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Arizona Corporation Commission 2003 JUN -5 P 4: 14

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AZ CORP COMMISSION
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5 *Attorneys for Respondents*
6 Gregory Russell Brown and
7 Karen Brown

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8 BEFORE THE ARIZONA CORPORATION COMMISSION

9
10 In the matter of)
11 INTERSECURITIES, INC.)
12 570 Carillon Parkway)
13 St. Petersburg, FL 33716-1202)
14 CRD# 16164)
15 GREGORY RUSSELL BROWN and JANE)
16 DOE BROWN, husband and wife)
17 16417 South 15th Drive)
18 Phoenix, Arizona 85045)
19 CRD# 2233684)
20 Respondents.)

DOCKET NO. S-03482A-03-0000

ANSWER

20 For their answer to the Notice of Opportunity for Hearing Regarding Proposed Order
21 to Cease and Desist, For Restitution, For Administrative Penalties, of Revocation and/or
22 Suspension, and For Other Affirmative Action (the "Notice"), respondent GREGORY
23 RUSSELL BROWN ("Brown") and KAREN BROWN (collectively "Respondents") admit,
24 deny, and allege as follows:
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I.
JURISDICTION

1. Respondents deny the allegations in paragraph 1.

II.
RESPONDENTS

2. Respondents are without sufficient knowledge or information concerning the truth of the allegations contained in paragraph 2 and, therefore, deny the same.

3. Respondents deny the allegation that Brown operated as an “investment advisor” and/or “financial planner” “at all pertinent times”, as those phrases are vague and ambiguous and used in the Notice, but admit the remaining allegations of paragraph 3.

4. With respect to paragraph 4, Respondents specifically admit that Greg and Karen Brown were married during the time period relevant to the allegations contained in the Notice, but deny the remaining allegations

5. Respondents deny the allegations in paragraph 5.

6. Paragraph 6 contains no allegations; therefore, no answer is required.

III.
FACTS

Brown Sold Payphone Contracts In Arizona

7. With respect to paragraph 7, Respondents admit that in or around April 1999 through approximately August 2000 Brown offered and sold certain business opportunities involving pay phones, as defined below. Respondents deny the remaining allegations.

8. With respect to the paragraph 8, Respondents admit that approximately 49 Arizona purchasers solicited by Brown paid approximately \$2,752,850 for their respective pay phone business opportunities. Those figures include more than \$400,000 paid by Brown and two other members of his family. Respondents deny the remaining allegations..

9. Respondents specifically admit that Brown sold certain business opportunities involving pay phones and that those opportunities involved Phoenix Telecom, LLC, TSI Group, Inc. or Tri-Financial Group, Inc., ETS Payphones, Inc., BCI Financial, Inc., BEE

1 Communications, Inc., National Communications Marketing, Inc., Communications
2 Marketing Associates, Alpha Telcom, Inc., and American Telecommunications Co., Inc.
3 (collectively referred to as the "business opportunities"). Respondents deny the remaining
4 allegations in paragraph 9.

5 10. Respondents specifically admit that the business opportunities contained
6 certain options concerning the sale of the equipment and that the business opportunities were
7 to generate income. Respondents deny the remaining allegations in paragraph 10.

8 11. Respondents specifically admit the business opportunities contained certain
9 service options, including the choice of site and phone installation, collecting revenues, the
10 repair of phones, and repurchasing phones. Respondents deny the remaining allegations in
11 paragraph 11.

12 12. Respondents specifically admit that the purchasers of the business
13 opportunities could choose from numerous companies to manage their phones and that they
14 all chose either Phoenix, ETS, or Alpha. Respondents deny the remaining allegations in
15 paragraph 12

16 13. Respondents specifically admit that the price of each phone from Phoenix and
17 ETS was \$7,000 and from Alpha was \$5,000; the monthly income from Phoenix was \$82.25,
18 from ETS was \$82, and from Alpha was \$58.34. Respondents deny the remaining
19 allegations in paragraph 13.

20 14. Respondents are without sufficient knowledge or information concerning the
21 truth of the allegations contained in the first sentence of paragraph 14 and, therefore, deny
22 the same. Respondents specifically admit the allegations in the second sentence of paragraph
23 14.

24 15. Respondents are without sufficient knowledge or information concerning the
25 truth of the allegations contained in the first sentence of paragraph 15 and, therefore, deny
26 the same.

1 **ISI Approved Brown's Sale of Payphone Investment Contracts in Arizona**
2 **Despite Prior Regulatory Problems in Other States**

3 16. Respondents are without sufficient knowledge or information concerning the
4 truth of the allegations contained in paragraph 16 and, therefore, deny the same, and
5 affirmatively allege that the "TSI phone cards" had nothing to do with the business
6 opportunities described in the Notice and were never pursued by Brown.

7 17. Respondents are without sufficient knowledge or information concerning the
8 truth of the allegations contained in paragraph 17 and, therefore, deny the same.

9 18. Respondents are without sufficient knowledge or information concerning the
10 truth of the allegations contained in paragraph 18 and, therefore, deny the same.

11 19. Respondents specifically admit that Brown sent to Intersecurities, Inc. ("ISI")
12 materials to review concerning the business opportunities, including marketing and sales
13 materials and that Brown sought ISI's approval to sell the business opportunities.
14 Respondents deny the remaining allegations in paragraph 19.

15 20. Respondents specifically admit that Brown recalls ISI requesting that he
16 contact the Arizona Securities Division to confirm that BCI/ETS had a clean record, or
17 words to that effect, and Respondents affirmatively allege that Brown does not recall ISI
18 advising him that "Arizona was one of the states that uncovered fraudulent payphone
19 operations." Respondents deny the remaining allegations in paragraph 20.

20 21. Respondents specifically admit that on or about April 28, 1999, Brown wrote a
21 letter to Rodney Tidwell, Assistant Vice President of Compliance for ISI, advising him of a
22 conversation Brown had with "Wendy" at the Arizona Securities Division concerning ETS
23 and BCI. Wendy told Brown that she had no knowledge of having a problem with either
24 company and that both companies have and are operating in Arizona. Wendy also advised
25 Brown that two other pay phone business opportunities had operated in Arizona as limited
26 partnerships and were found to be securities. Wendy cautioned Brown to be sure that ETS
27 and BCI did not structure their respective business opportunities as limited partnerships.
28 Wendy did not offer any additional cautionary language. Respondents are without sufficient

1 knowledge or information concerning the truth of the remaining allegations contained in
2 paragraph 21 and, therefore, deny the same.

3 22. Respondents specifically admit that on April 29, 1999, Rodney Tidwell,
4 Assistant Vice President of Compliance for ISI, faxed to Brown the following message:
5 "Re: ETS/Payphones/BEE Communication. I have reviewed the material and received your
6 report from the state – and this activity is approved." Respondents deny the remaining
7 allegations in paragraph 22.

8 23. Respondents are without sufficient knowledge or information concerning the
9 truth of the allegations contained in paragraph 23 and, therefore, deny the same.

10 24. Respondents are without sufficient knowledge or information concerning the
11 truth of the allegations contained in paragraph 24 and, therefore, deny the same.

12 25. Respondents are without sufficient knowledge or information concerning the
13 truth of the allegations contained in paragraph 25 and, therefore, deny the same.

14 26. Respondents are without sufficient knowledge or information concerning the
15 truth of the allegations contained in paragraph 26 and, therefore, deny the same.

16 27. Respondents specifically admit that ISI approved Brown's request to sell the
17 business opportunities offered by Phoenix. The use of the phrase "outside business activity"
18 in the Notice is vague and, therefore, the remaining allegations in paragraph 27 are denied.

19 28. Respondents specifically admit that Brown advised ISI of his sales of the
20 business opportunities offered by Alpha/ATC. The use of the phrase "outside business
21 activity" in the Notice is vague and, therefore, the remaining allegations in paragraph 28 are
22 denied.

23 29. Respondents are without sufficient knowledge or information concerning the
24 truth of the allegations contained in paragraph 29 and, therefore, deny the same.

25 30. Respondents specifically admit that Brown disclosed the sales of business
26 opportunities involving Alpha in his Annual Compliance Review Questionnaire for Calendar
27 Year 1999. Respondents deny the remaining allegations in paragraph 30.

28 31. Respondents specifically admit that Brown reported to ISI that the business

1 opportunities resulted in year-to-date sales of \$200,000. Respondents are without sufficient
2 knowledge or information concerning the truth of the remaining allegations contained in
3 paragraph 31 and, therefore, deny the same.

4 32. Respondents are without sufficient knowledge or information concerning the
5 truth of the allegations contained in paragraph 32 and, therefore, deny the same.

6 33. Respondents admit the allegations in paragraph 33, and affirmatively allege
7 that Brown immediately complied with ISI's instructions.

8 34. Respondents are without sufficient knowledge or information concerning the
9 truth of the allegations contained in paragraph 34, including its subparts, and, therefore, deny
10 the same.

11 **ISI Failed to Properly Supervise Brown's Sale of the**
12 **Payphone Investment Contracts.**

13 35. Respondents are without sufficient knowledge or information concerning the
14 truth of the allegations contained in paragraph 35 and, therefore, deny the same.

15 36. Respondents deny the allegations in paragraph 36.

16 37. Respondents generally deny the allegations in paragraph 37, but specifically
17 admit that Brown paid \$210,000 of his own money in the business opportunities and two
18 other members of his family paid a total of approximately \$210,000 in the business
19 opportunities, and that he may have told some purchasers that he contacted the Securities
20 Division.

21 38. Respondents are without sufficient knowledge or information concerning the
22 truth of the allegations contained in paragraph 38 and, therefore, deny the same.

23 39. Respondents admit the allegations in paragraph 39.

24 **IV.**

25 **VIOLATION OF A.R.S. § 44-1841**

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

27 40. Respondents deny the allegations in paragraph 40.

28 41. Respondents deny the allegations in paragraph 41.

1 42. Respondents deny the allegations in paragraph 42.

2 V.

3 VIOLATION OF A.R.S. § 44-1991

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

5 43. Respondents deny the allegations in paragraph 43.

6 44. Respondents deny the allegations in paragraph 44.

7 45. Respondents deny the allegations in paragraph 45.

8 46. Respondents deny the allegations in paragraph 46.

9 VI.

10 REMEDIES PURSUANT TO A.R.S. § 44-1961

11 (Denial, Revocation or Suspension of Dealer Registration)

12 47. Respondents deny the allegations in paragraph 47.

13 VII.

14 REMEDIES PURSUANT TO A.R.S. § 44-1962

15 (Denial, Revocation or Suspension of Registration of Salesman)

16 48. Respondents deny the allegations in paragraph 48.

17 49. Respondents deny each and every allegation in the Notice that is not
18 specifically and expressly admitted.

19 AFFIRMATIVE DEFENSES

20 1. The Arizona Corporation Commission (the "ACC") has failed to state a claim for
21 which relief can be granted.

22 2. The ACC has failed to allege securities fraud with reasonable particularity as
23 required by Rule 9(b), Ariz.R.Civ.P.

24 3. The purchasers of the business opportunities did not rely, reasonably or otherwise,
25 on any alleged misrepresentations from Respondents.

26 4. Respondents did not know, and in the exercise of reasonable care could not have
27 known, of any alleged untrue statements or material omissions as set forth in the Notice.

28 5. Respondents did not act with the requisite scienter.

1 6. Respondents did not employ a deceptive or manipulative device in connection
2 with the purchase or sale of any security.

3 7. Respondents never made any misrepresentations or omissions, material or
4 otherwise.

5 8. The ACC does not have jurisdiction over Respondents, as Respondents did not
6 offer or sell securities. *See, e.g., Securities and Exchange Commission v. ETS Payphones,*
7 *Inc.*, 300 F.3d 1281 (11th Cir. 2002).

8 9. The ACC does not have jurisdiction over Karen Brown, who is named to
9 determine the liability of Respondents' community property.

10 10. The alleged damages, if any, resulted from intervening and superseding causes
11 beyond Respondents' control.

12 11. Respondents reasonably relied upon advice provided by an authorized agent of the
13 Arizona Securities Division concerning whether the business opportunities constituted
14 securities.

15 12. The alleged damages, if any, are mitigated or satisfied by other recoveries.

16 13. The claims in the Notice are barred by accord and satisfaction.

17 14. The claims in the Notice are barred by estoppel.

18 15. Respondents allege that person or entities not a party to this action were wholly or
19 partially at fault in causing the injuries and/or damages for which the ACC seeks recovery.

20 16. The claims are barred by assumption of risk.

21 17. If Respondents are determined to be liable for the allegations contained in the
22 Notice, Respondents are entitled to contribution and/or indemnification from other unnamed
23 respondents.

24 18. Respondents reserve the right to amend their Answer at a later time to assert any
25 matter constituting an avoidance or affirmative defense including without limitation those
26 matters set forth in Rule 8(c), Ariz.R.Civ.P., as discovery show to be applicable.

