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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

COMMISSIONERS

KRISTIN K. MAYES, Chairman
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2009 DEC -8 P 1:34

AZ CORP COMMISSION
DOCKET CONTROL

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 [Signature]

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.

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**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.



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

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

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

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

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

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

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

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

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

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

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

20 16. In 2003 and 2004, Respondents represented to investors that there was a time limit  
21 on the investment opportunity and they must hurry if they wanted to invest in the program. In early  
22 2005, Respondents represented to at least one investor, that he was the only investor in the  
23 program.

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

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

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

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

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

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

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

24 23. DAMITIO stated to an investor that she "had been working on this project for many  
25 years with" HOGAN. DAMITIO received a letter from an investor describing his plan to invest in  
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1 the development project on the Crow Indian Reservation that HOGAN had described. The letter  
2 was addressed to DAMITIO at HOGAN & ASSOCIATES.

3 **IV.**

4 **VIOLATION OF A.R.S. § 44-1841**

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

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

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

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

12 **V.**

13 **VIOLATION OF A.R.S. § 44-1842**

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

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

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

18 **VI.**

19 **VIOLATION OF A.R.S. § 44-1991**

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

21 29. In connection with the offer or sale of securities within or from Arizona, HOGAN &  
22 ASSOCIATES, HOGAN and DAMITIO directly or indirectly: (i) employed a device, scheme, or  
23 artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that  
24 were necessary in order to make the statements made not misleading in light of the circumstances  
25 under which they were made; or (iii) engaged in transactions, practices, or courses of business that  
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1 operated or would operate as a fraud or deceit upon offerees and investors. The conduct includes, but  
2 is not limited to, the following:

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

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

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

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

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

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

20 **VII.**

21 **REQUESTED RELIEF**

22 The Division requests that the Commission grant the following relief:

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





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

3 **IX.**

4 **ANSWER REQUIREMENT**

5 Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting  
6 respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket  
7 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within  
8 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from  
9 Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
10 <http://www.azcc.gov/divisions/hearings/docket.asp>.

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

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

19 When the answering respondent intends in good faith to deny only a part or a qualification  
20 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
21 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 5<sup>th</sup> day of December, 2009.



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Mark Dinell  
Assistant Director of Securities