

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



BRIAN C. McNEIL
EXECUTIVE SECRETARY

E-MAIL: accsec@ccsd.cc.state.az.us

ARIZONA CORPORATION COMMISSION

MEMORANDUM

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

Arizona Corporation Commission

DOCKETED

SEP 08 2003

FROM: Matthew Neubert
Acting Director of Securities

DOCKETED BY	
-------------	--

DATE: September 8, 2003

RE: *In the Matter of Ralph Shaul and Leslie Shaul, husband and wife,*
No. S-03507A-02-0000

CC: Brian C. McNeil, Executive Secretary

ARIZONA CORPORATION COMMISSION
DOCUMENT CONTROL

2003 SEP - 8 P 3: 11

RECEIVED

Attached is a proposed Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties, and Consent to Same by: Respondents Ralph Shaul and Leslie Shaul ("Consent Order"). This order was negotiated to resolve claims regarding sales of pay telephone investment contracts involving phones offered by Alpha Telcom and related entities, generally through sales by licensed insurance professionals.

Salespersons for these pay phone contracts, including Shaul, were recruited by various means. They were provided with legal opinions stating that the investment contracts in question were not securities; these opinions, however, did not address Arizona law regarding investment contracts. Moreover, during the period when most of the insurance salespersons were selling these contracts, a number of jurisdictions had already begun to take action against Alpha Telcom for illegal securities sales. As a result, had the salespersons checked further regarding the legality of the sales, they could have determined that there were questions regarding whether the investments should have been registered as securities.

The proposed Consent Order calls for Respondent Ralph Shaul to cease and desist from further violations of the Arizona Securities Act, and orders Respondents to disgorge all commissions Shaul received from sales of Alpha Telcom pay telephones and pay an administrative penalty of \$5,000. The Securities Division recommends approval of this Consent Order. The Order reflects full disgorgement of all commissions, and the penalty reflects an

appropriate penalty for the activity, considering the amount of commissions to be disgorged and the financial status of the respondents.

Originated by: Kathleen Coughenour DeLaRosa

MJN/kcd

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman
4 JIM IRVIN
5 WILLIAM A. MUNDELL
6 JEFF HATCH-MILLER
MIKE GLEASON

7 In the matter of

DOCKET NO. S-03507A-02-0000

8 RALPH SHAUL and LESLIE SHAUL, husband
9 and wife
10 Post Office Box 9760
11 Phoenix, Arizona 85068

DECISION NO.

12 Respondents.

13 **ORDER TO CEASE AND DESIST,
14 ORDER OF RESTITUTION, ORDER
15 FOR ADMINISTRATIVE PENALTIES
16 AND CONSENT TO SAME BY:
17 RESPONDENTS RALPH SHAUL and
18 LESLIE SHAUL**

19 RESPONDENT RALPH SHAUL ("SHAUL") and RESPONDENT LESLIE SHAUL
20 (collectively "RESPONDENTS") elect to permanently waive their right to a hearing and appeal
21 under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* ("Securities
22 Act") with respect to this Order To Cease And Desist, Order of Restitution, Order for
23 Administrative Penalties and Consent to Same by: Respondents RALPH SHAUL and LESLIE
24 SHAUL ("Order"). RESPONDENTS admit the jurisdiction of the Arizona Corporation
Commission ("Commission"), including the Commission's jurisdiction over the marital
community of SHAUL and LESLIE SHAUL; neither admit nor deny the Findings of Fact and
Conclusions of Law contained in this Order; and consent to the entry of this Order by the
Commission.

25 **I.**

26 **FINDINGS OF FACT**

1. At all times material hereto, SHAUL was a resident of Arizona. SHAUL was licensed in Arizona as an insurance salesperson, but was not registered as a securities dealer or

1 salesperson, and was not licensed as an investment adviser or investment adviser representative.

2 2. At all times material hereto, SHAUL and LESLIE SHAUL were husband and wife.
3 SHAUL's actions were in furtherance of and for the benefit of the marital community of SHAUL
4 and LESLIE SHAUL. LESLIE SHAUL was joined in this action pursuant to A.R.S. 44-2031(C),
5 solely to determine the liability of the marital community for SHAUL's actions.

6 3. At all times material hereto, Alpha Telecom, Inc. ("Alpha") was an Oregon
7 corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

8 4. At all times material hereto, American Telecommunications Company, Inc.
9 ("ATC") was a Nevada corporation formed as a wholly owned subsidiary of Alpha on or about
10 September 17, 1998. Originally named ATC, Inc., the name was changed to American
11 Telecommunications Company, Inc., sometime in the first half of 2000. Its address was the same
12 as Alpha's, but was later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900
13 Vine Street, Suite J, Grants Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants
14 Pass, Oregon 97526.

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

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

19 7. At all times material hereto, Alpha and ATC, and their affiliates, sold pay
20 telephones with telephone service agreements pursuant to which the investor would share in the
21 profits of the pay telephone. Investors would enter into two agreements, a purchase agreement, and
22 a service agreement with Alpha to manage the phone. The two agreements were presented and
23 promoted simultaneously. The telephones were presented to potential investors with four options
24 in the way of service contracts, each varying in the amount of service provided. The four options
25 varied from Level 1, which included a minimum of service, to Level 4, which provided full service
26 to the purchaser, including choosing a site and installing the telephone, collecting all revenue from

1 the telephone's operation, repairing the telephone when necessary, and even repurchasing or
2 buying back the telephone at the investor's option. Under Level 4, Alpha would split the net
3 proceeds with the investor on a 70/30 basis, with Alpha retaining 70% and the investor receiving
4 30%. The price of the pay telephones was the same regardless of the service option chosen,
5 \$5,000.00 per telephone. Although investors were given a choice of using a company other than
6 Alpha to manage the phone, no Arizona investor to whom SHAUL sold the investment picked a
7 company other than Alpha to manage their phones. A "typical return" on each pay telephone was
8 touted as 14% per year. In practice, all purchasers received \$58.34 per month per pay telephone
9 purchased, which amounted to exactly 14% per annum.

10 8. ATC's primary role was marketing the contracts. Alpha's main focus was on
11 obtaining phone sites and installing, servicing, and managing the phones.

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

19 10. SHAUL, directly or indirectly, entered into agreements with Alpha, ATC, and/or
20 SPA, pursuant to which SHAUL sold investment contracts involving Alpha pay telephones (the
21 "Alpha investment contracts") within or from the state of Arizona. All Alpha investment contracts
22 SHAUL sold were Level 4 contracts.

23 11. All sales agents, including SHAUL, were paid commissions on each telephone sold.

24 12. SHAUL sold Alpha investment contracts involving at least 131 telephones to at least
25 28 individuals or entities within or from the state of Arizona from May, 2000 through April, 2001, for
26 a total sales amount of at least \$655,000.00.

1 13. SHAUL received commissions from Alpha and/or ATC and/or SPA in the total
2 amount of \$98,760.00. However, of that amount, Financial Security Group was paid \$16,400 in
3 referral fees, thereby reducing SHAUL's net commissions to \$82,360.

4 14. Alpha has a long regulatory history in which state securities regulators have found that
5 these purchases of pay telephones and accompanying service contracts were unregistered securities in
6 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
7 Alpha and those working with it to cease and desist. The orders entered during the period when
8 SHAUL was selling the Alpha investment contracts include:

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

15. Actions against Alpha after SHAUL ceased his sales of the Alpha investment
contracts include:

.....

- 1 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of
2 Securities;
- 3 b. August 27, 2001, Temporary Restraining Order issued by United States
4 District Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No.
5 CV 01-1283 PA
- 6 c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities
7 Department, *In the Matter of Alpha Telecom, Inc., et al.*, No. 01-36-S.
- 8 d. September 6, 2001, Preliminary Injunction issued by United States District
9 Court, District of Oregon, *SEC v. Alpha Telecom, Inc., et al.*, No.
10 CV 01-1283 PA.
- 11 e. February 7, 2002, Final Judgment of Permanent Injunction issued by
12 United States District Court, District of Oregon, *SEC v. Alpha Telecom,
13 Inc., et al.*, No. CV 01-1283 PA.
- 14 f. March 13, 2002, Final Order to Cease and Desist issued by Washington
15 Department of Financial Institutions, *In the Matter of Alpha Telecom, Inc.,
16 et al.*, No. SDO-21-02.

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

25 16. On February 7, 2002, the United States District Court for the District of Oregon
26 issued its final opinion in connection with the trial of Paul Rubera. That opinion is reported at
SEC v. Alpha Telecom, 187 F. Supp. 2d 1250 (D. Or. 2002). In its opinion, the court confirmed
that the Alpha investment contracts are securities and thus subject to regulation as securities. The
court also confirmed that Alpha operated what was essentially a Ponzi scheme in connection with
the sale of the Alpha investment contracts.

17. Monthly payments to investors ceased prior to August, 2001.

II.

CONCLUSIONS OF LAW

1
2
3 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
4 Arizona Constitution and the Securities Act.

5 2. The Commission has jurisdiction to enter an order that may be collected from
6 property attributable to the marital community of RESPONDENTS, pursuant to A.R.S.
7 § 44-2031(C).

8 3. SHAUL offered or sold securities within or from Arizona, within the meaning of
9 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

10 4. SHAUL violated A.R.S. § 44-1841 by offering or selling securities that were
11 neither registered nor exempt from registration.

12 5. SHAUL violated A.R.S. § 44-1842 by offering or selling securities while neither
13 registered as a dealer or salesman nor exempt from registration.

14 6. SHAUL'S conduct is grounds for a cease and desist order pursuant to A.R.S.
15 § 44-2032.

16 7. SHAUL'S conduct is grounds for an order of restitution pursuant to A.R.S.
17 § 44-2032.

18 8. SHAUL'S conduct is grounds for administrative penalties under A.R.S. § 44-2036.

19 III.

20 ORDER

21 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the
22 RESPONDENTS' consent to the entry of this Order, the Commission finds that the following
23 relief is appropriate, in the public interest, and necessary for the protection of investors:

24 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that SHAUL, his agents, employees,
25 successors and assigns, permanently cease and desist from violating the Securities Act.

26 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS,

1 including the marital community of SHAUL and LESLIE SHAUL, shall pay restitution to
 2 investors shown on the records of the Commission in the amount of \$82,360.00, plus interest at the
 3 rate of 10% per annum from the date of this order until paid in full. Pursuant to A.A.C. 14-4-
 4 308(C), the amount of RESPONDENTS' restitution shall be lessened by any principal, interest, or
 5 other distributions received by investors. Monthly payments in the amount of \$200.00 each shall
 6 be made by cashier's check or money order payable to the "State of Arizona" to be placed in an
 7 interest-bearing account maintained and controlled by the Arizona Attorney General. Monthly
 8 payments shall be due and payable on the first day of each month, beginning the first day of the
 9 month following the date of entry of this Order. The Arizona Attorney General shall disburse the
 10 funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert
 11 to the state of Arizona. If restitution is not made in accordance with this Order, any outstanding
 12 balance shall be deemed in default and shall be immediately due and payable.

13 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS,
 14 including the marital community of SHAUL and LESLIE SHAUL, shall pay an administrative
 15 penalty in the amount of \$5,000.00, payable to the "State of Arizona." Payment shall be made by
 16 cashier's check or money order, with the initial payment of \$1,000.00 due and payable on the date
 17 of this Order. The remaining penalty amount shall be subordinate to the restitution obligations in
 18 the preceding paragraph, and shall be paid following payment in full of that restitution obligation
 19 and pursuant to the payment schedule set forth in the preceding paragraph. If RESPONDENTS do
 20 not comply with this order for administrative penalties, any outstanding balance shall be deemed in
 21 default and shall be immediately due and payable.

22 ...
 23 ...
 24 ...
 25 ...
 26 ...

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, BRIAN C. McNEIL,
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 BRIAN C. McNEIL
15 Executive Secretary

16 _____
17 DISSENT

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

21 KCD
22
23
24
25
26

CONSENT TO ENTRY OF ORDER

1
2 1. RESPONDENTS RALPH SHAUL ("SHAUL"), an individual, and LESLIE SHAUL,
3 his wife, ("RESPONDENTS") admit the jurisdiction of the Commission over the subject matter of
4 this proceeding. RESPONDENTS acknowledge that they have been fully advised of their right to
5 a hearing to present evidence and call witnesses and RESPONDENTS knowingly and voluntarily
6 waive any and all rights to a hearing before the Commission and all other rights otherwise
7 available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code.
8 RESPONDENTS acknowledge that this Order To Cease And Desist, Order of Restitution, Order
9 for Administrative Penalties and Consent to Same by: Respondents Ralph Shaul and Leslie Shaul
10 ("Order") constitutes a valid final order of the Commission.

11 2. RESPONDENTS knowingly and voluntarily waive any right they may have under
12 Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or
13 extraordinary relief resulting from the entry of this Order.

14 3. RESPONDENTS acknowledge and agree that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. RESPONDENTS acknowledge that they have been represented by counsel in this
17 matter, they have reviewed this Order with their attorney and understand all terms it contains.

18 5. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of Law
19 contained in this Order.

20 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action
21 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
22 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
23 factual basis. RESPONDENTS will undertake steps necessary to assure that all of their agents and
24 employees, if any, understand and comply with this agreement. Nothing in this Order, however,
25 shall in any way limit RESPONDENTS' ability to defend themselves and/or take any contrary
26 position of fact or law in any subsequent litigation or other proceeding in which the Commission is

1 not a party.

2 7. While this Order settles this administrative matter between RESPONDENTS and the
3 Commission, RESPONDENTS understand that this Order does not preclude the Commission from
4 instituting other administrative proceedings based on violations that are not addressed by this
5 Order.

6 8. RESPONDENTS understand that this Order does not preclude the Commission from
7 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
8 that may be related to the matters addressed by this Order.

9 9. RESPONDENTS understand that this Order does not preclude any other agency or
10 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
11 proceedings that may be related to matters addressed by this Order.

12 10. RESPONDENTS agree that they will not apply to the state of Arizona for registration
13 as a securities dealer or salesman or for licensure as an investment adviser or investment adviser
14 representative at any time in the future.

15 11. RESPONDENTS agree that they will not exercise any control over any entity that
16 offers or sells securities or provides investment advisory services, within or from Arizona.

17 12. RESPONDENTS agree that until restitution and penalties are paid in full,
18 RESPONDENTS will notify the Director of the Securities Division within 30 days of any change
19 in home address or any change in RESPONDENTS' ability to pay amounts due under this Order.

20 13. RESPONDENTS understand that default shall render them liable to the Commission
21 for its costs of collection and interest at the maximum legal rate.

22 14. RESPONDENTS acknowledge that any restitution, rescission or penalties imposed by
23 this Order are obligations of SHAUL as well as the marital community of RESPONDENTS.
24 RESPONDENTS consent to the entry of this Order and agrees to be fully bound by its terms and

25 ...

26 ...

1 conditions. If RESPONDENTS breach any provision of this Order, the Commission may vacate
2 this Order and restore this case to its active docket.

3 *Ralph B. Shaul*
4 _____

5 RALPH SHAUL

6
7 *Leslie Shaul*
8 _____

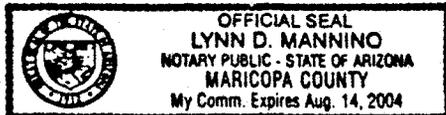
9 LESLIE SHAUL

10 SUBSCRIBED AND SWORN TO BEFORE me this 28th day of August, 2007.

11 *Lynn D. Mannino*
12 _____

13 NOTARY PUBLIC

14 My Commission Expires:



15 N:\ENFORCE\CASES\RalphShaul.kcd\PLEADING\2003-08-27 Shaul Consent Final.Doc