

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER
RECEIVED
MARC SPITZER
COMMISSIONER

2002 MAY 14 P 3: 28

ARIZONA CORPORATION COMMISSION



ORIGIN



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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

AZ CORP COMMISSION
DOCUMENT CONTROL

MEMORANDUM

Arizona Corporation Commission
DOCKETED

MAY 14 2002

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

OPEN MEETING ITEM DOCKETED BY

5/23/02

FROM: Mark Sendrow
Director of Securities

DATE: May 8, 2002

RE: Docket No. S-03449A-01-0000, 21st Century Satellite Communications, Inc. et al., Proposed Order To Cease And Desist, Order Of Restitution and Order For Administrative Penalties Re: Respondent 21st Century Satellite Communications, Inc.

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order to Cease and Desist, Order of Restitution and Order for Administrative Penalties for Respondent 21st Century Satellite Communications, Inc. ("21st CENTURY"). It is a default order. 21st CENTURY was served with a Notice of Opportunity for Hearing on September 12, 2001, but did not file a request for a hearing. In a telephone conversation with the Securities Division, an attorney for 21st CENTURY stated that it would not appear in this proceeding. The Order requires 21st CENTURY to cease and desist its activity, to pay \$262,000 in restitution to all investors and to pay a penalty of \$5,000. The other three Respondents in this action have entered into consent orders which are also scheduled for this Open Meeting.

21st CENTURY is a Florida based company that allegedly installed satellite antenna equipment at gated communities, receiving monthly fees from subscribers in exchange for programming. 21st CENTURY began in business in 1997, raising over \$23,000,000 from the sale of promissory notes nationwide. \$262,000 of the notes were sold in Arizona. 21st CENTURY offered its promissory notes through marketing agents, such as Respondents GLENN A. LIBERATORE FINANCIAL SERVICES ("GALFS") and GLENN A. LIBERATORE ("LIBERATORE"), who recruited sales agents such as Respondent HOWARD S. BALDWIN ("BALDWIN"). The 21st CENTURY promissory notes stated that interest payable to the note holders was 13% per annum. The notes offered were generally for five year terms.

The attached Order finds that 21st CENTURY violated A.R.S. §§ 44-1841, 44-1842 and 44-1991. 21st CENTURY sold 16 promissory notes to 14 Arizona investors for a total investment of \$262,000. The notes were sold from April 1998 through February 2000. The investors were told that there was little risk from the notes as the notes were secured by a UCC-1 that would be filed by 21st CENTURY. They were not informed that the promissory notes were not registered as securities in Arizona or exempt from registration, nor were they informed of the financial incentives that agents received for selling the promissory notes and were not provided full disclosure regarding the investment including risk, business and financial background of 21st CENTURY, prospectuses or financial statements.

21st CENTURY made interest payments until October 2000, when it defaulted on its notes. No interest payments have been made since that time. No investor has received his or her principal back from 21st CENTURY.

On October 12, 2001, after the Division filed its Notice, the United States Securities and Exchange Commission sued 21st CENTURY and two of its officers for violation of the Federal securities laws for selling the promissory notes. 21st CENTURY and its two officers agreed to entry of judgment against them. 21st CENTURY then filed for bankruptcy. A plan of reorganization has been approved in the bankruptcy that anticipates that the note holders will receive a portion of their principal back.

The Order requires 21st CENTURY to cease and desist its activity, to pay restitution of \$262,000, the amount of the notes sold to Arizona investors, plus a penalty of \$5,000. Any restitution payments by other respondents in this case will offset the amount owed by 21st CENTURY. The Division recommends approval of the Order. 21st CENTURY is required to pay full restitution, in addition to payment of a \$5,000 penalty. Additionally, the Order serves as a deterrent to other companies that seek to sell unregistered promissory notes in Arizona.

Originator: Mark Dinell

Attorney General: Moira McCarthy

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
3 Chairman
4 JIM IRVIN
5 Commissioner
6 MARC SPITZER
7 Commissioner

8 In the matter of:)
9)
10 21st CENTURY SATELLITE)
11 COMMUNICATIONS, INC.)
12 14910 Winding Creek Court, Suite 101A)
13 Tampa, Florida 33613)
14)
15 HOWARD S. BALDWIN)
16 5926 E. Lewis Av.)
17 Scottsdale, AZ 85257)
18)
19 GLENN A. LIBERATORE FINANCIAL)
20 SERVICES)
21 165 W. Canyon Crest Rd., Suite 305)
22 Alpine, UT 84004)
23)
24 GLENN A. LIBERATORE)
25 165 W. Canyon Crest Rd., Suite 305)
26 Alpine, UT 84004,)
Respondents.)

DOCKET NO. S-03449A-01-0000

DECISION NO. _____

**ORDER TO CEASE AND DESIST,
ORDER OF RESTITUTION AND
ORDER FOR ADMINISTRATIVE
PENALTIES RE: RESPONDENT 21ST
CENTURY SATELLITE
COMMUNICATIONS, INC.**

18 On August 9, 2001, the Securities Division of the Arizona Corporation Commission filed a
19 Notice of Opportunity for Hearing Regarding Proposed Order of Relief against 21ST CENTURY
20 SATELLITE COMMUNICATIONS, INC. ("21ST CENTURY"). The Notice specified that 21ST
21 CENTURY would be afforded an opportunity for an administrative hearing regarding this matter upon
22 filing a written request with Docket Control of the Commission within ten days of receipt of the Notice.
23 21ST CENTURY failed to request a hearing within the required time.

I.

FINDINGS OF FACT

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1. 21st CENTURY is a foreign corporation whose current address is 3925 Coconut Palm Drive, #119, Tampa, Florida 33619. 21st CENTURY was served with a Notice of Opportunity for Hearing Regarding Proposed Order of Relief on September 12, 2001. 21st CENTURY did not request a hearing.

2. 21st CENTURY is a Florida based company that allegedly installed satellite antenna equipment at gated communities, receiving monthly fees from subscribers in exchange for programming. 21st CENTURY began in business in 1997, raising over \$23,000,000 from the sale of promissory notes nationwide. \$262,000 of the notes were sold in Arizona. 21st CENTURY offered its promissory notes through marketing agents, such as Respondents GLENN A. LIBERATORE FINANCIAL SERVICES ("GALFS") and GLENN A. LIBERATORE ("LIBERATORE"), who recruited sales agents such as Respondent HOWARD S. BALDWIN ("BALDWIN"). The 21st CENTURY promissory notes stated that interest payable to the note holders was 13% per annum. The notes offered were generally for five year terms. In addition, some investors received promises of an additional profit incentive. That additional profit incentive provided that the investor would receive 25% of 21st CENTURY's profit, in proportion to the amount the investor invested compared to the total capital cost of equipment. Despite such a promise, as of this date no Arizona investor received any return from the profit incentive.

3. On or about September 17, 1997, GALFS and LIBERATORE entered into an agreement to market promissory notes issued by 21st CENTURY. Under that agreement, GALFS and LIBERATORE were to collectively receive up to 20% commissions. On or about February 18, 1998, GALFS and LIBERATORE entered into an agreement with Respondent BALDWIN, an Arizona based insurance agent, for BALDWIN to sell the promissory notes to his clients. That agreement gave BALDWIN

1 commissions of 12%, out of the 20% that GALFS and LIBERATORE were to receive. 21st CENTURY,
2 GALFS, LIBERATORE, and BALDWIN are collectively referred to as "RESPONDENTS."

3 4. RESPONDENTS sold 16 promissory notes to 14 Arizona investors for a total
4 investment of \$262,000. The notes were sold from April 1998 through February 2000.

5 5. The investors were told that there was little risk from the notes as the notes were secured
6 by a UCC-1 that would be filed by 21st CENTURY. Investors were (a) not informed that the
7 promissory notes were not registered as securities in Arizona or exempt from registration; (b) not
8 informed of the financial incentives that RESPONDENTS received for selling the promissory notes; (c)
9 not provided full disclosure regarding the risk of the investment, including (i) the potential to lose
10 principal; (ii) the fact that UCC filings, even if filed, must be foreclosed upon in order to collect against
11 any assets; (iii) the possibility that no assets existed to secure the UCC filings and (iv) the riskiness of
12 investing in a company with a limited track record. Investors were not provided with disclosure
13 statements, prospectuses or financial statements including but not limited to past operations, balance
14 sheets, statements of income, retained earnings, cash flows and uses of proceeds.
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16 6. 21st CENTURY made interest payments until October 2000, when it defaulted on its
17 notes. No interest payments have been made since that time. No investor has received his or her
18 principal back from 21st CENTURY. Despite the existence of the UCC paperwork, no security has
19 been foreclosed upon on behalf of any investor.
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21 7. On October 12, 2001, the United States Securities and Exchange Commission sued 21st
22 CENTURY and two of its officers for violation of the Federal securities laws for selling the promissory
23 notes. 21st CENTURY and its two officers agreed to entry of judgment against them. 21st CENTURY
24 then filed for bankruptcy. A plan of reorganization has been approved in the bankruptcy that anticipates
25 that the note holders will receive a portion of their principal back.
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1 **II.**

2 **CONCLUSIONS OF LAW**

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

5 2. 21st CENTURY offered or sold securities within or from Arizona, within the meaning of
6 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

7 3. 21st CENTURY violated A.R.S. § 44-1841 by offering or selling securities that were
8 neither registered nor exempt from registration.

9 4. 21st CENTURY violated A.R.S. § 44-1842 by offering or selling securities while not
10 registered as a dealer nor exempt from registration.

11 5. 21st CENTURY violated A.R.S. § 44-1991 in connection with a transaction within or
12 from Arizona involving the offer and sale of securities by (a) employing a device, scheme or artifice to
13 defraud, (b) making untrue statements or misleading omissions of material facts; and (c) engaging in
14 transactions, practices, or courses of business which operate or would operate as a fraud or deceit.

15 **III.**

16 **ORDER**

17 **THEREFORE**, on the basis of the Findings of Fact and Conclusions of Law, the Commission
18 finds that the following relief is appropriate, in the public interest, and necessary for the protection of
19 investors:

20 **IT IS ORDERED**, pursuant to A.R.S. § 44-2032, that 21st CENTURY, its agents, employees,
21 successors and assigns, permanently cease and desist from violating the Securities Act.

22 **IT IS FURTHER ORDERED**, pursuant to A.R.S. § 44-2032, that 21st CENTURY shall pay
23 restitution to Arizona investors shown on the records of the Commission in the amount of \$262,000,
24 subject to setoff for payments of restitution made to investors by other Respondents in this action. Any
25 amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until
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1 paid in full. Payment shall be made by cashier's check or money order payable to the "State of
2 Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney
3 General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. If all
4 investors are paid in full, any excess funds shall revert to the state of Arizona.

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1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that 21st CENTURY shall pay an
2 administrative penalty in the amount of \$5000.00, payable to the "State of Arizona." Any amount
3 outstanding shall accrue interest at the rate of 10% per annum from the date of this Order until paid in
4 full.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

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10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
11 Secretary of the Arizona Corporation Commission, have
12 hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of
14 Phoenix, this _____ day of _____, 2002.

15 _____
16 BRIAN C. McNEIL
17 Executive Secretary

18 _____
19 DISSENT

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

22 n/enforce/cases/21st century.md/default order re 21st century

23 (md)
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