES and HOGAN raised at least $1.9 million from at least 32 investors.

8. HOGAN & ASSOCIATES and HOGAN represented to offerees and investors that HOGAN & ASSOCIATES and HOGAN had the "opportunity to coordinate a significant financial undertaking for the mineral exploration and development of resources (Project) on the Crow Indian Reservation" in Montana to "facilitate this Project between the Tribe and [Energy Companies] requires substantial funding."

9. HOGAN & ASSOCIATES' business address is located in Sedona, Arizona at the current residence of HOGAN and DAMITIO. Legal title of the residence is vested in DAMITIO.

10. Beginning in 2001, HOGAN & ASSOCIATES and/or HOGAN entered into contracts with investors. The contracts were titled "Interest in a Commissions Agreement" ("Agreements"). According to the Agreements "Ted Hogan, of Theodore J. Hogan & Associates, LLC of Sedona, Arizona AKA Ted Killsinthefog" was to receive under the various Agreements of Consulting/Development Services with the Crow Tribe ("Consulting Agreements") in return for an investment, the investors were to receive a portion of the compensation.

11. The Agreements described that HOGAN & ASSOCIATES and HOGAN were "coordinating a significant financial undertaking for the mineral exploration and development of resources (Project) on the Crow Indian Reservation . . . between the Crow Tribe . . . and one or more energy companies." HOGAN was to earn "as much as . . . $360,000,000 over the next six months to one year" for "commissions, consulting fees, royalties, and like compensation for his activities." According to the Agreements signed by the investors and HOGAN, the investors were to provide HOGAN & ASSOCIATES and/or HOGAN with the funds necessary for the "mineral exploration and development of resources . . . on the Crow Indian Reservation." In return for

making the investment, the investors would receive a portion of the compensation HOGAN & ASSOCIATES and HOGAN were to be paid pursuant to the various Consulting Agreements. Some of the Agreements state that the "[i]nvestor shall not have any interest or ownership in Hogan and Associates, nor shall the [i]nvestor participate in the management of Hogan and Associates." The investors were only required to provide investment funds to HOGAN & ASSOCIATES and HOGAN.

12. According to the Agreements, the investors were to receive a return on their investments between six months to a year after the investment was made. The investors were to receive a return on their investments through a percentage or share of the "commissions, consulting fees, royalties and like compensation for his activities" that HOGAN expected to earn from the Consulting Agreements. The Agreements with the investors were essentially the same, however, the amount of return that each investor was promised differed. For example:

a) Based upon the Agreement one investor signed, HOGAN & ASSOCIATES and HOGAN were to pay the investor ten times the amount invested;

b) In one instance, the investor was told he would receive fifteen times the dollar amount invested from HOGAN & ASSOCIATES and HOGAN;

c) In another instance, investors were told they would earn five times the amount invested from HOGAN & ASSOCIATES and HOGAN;

d) In another Agreement signed by an investor, the investor was to receive five percent of all the commissions earned by HOGAN & ASSOCIATES and HOGAN; and

e) In still another variation, the investors were to receive ten times their initial investment. On the second investment made by the same investors they were to receive one percent of the entire amount of the proceeds of the project plus $150,000.

13. In May of 2001, HOGAN, individually, entered into an Agreement with an investor. Under this Agreement, HOGAN was to "coordinate a significant financial undertaking for the mineral exploration and development of resources . . . on the Crow Indian Reservation . . . between

the Crow Tribe . . . and one or more energy companies." HOGAN purported to have an "exclusive agency agreement to receive commissions, consulting fees, royalties, and like compensation for his activities." According to the Agreement, HOGAN was to earn commissions that may reach "as much as . . . $360,000,000 . . . beginning over the next six (6) months to one (1) year." According to the Agreement, the investor was to "make a personal loan to Hogan's activities and the commissions Hogan [would] receive, and [the investor]desire[d] to provide Hogan with the funds he need[ed] to facilitate personal living and enhance the Project."

14. In September of 2005, HOGAN, individually, entered into an Agreement with an investor. Under this Agreement, HOGAN was to "coordinate a significant financial undertaking for the mineral exploration and development of Individual Indian resources . . . on the Crow Indian Reservation . . . between the Crow Individual Indians and one or more economic/energy development companies." The Agreement stated that "Hogan ha[d] an agreement to receive commissions, consulting fees, royalties, and like compensation for his activities." The investor agreed to "make this loan to Hogan's activities and the commissions Hogan will receive." HOGAN agreed to pay the investor ten (10) times the original amount of the loan "from all commissions earned and paid to Hogan by the Inidviduals [sic] or companies including, . . . commissions, consulting fees, royalties, expense, or reimbursements . . .."

15. In 2002, Respondents represented to at least one investor that the development project on the Crow Indian Reservation was "bonded and guaranteed by the Federal government."

16. In 2003 and 2004, Respondents represented to investors that there was a time limit on the investment opportunity and they must hurry if they wanted to invest in the program. In early 2005, Respondents represented to at least one investor, that he was the only investor in the program.

17. In 2003, Respondents represented to an investor that the drilling was about to start on the Tribal lands. In 2004, Respondents stated to one investor that the drilling would start in about two weeks. In 2005 Respondents told an investor that production drilling had started.

Respondents had not started drilling on the Crow Indian Reservation. Further, Respondents did not have permission to drill on the Crow Indian Reservation.

18. HOGAN & ASSOCIATES and HOGAN have been raising money from investors to develop the resources of the Crow Indian Reservation since at least 2001 using many variations of the same Agreement. No investor has received the return of their principal or received the expected returns pursuant to the terms of the Agreement.

19. In July of 2005, DAMITIO stated on a residential loan application that she was self-employed as the owner of HOGAN & ASSOCIATES with a title of "VP Energy Development." In January of 2005, the certified public accountant employed by HOGAN & ASSOCIATES verified, in a letter to the mortgage company, that DAMITIO was a fifty percent owner of HOGAN & ASSOCIATES and had been for the last seven years. DAMITIO listed in the July 2005 application that she received approximately $19,300 a month in income. The only employer listed for DAMITIO was HOGAN & ASSOCIATES.

20. In February of 2006, on another residential loan application, DAMITIO stated that, for the past nine years, she was employed as the vice-president of HOGAN & ASSOCIATES. In addition, DAMITIO disclosed on the application that she received salary of about $24,200 a month. The only employer listed by DAMITIO was HOGAN & ASSOCIATES.

21. Upon information and belief, the main source of money in the HOGAN & ASSOCIATES bank accounts was from investors.

22. HOGAN represented to investors that if anything happened to him, DAMITIO and HOGAN's daughter would know what to do to continue the project. Further, HOGAN represented to at least one investor that the "Associates" in HOGAN & ASSOCIATES was DAMITIO and his daughter.

23. DAMITIO stated to an investor that she "had been working on this project for many years with" HOGAN. DAMITIO received a letter from an investor describing his plan to invest in

the development project on the Crow Indian Reservation that HOGAN had described. The letter was addressed to DAMITIO at HOGAN & ASSOCIATES.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

24. From on or about September of 2001 through February of 2006, HOGAN & ASSOCIATES and HOGAN offered or sold securities in the form of investment contracts and/or participation in a profit-sharing agreement, within or from Arizona.

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

26. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

27. HOGAN & ASSOCIATES and HOGAN offered or sold securities within or from Arizona while not registered as dealers and/or salesmen pursuant to Article 9 of the Securities Act.

28. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

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

29. In connection with the offer or sale of securities within or from Arizona, HOGAN & ASSOCIATES, HOGAN and DAMITIO directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that

operated or would operate as a fraud or deceit upon offerees and investors. The conduct includes, but is not limited to, the following:

a) HOGAN & ASSOCIATES and HOGAN misrepresented to some offerees and investors that they were the only investors in the program when in fact there were many investors.

b) HOGAN & ASSOCIATES and HOGAN misrepresented to some offerees and investors work had already begun on the Crow Indian Reservation, the project was near completion or that the project was moving forward with various work being completed, when, in fact, the project had not begun.

c) HOGAN & ASSOCIATES and HOGAN misrepresented to at least one investor that the development project on the Crow Indian Reservation was "bonded and guaranteed by the Federal government" when, in fact, the project was not,

d) HOGAN & ASSOCIATES and HOGAN failed to disclose to offerees and investors that no investor has received a return of their principal or the expected returns as represented under the Agreement signed by HOGAN & ASSOCIATES or HOGAN.

30. This conduct violates A.R.S. § 44-1991.

31. HOGAN and DAMITIO directly or indirectly controlled persons or entities within the meaning of A.R.S. § 44-1999, specifically HOGAN & ASSOCIATES. Therefore, HOGAN and DAMITIO are jointly and severally liable under A.R.S. § 44-1999 to the same extent as HOGAN & ASSOCIATES for its violations of A.R.S. § 44-1991.

VII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

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

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

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

4. Order that the marital community of HOGAN and DAMITIO be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

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

VIII.

HEARING OPPORTUNITY

Each Respondent, may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at http://www.azcc.gov/divisions/hearings/docket.asp.

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

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A.

Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

IX.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at http://www.azcc.gov/divisions/hearings/docket.asp.

Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to Wendy Coy, Senior Counsel.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

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The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 8th day of December, 2009.

Mark Dinell
Assistant Director of Securities