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6 Attorney for Respondents

8 **BEFORE THE ARIZONA CORPORATION COMMISSION**

9 COMMISSIONERS

10 MARC SPITZER, Chairman
11 JIM IRVIN
12 WILLIAM A. MUNDELL
13 JEFF HATCH-MILLER
MIKE GLEASON

14	In the matter of:)	DOCKET NO. S-03509A-02-0000
15	EVELYN BAUMGARDNER)	
16	DBA Your Living Trust)	RESPONDENTS' ANSWER TO
17	7141 North 51 st Avenue, Suite B-2)	NOTICE OF OPPORTUNITY FOR
18	Glendale, Arizona 85301)	HEARING REGARDING
19	JOHN DOE BAUMGARDNER)	PROPOSED ORDER TO CEASE
20	7141 North 51 st Avenue, Suite B-2)	AND DESIST, FOR RESTITUTION,
21	Glendale, Arizona 85301,)	FOR ADMINISTRATIVE
22	Respondents.)	PENALTIES, AND FOR OTHER
23)	AFFIRMATIVE ACTION

21 Respondents Evelyn Baumgardner and John Doe Baumgardner Answer the Notice of Opportunity
22 For Hearing Regarding Proposed Order To Cease And Desist, For Restitution, For Administrative
23 Penalties, And For Other Affirmative Action by the Securities Division as follows:
24

- 25 1. Respondents deny the allegation in paragraph 1. Respondents deny the Commission has
26

1 jurisdiction over John Doe Baumgardner.

2 2. Respondents admit the allegations in paragraph 2.

3 3. Respondent Evelyn Baumgardner admits she was married to John Doe Baumgardner whose
4 real name is Michael Baumgardner at all times material hereto as alleged in paragraph 3. Respondents
5 deny that all acts done by Respondent Evelyn Baumgardner were in furtherance of and for the benefit
6 of the marital community of Evelyn Baumgardner and Michael Baumgardner. Respondents assert that
7 Michael Baumgardner should not be joined in this action pursuant to A.R.S. § 44-2031(C) to
8 determine liability of the marital community for alleged violations of the Securities Act by Respondent
9 Evelyn Baumgardner as that statute was not in effect at the time of the alleged violations by
10 Respondent Evelyn Baumgardner nor is the statute effective retroactively.

11
12 4. No allegations against Respondents are made in paragraph 4, therefore, Respondents provide
13 no response to this paragraph.

14 5. Respondents lack sufficient knowledge or information to answer the allegations in paragraph
15 5.
16

17 6. Respondents admit that the three different addresses listed in the last sentence of paragraph 6
18 were used by ATC. Respondents lack sufficient knowledge or information as to the other allegations
19 in paragraph 6.

20 7. Respondents lack sufficient knowledge or information as to the allegations in paragraph 7.

21 8. Respondents lack sufficient knowledge or information as to the allegations in paragraph 8.

22 9. Respondents admit that Alpha and ATC sold pay telephones and that four different service
23 agreements were offered to each investor but not required to be purchased. Respondents deny that
24 investors were required to share profits of the pay telephones. Respondents admit that investors
25 entered into a purchase agreement with Alpha and/or ATC. Respondents lack sufficient knowledge or
26

1 information at this time as to whether all investors entered into a service agreement with Alpha but
2 admit that at least most investors did enter into a service agreement with Alpha. Respondents admit
3 that a purchase agreement and service agreements were presented to investors. Respondents admit that
4 four service plans were offered by Alpha with each varying in the amount of services being provided;
5 Level 1 provided the least amount of services and Level 4 provided the most amount of services.
6 Respondents admit that under the Level 4 service plan Alpha received 70% and the investor received
7 30% of the adjusted gross revenue. Respondents admit that each pay telephone cost \$5,000, regardless
8 of whether or not the investor chose a service plan. Respondents lack sufficient knowledge or
9 information at this time as to whether or not any Arizona investor chose a company other than Alpha
10 to manage their pay telephone; all investors were given the option to manage and service the pay
11 telephone themselves or to engage a third party management company or to engage Alpha.
12 Respondents deny that a "typical return" on each pay telephone was touted as 14% per year.
13 Respondents deny that all purchasers received \$58.34 per month for each pay telephone. Respondents
14 deny any other allegation in paragraph 9 that is not expressly admitted above.
15
16

17 10. Respondents lack sufficient knowledge or information as to the allegations in paragraph 10.

18 11. Respondents lack sufficient knowledge or information as to the allegations in paragraph 11.

19 12. Respondents admit that Respondent Evelyn Baumgardner entered into an agreement with
20 Alpha. Respondents deny that Respondent Evelyn Baumgardner sold investment contracts involving
21 Alpha pay telephones. Respondents lack sufficient knowledge or information at this time as to all
22 other allegations in paragraph 12.
23

24 13. Respondents deny that prospective investors were told by Respondent Evelyn Baumgardner
25 that their investments were insured. Respondents lack sufficient knowledge or information as to the
26 other allegations in paragraph 13.

1 14. Respondents admit that Respondent Evelyn Baumgardner used at least some documents
2 provided by Alpha to present the company. Respondents deny that Respondent Evelyn Baumgardner
3 used the term "turn-key" in presenting Alpha. Respondents deny any other allegation in paragraph 14.

4 15. Respondents deny that Respondent Evelyn Baumgardner earned a 12-19% commission per
5 pay telephone sold as alleged in paragraph 15.

6 16. Respondents deny that Respondent Evelyn Baumgardner sold Alpha investment contracts
7 from about August 1, 2000 through May 31, 2001. Respondents admit that Respondent Evelyn
8 Baumgardner sold pay telephones to individuals or entities from about August 1, 2000 through
9 approximately March 31, 2001. Respondents lack sufficient knowledge or information at this time as
10 to the other allegations alleged in paragraph 16.

11 17. Respondents deny that Respondent Evelyn Baumgardner failed to disclose to investors the
12 orders listed in paragraph 17.

13 18. Respondents admit to the actions listed in sub-paragraphs a, b, d and e but lack sufficient
14 knowledge or information as to the allegations in sub-paragraphs c and f of paragraph 18.
15 Respondents admit that Alpha filed for bankruptcy in August 2001, that a court appointed receiver
16 took over the operations of Alpha, and that the U.S. District Court, District of Oregon, filed a final
17 opinion in February 2002 holding that the pay telephones sold by Alpha were investment contracts.
18 Respondents lack sufficient knowledge or information as to the other allegations in paragraph 18.

19 19. Respondents lack sufficient knowledge or information as to the allegation in paragraph 19.

20 20. Respondents deny the allegations in paragraph 20.

21 21. Respondents deny that the sale of Alpha pay telephones were securities and admit that the
22 pay telephones were not registered in Arizona pursuant to the Securities Act as alleged in paragraph
23

24 21.
25
26

1 22. Respondents deny paragraph 22.

2 23. Respondents deny that the sale of Alpha pay telephones were securities and admit that
3 Respondent Evelyn Baumgardner was not registered as a dealer or salesman pursuant to Article 9 of
4 the Securities Act as alleged in paragraph 23.

5 24. Respondents deny the allegation in paragraph 24.

6 25. Respondents deny the allegations in paragraph 25 except Respondents admit, based solely
7 upon information in a published case involving Alpha, that returns paid to investors came from
8 purchases by subsequent investors.
9

10 26. Respondents deny the allegation in paragraph 26.

11 27. Any allegation in the Notice of Opportunity For Hearing Regarding Proposed Order To Cease
12 And Desist, For Restitution, For Administrative Penalties, And For Other Affirmative Action not
13 expressly admitted in this Answer is denied.
14

15 DEFENSES

16 1. As and for affirmative defenses, Respondents allege lack of jurisdiction over both
17 Respondents and failure to state a claim upon which relief can be granted.

18 2. Respondents reserve the right to raise other affirmative defenses that Respondents may
19 become aware of in the future.

20 RESPECTFULLY SUBMITTED this 19th day of June, 2003.

21 Law Office of Anthony B. Bingham, P.C.

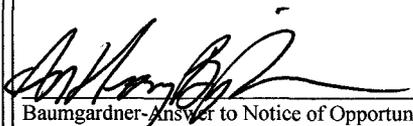
22 By Anthony B. Bingham
23 Anthony B. Bingham
24 Attorney for Respondents
25
26

1 Original and thirteen (13) copies
2 of the foregoing mailed/delivered
3 this 20th day of June, 2003 to:

4 Docket Control
5 Arizona Corporation Commission
6 1200 W. Washington
7 Phoenix, AZ 85007

8 Copy of the foregoing mailed/delivered
9 this 20th day of June 2003, to:

10 Kathleen Coughenour DeLaRosa
11 Arizona Corporation Commission
12 Securities Division
13 1300 W. Washington, 3rd Floor
14 Phoenix, AZ 85007

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16 Baumgardner-Answer to Notice of Opportunity For Hearing.doc