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Arizona Corporation Commission  
PUBLIC CONTROL  
**DOCKETED**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

DEC 01 2000

CARL J. KUNASEK  
Chairman  
JIM IRVIN  
Commissioner  
WILLIAM A. MUNDELL  
Commissioner

DOCKETED BY  
JM

In the Matter of:

CALUMET SLAG, INC.  
GARRETH N. PATTON  
JEFFREY G. CRAWFORD  
MATTHEW E. HUNZINGER  
Respondents.

DOCKET NO. S-03361A-CO-0000  
**PATTON'S POST-HEARING MEMO**

Respondent Garreth N. Patton Respondent Gareth N. Patton  
(Patton) hereby files his post-hearing memorandum.

**INTRODUCTION**

The Securities Division (Division) has over-charged and over-prosecuted Patton, while allowing the main perpetrators of the failed Calumet Slag stock offering to go free, without any order, penalty or sanction. The Division used the selective naming of Respondents and selective presentation of evidence to achieve this unfortunate result.

The evidence at the hearing proved:

1. The slag pile at issue is worth between \$300,000.00 and \$2,300,000.00;
2. Calumet Slag, Inc. (CSI), through its current operators Joe Atkins (Atkins) and Joe Hurley (Hurley)

1           orchestrated the sales of Patton's stock. CSI issued  
2           this stock to Patton in exchange for the slag pile;

3           3. Patton spent at least \$350,000.00 of the \$400,000.00  
4           to \$450,000.00 raised by the sale of this stock for  
5           the benefit of CSI; and

6           4. Patton sold stock to about 30 of the 180 or so CSI  
7           investors. Most of the sales were made by Atkins,  
8           Hurley, a stockbroker named Ron Delmanowski  
9           (Delmanowski), and an investor / salesman named  
10          Suliaman Hawash (Hawash). None of these people were  
11          named as respondents in this matter.

12          When confronted with the weakness and inconsistency of its  
13          case, the Division responded with its old stand-by response:  
14          "prosecutorial discretion". According to the Division, this  
15          "discretion" allows it to name or not name whomever it pleases,  
16          and to account to no one for its actions. However, this  
17          "discretion" does not trump justice, or fairness, or  
18          constitutional rights such as due process or equal protection.

19          The Division, like the Respondents, must live with the  
20          decisions it makes. In this case, it decided to cast its lot  
21          with Messrs. Atkins, Hurley and Delmanowski. It chose to allow  
22          these men to escape being named as respondents in this case,  
23          despite overwhelming proof that these men made **dozens of sales of**  
24          **unregistered securities**. The Division allowed CSI to consent to  
25          an order without having to pay any fines, penalties or  
26          restitution. To assess a harsher sanction on Patton, who in many  
27          ways was a victim of these men's actions, would reek of  
28          unfairness and injustice.

1           **I.    The Slag Pile is Worth Between \$300,000.00 and**  
2                   **\$2,300,000.00.**

3           Patton and his family have owned the subject property in  
4 the Black Hills of South Dakota since 1923. **p. 310.** This property  
5 includes land, mineral rights and a 5000 ton slag pile. **pp. 310-**  
6 **312.** This slag pile, which is made up of the remains of various  
7 mining projects over the years, contains gold, silver, nickel,  
8 cobalt, lead, zinc and other metals. **p. 312.**

9           Patton is 37 years old, and is married with three sons,  
10 ages 10, 8 and 1. His middle son has cerebral palsy. He has a  
11 GED education and works as an excavator. **pp. 308-310.** He met  
12 Atkins in about 1991 when Patton was digging swimming pools in  
13 Phoenix. **p. 313.**

14           Atkins formed CSI with 32 "incorporators", most of whom  
15 were Atkins' friends. CSI issued Patton 750,000 of 1,000,000  
16 authorized shares of CSI stock in exchange for the slag pile.  
17 **pp. 313-314.**

18           If the slag pile was simply sold for asphalt, it would be  
19 worth about \$65.00 per ton, for a total value of more than  
20 \$300,000.00. **p. 315.** Patton produced several assays and  
21 analyses at the hearing. **Exhibits R-5, 6, 7, 8, 9, 10 and 12.**  
22 Over the years dozen of such reports were prepared. If these  
23 reports, which were made throughout the 1990s, are averaged out,  
24 the value of the slag pile could be worth as much as  
25 \$2,300,000.00. **p. 316.**

26           In a February 1999 memo from an active shareholder named  
27 David Wastchak to, among others, Atkins and Division witnesses  
28 Hawash and Foley, the value of slag pile was "guesstimated" at

1 \$2,475,000.00. This figure, which is characterized by Wastchak  
2 as "realistic" and "conservative", is based on the gold and  
3 silver contained in the pile. **Exhibit R-9.**

4 The Division based its entire case on just one report, from  
5 late 1994, that made negative conclusions about the slag pile.  
6 Patton presented several reports at the hearing, which had  
7 varying conclusions. This is to be expected since the pile is  
8 that result of difference mining projects, using different mining  
9 technologies, over several decades.

10 It is misleading and unfair to cherry pick one discouraging  
11 assay, out of many, and argue that this assay reflects the true  
12 value of the slag pile. But that is precisely what the Division  
13 has done in this case.

14 **II. Calumet Slag, Inc. (CSI), through its current**  
15 **operators Atkins and Hurley, orchestrated the sales of**  
16 **Patton's stock.**

17 At the Open Meeting held on October 4, 2000 the Division  
18 recommended that the Commission approve a consent order with CSI  
19 that did **not** include an order of restitution, and did not impose  
20 any fines or penalties. The Division told the Commission that  
21 the current operators of CSI were not involved in the wrongdoing  
22 alleged in the Notice. That statement was not true.

23 In fact, Atkins told Patton to sell Patton's CSI stock to  
24 fund the company's operations. **p. 316.** As previously described,  
25 CSI issued Patton 750,000 of the 1,000,000 authorized shares of  
26 CSI stock, in exchange for the slag pile. The remaining 250,000  
27 shares were sold by Atkins. **p. 314.** Atkins and Hurley raised  
28 other money for CSI as well. **pp. 324-325.** Division witness  
Foley was solicited to purchase Patton's stock by Hurley. Foley

1 never even spoke to Patton before he invested. pp. 227-229.

2 **III. Patton spent at least \$350,000.00 of the \$400,000.00**  
3 **to \$450,000.00 raised by the sale of this stock for**  
4 **the benefit of CSI.**

4 The Division's CPA testified that about \$450,000.00 of  
5 proceeds from the sales of CSI stock was deposited in Patton's  
6 account. However, he did not know the use of that money.

7 Q. (BY MR. SALCIDO) How much money that was deposited  
8 into Mr. Patton's account was used for the benefit of  
9 Calumet Slag?

9 A. I have no exact figures.

10 Q. And why not? You have the raw materials, don't you?

11 A. I have the deposits and offsets. I reviewed as a  
12 whole the flow of the funds going through and was  
13 able to determine that there were instances where the  
14 investor funds were used to pay some of his personal  
15 expenses, and at the same time I was able to find or  
16 determine there were a few instances of the payments  
17 that were made on behalf of Calumet Slag.

15 Q. Now, Mr. Palfai characterized it as minor portion,  
16 didn't he?

16 A. I believe the attorney was paid about \$60,000, and  
17 their dumping was around 10, \$12,000.

18 Q. So if you can't tell me how much money in this account  
19 was used for business expenses, you also can't tell me  
20 how much was used for personal, can you?

20 A. As a whole, no, I cannot. pp. 292-293.

21 The Consent Order entered into by Atkins and Hurley, on  
22 behalf of CSI, stated that CSI "derived only a fractional benefit  
23 from the monies raised through the Representatives' sale of  
24 CALUMET stock." It also stated that CSI "received little, if  
25 any, of these funds." Both statements are untrue.

26 In fact, Patton used over \$350,000.00 of the money raised  
27 from the sale of his stock for the benefit of CSI. He testified  
28

1 that he paid the following expenses for the benefit of CSI:

2	M&W Milling and Refining	\$ 75,000.00
	Nizer, Inc.	80,000.00
3	Legal fees	20,000.00
	Don Rise / Jerry Wagner	110,000.00
4	Bahamian Refining	<u>70,000.00</u>
	TOTAL	\$355,000.00

5  
6 In October 2000 the treasurer of CSI sent a letter and  
7 ledger stating the Patton has paid more than \$109,000.00 of CSI's  
8 expenses. He stated, "I am sure that he (Patton) has incurred  
9 more than the amount shown but I do not have any support to  
10 substantiate these purchases." He also stated that a CSI balance  
11 sheet dated June 25, 1996 shows and outstanding liability to  
12 Patton of more than \$184,000.00. **Exhibits R-1, R-13.**

13 Patton had no job, other than CSI, from 1994 to 1998.  
14 Patton received \$400,000 - 450,000 from the sale of his stock.  
15 From that he paid more than \$350,000 for CSI expenses. He used  
16 the difference to support his family for those years. **p. 339.**  
17 As can be seen, Patton hardly lived a life of luxury at investor  
18 expense.

19 **IV. Patton sold stock to only about 30 of the 180 or so**  
20 **investors.**

21 Division investigator Meg Pollard testified that about 180  
22 people purchased CSI stock. However, she did not know how many  
23 of those investors spoke with Patton before they invested.

24 Q. (BY MR. SALCIDO) I'm just asking how many of these  
25 people spoke with Patton before they made their first  
investment. Do you have that answer as you sit here?

26 A. No, I guess I do not. **p. 285.**

27 In fact, Patton only spoke to about 30 investors. **p. 325.**  
28 Atkins and Hurley sold stock to more than 50 investors. **p. 325.**

1 Respondent Crawford and his father in law Delmanowski sold stock  
2 to more than 70 investors. **p. 327.** Hawash, a Division witness,  
3 made sales to more than 12 investors. **p. 327.**

4 The Division's own witnesses support the fact that Patton  
5 was not an active salesman. Hawash first learned about this  
6 investment from his stockbroker, Delmanowski, and Delmanowski's  
7 wife Joyce. **pp. 19, 62-63.** Hawash testified that Atkins was  
8 "looking for another investors (sic)" between September 1994 and  
9 November 1997. **pp. 78-79.** He testified that Atkins hosted  
10 potential investors at Atkins' home, showed them a videotape  
11 about the slag pile, and "explained" the slag pile to them. In  
12 fact, Hawash made additional investments after this presentation  
13 at Atkins' home. **pp. 80-81.** Hawash admitted that he solicited 2  
14 investors. **pp. 81-82.**

15 Division witness Hagen learned about the investment from  
16 Ron Delmanowski's wife. Hagen was given various assay reports to  
17 review. **pp. 114-116.**

18 Division witness Overhamm learned about the investment from  
19 Ron Delmanowski's wife, and was given assays to review. **pp. 176-**  
20 **177.** Overhamm testified that the "only reason I went along with  
21 it (the investment) is because there was a financial advisor  
22 (Delmanowski) present who condoned it." **p. 186.**

23 Q. (BY MR. SALCIDO) You wouldn't have invested if Mr.  
24 Delmanowski had not been there, would you?

25 A. Absolutely I would not have. He lent the credence to  
26 it and that supported our judgment. **p. 187.**

27 Division witness Foley was solicited by Hurley and never  
28 even spoke to Patton before investing. **pp. 227-229.**



1 player in this sorry affair. The major players, Atkins, Hurley  
2 and registered stockbroker Delmanowski, remain untouched. Atkins  
3 and Hurley now run CSI, a company that owns a slag pile that may  
4 be quite valuable. This Commission continues to labor under the  
5 false impression that all the "bad guys" have left CSI and that  
6 the "good guys" are now running the show.

7 Patton was instructed by Atkins and Hurley to sell his CSI  
8 shares, which he did. He was told by Atkins and Hurley to use  
9 the money raised therefrom for CSI's benefit, which he did.  
10 Today, Patton has less than 5% of the CSI stock he was issued in  
11 exchange for the slag pile that had been in Patton's family for  
12 almost 80 years.

13 Patton no longer has the slag pile. He no longer has his  
14 CSI stock. He did not enjoy the \$400,000 - 450,000 raised from  
15 the sale of his stock. Instead, CSI has the slag pile, and CSI  
16 enjoyed the benefit of the hundreds of thousands of dollars  
17 raised from the sale of Patton's CSI stock.

18 Yet, the Division allowed CSI to consent to an Order that  
19 did not require restitution, or impose a fine or penalty. The  
20 Division allowed Atkins, Hurley and Delmanowski, who sold most of  
21 the CSI stock, to go free. Now, the Division requests an order  
22 requiring Patton to pay almost \$600,000.00 to investors, who  
23 continue to hold CSI stock. This would be patently unjust and  
24 unfair.

25 Any Order issued against Patton should be, at the most,  
26 less onerous than that issued, by consent, to CSI. The Order  
27 should not include restitution orders, fines or penalties.

28

1 People must be treated equitably under the law.

2 **RESPECTFULLY SUBMITTED:** December 1, 2000

3 **MICHAEL SALCIDO, PC**

4 

5 Michael Salcido  
6 Attorneys for Respondent Patton

7 **ORIGINAL** and ten (10) copies filed with:

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