

ORIGINAL



0000118030

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CITY & STATE: Phoenix, AZ  
ZIP: 85027  
PHONE: 602-218-5057



MICHAEL K. JAMES, CLERK  
DEPUTY CLERK  
SSJg

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

Kyle Schmierer  
\_\_\_\_\_  
PLAINTIFF,  
  
vs.  
  
AZ Corporation  
\_\_\_\_\_  
Commission Securities Div.  
DEFENDANT.

CASE NO.: LC2010-000685  
TITLE: Complaint:  
to Superior Court for an  
Appeal of Decision by  
AZ Corp. Commission  
in case: Docket NO.  
S-20651A-09-0029

see attached

Arizona Corporation Commission  
DOCKETED  
SEP 9 2010

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ARIZONA CORPORATION COMMISSION  
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2010 SEP -9 P 3:01

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[Signature]

9-2-2010

**Complaint: to Superior Court for an Appeal of decision by Arizona Corporation Commission In the case: DOCKET NO. S-20651A-09-0029**

Plaintiff-Appellant: Kyle Schmierer

Defendants-Appellees: Arizona Corporation Commission - Securities Division

Superior Court,

Please take into consideration that I am not a lawyer and as of today cannot afford one. I may not use the correct format, syntax, or vocabulary you expect, but I request you please focus on what is most important – the truth and justice. Justice must be available to all citizens of our country regardless of their income or connections and status in society for our democracy to succeed.

My intention in plain English is to have all charges and fines against me dropped and that the Arizona Corporation Commission Securities Division be formally investigated for abuse of power, malicious prosecution, perjury, and attempted extortion. I want to be sure that no other citizen should be subjected to the illegal abuse and immoral activities of this out of control government agency.

I respectfully request the Superior Court vacate all the charges and fines against me, Kyle Schmierer, immediately and launch an investigation into the illegal, immoral and dangerous behavior of the Arizona Corporation Commission Securities Division.

If you are not able to vacate and dismiss the decision and fines of the AZ Corporation Commission, I request a jury trial of my peers. A trial de novo with a jury is hereby officially demanded in this complaint. If all fines and charges are vacated immediately by the Superior Court and an independent investigation is ordered, then no trial will be required or needed.

A.R.S. §12-910 states: “pursuant to section 41-1092.02, the trial shall be de novo if trial de novo is demanded in the complaint... On demand of any party, if a trial de novo is available under this section, it may be with a jury,”

Whereas the Seventh Amendment of the US Constitution guarantees all citizens a trial by jury in a civil case, I hereby assert my constitutional rights and officially as required demand I be given a trial by a jury of my peers in civil court.

Seventh Amendment: “In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.”

Whereas the value of this case is by any measure over \$20.00 as I am faced with an extortion fine of \$1,000.00 or more, I hereby assert my constitutional rights and demand I be given a trial by a jury of my peers in civil court.

Whereas the Arizona Constitution article VI, s 17 – 17 guarantees a trial by jury in any case where such a jury trial is demanded and I have formally demanded a jury trial in this, I must be given a jury trial or the charges and fines must be vacated.

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Arizona Constitution article VI, s 17 – 17: Section 17. The superior court shall be open at all times, except on nonjudicial days, for the determination of non-jury civil cases and the transaction of business. For the determination of civil causes and matters in which a jury demand has been entered, and for the trial of criminal causes, a trial jury shall be drawn and summoned from the body of the county, as provided by law. The right of jury trial as provided by this constitution shall remain inviolate, but trial by jury may be waived by the parties in any civil cause or by the parties with the consent of the court in any criminal cause. Grand juries shall be drawn and summoned only by order of the superior court.

Whereas I have demanded in this motion that I receive a jury trial as guaranteed by both the US Constitution and Arizona Constitution, a jury trial must be granted, unless the charges and fines are vacated which would remove the need for a trial. No cited case law or any law can supersede the US Constitution and deny anyone of their basic constitutional rights.

My right to appeal is stated in: A.R.S. §12-904, A.R.S. §12-905, A.R.S. §12-906 to, A.R.S. §12-907, A.R.S. §12-908, A.R.S. §12-909, A.R.S. §12-910 that guide any appeal to Superior Court from an Administrative Hearing decision.

I have filed the complaint within the time requirement outlined in A.R.S. §12-904. Exhibit A is a scan of the certified letter of the decision which shows the date I received the decision from the Arizona Corporation Commission.

Statement of the findings and decision:

The Arizona Corporation Commission will have their false findings and poor decision under my name, Kyle Schmierer, and DOCKET NO. S-20651A-09-0029.

A transcript of the hearing should not be designated as part of the record because the process was completely unfair and unjust. A trial de novo with a jury is required in a real court with fair rules.

My understanding of the decision is they falsely claim I had to register as a broker with the state and because I did not, they believe I broke certain state laws and thus improperly fined me \$1,000.00 USD.

They also stated they will block my ability to register in the future. They claim I must register but then will also not allow it? I offered to register even though I do not believe the law requires me to as a gesture of good will to resolve the matter quickly. Their blocking of their own demand demonstrates their concern only for fines and winning cases not justice or protecting anyone.

Their views of the laws are self serving to allow them to threaten and attempt extortion on more law abiding honest citizens and entrepreneurs. Their unduly strict and improper interpretation of the laws is not in line with the intent of the law makers or the standards of the community. No one has been hurt in this ordeal but me - the plaintiff. My (the plaintiff, Kyle Schmierer) intentions were always and remain honest, equitable, moral and legal. It must not be illegal for a business owner to seek fair financing for a legitimate and legal business, especially from savvy wealthy investors as allowed under Regulation D.

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I am operating under Regulation D of the SEC and am exempt from filing. I have and will seek accredited investors for a legitimate and legal investment in a legitimate and legal business. This makes me exempt under Federal Law and therefore also state law.

Grounds upon which review is sought:

Employees of the Arizona Corporation Commission Securities Division, have repeatedly lied to me, lied to the Administrative Judge and then lied to the Commissioners. I was also threatened and then they repeatedly blocked me from getting basic information required for a fair hearing. I will swear to these facts and take an oath on any holy book and take any lie detection test.

They seem to be willing to do anything at all to win at all costs. All the while they would chat with the Judge and Commissioners on a personal basis as they all know each other and work together often and then lie to them about my case and their own illegal and immoral behavior.

OVERVIEW of CASE: DOCKET NO. S-20651A-09-0029 - Arizona Corporation Commission:

Extortion, abuse of power, dirty tactics, lies and intimidation.... no it's not the mafia but our own state government! This is a threat to the economic health of the state and a cancer attacking our democracy.

This state agency is waging war against entrepreneurs and small businesses, when the state should be helping entrepreneurs and small business grow and do what they do best - create innovation, jobs and generate revenues and taxes.

On 2-26-2009 I attended an informational hearing by the Arizona Corporation Commission Securities Division. It turned out to be an inquisition. I was faced with angry intimidation tactics by their counsel Wendy Coy and a silent associate (her name is being blocked and illegally withheld). I was threatened with felony charges, for what - they refused to tell me. Later I learned that Wendy Coy very deviously had ordered the court reporter to be off the record every time she threatened me. They said I must pay their \$5,000 fine or face felony charges. They attacked me and tried to trick me throughout this supposed hearing. There was no interest in the truth or providing me with information like law abiding government agencies do.

After months of hard work, I finally managed to determine what the false charges against me are. When I checked the laws and interpretations on the Securities Division's own website, it became very clear they had no authority to charge me with any felonies. I found out that these charges were completely baseless. They said I had to register, while both Federal SEC rules and State laws allow for exemptions in my case were I am offering investments in my own company to only wealthy/savvy accredited investors. They also falsely claimed I was acting as an unregistered broker, when in fact I am the owner of the company who makes no commission. On both their civil administrative charges, by their own definition in fact I have not violated any laws or rules whatsoever. I am just an honest entrepreneur and artist who is trying to raise money for his project. This is what we are supposed to do in a free capitalist country. The Securities Division is acting like we are in the old Soviet Union, but this is America and we are still a free country. All our

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freedom is threatened by government agencies that are arrogant and out of control. The Securities Division has no interest in finding the truth, only collecting their fines. Government is supposed to serve and protect the people not destroy good innocent people and their dreams!

Clearly the Securities Division made illegal threats to pressure me to pay the fine. It almost worked. I was very scared, confused and shocked. Normally a company would probably cave in and pay the fine even when innocent because it is easier and cheaper than fighting it. That is their illegal and immoral tactic. That is a text book definition of extortion. Abusing the power the State and a team of lawyers against innocent entrepreneurs is reprehensible and dangerous. Naively I was very open and honest with my inquisitors, because I thought they wanted the truth. But as soon as I told them I could not afford an attorney they became like hungry sharks smelling the blood. I submitted a great deal of sensitive personal information to these criminals to prove I could not afford it. All they did was lower the fine to \$1,000. Well that might as well have been a million to me and my financial statements proved that. Why should I have to be in debt or starve to pay a fine for false charges? They have no interest in the truth or getting compliance, it is all about fines and prosecution. Threat, lies and intimidation to get money and win at all cost - this is the ethos and morality of the Arizona Corporation Commission Securities Division.

Since they now know I cannot afford an attorney they continue to play dirty tricks and block me from being able to show the truth and defend myself. The judge at first suggested mediation, but the Arizona Corporation Commission Securities Division refused and from that point the judge has done nothing to protect my legal rights. I have asked for the names and contact information for several key witnesses that are essential to the truth and will prove my innocence and the extortion by the Arizona Corporation Commission Securities Division. Over and over I have made motions, while attending college fulltime, to get basic information I must have to defend myself. Yet they continue to fight my motions instead. This proves they have no interest in the truth. Why try to confuse me and not know the charges. Why block witnesses? Why not seek the truth and justice? Why must they threaten and lie and cheat? If the Securities Division is ever investigated I am certain you will find others who are innocent like me that were threatened and extorted for fines. I am all for laws to protect investors and grandmas of their savings, but most business people and entrepreneurs are not criminals. There is nothing wrong with a business owner trying to find investors for his or her business. I have very carefully and strictly followed SEC Regulation D practices even though they are very restrictive, unjust and unfair to normal and middle class people who cannot afford all the vast attorney fees for a stock offering. Entrepreneurship is not immoral or illegal, yet that is how the Arizona Corporation Commission Securities Division treats us.

The Arizona Corporation Commission Securities Division continues to deny me due process and basic legal rights guaranteed by the US Constitution to be able to confront my accusers and question essential witnesses. The immoral scoundrels at the Securities Division continue to block information I need to defend myself. They continue to cover up their illegal extortion efforts and try to exploit their close relationship with the judge, my lack of legal knowledge, and my inability to hire an attorney in order to abuse their power with lies, threats, continual efforts to block witnesses and hide the truth, and hide their evil attempts at extortion.

When a government agency ruthlessly, callously, and continuously abuses its power and unjustly persecutes a law abiding citizen merely trying to fulfill her or his dreams and create much needed jobs, it is not only morally despicable but a threat to freedom and a cancer infecting our fragile democracy.

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There can be no excuse and no justification for threatening me with felony charges unless I paid a \$5,000 fine when I did nothing wrong and when the division has no authority to charge a felony for their trumped up charges. This is the text book definition of extortion! There can be no excuse and no justification for blocking the names and contact information of witness I must have to defend myself. This is abuse of power. The behavior of the Securities Division is outrageous. This agency is out of control and must be stopped!

I am asking you to do the right thing. I ask you to be a moral leader and protect our democracy. Investigate the extortion, lies, abuse and intimidation by the Arizona Corporation Commission Securities Division.

Whereas I (plaintiff) have been illegally and immorally denied essential information, specifically the full contact details to be able to subpoena and get testimony from Peggy Scozzari. Peggy Scozzari is listed as the person that misrepresented themselves as an accredited investor and lied to get proprietary and confidential business property that the AZ Corporation Commission abused in their malicious prosecution for the purpose of extortion of the plaintiff, Kyle Schmierer. And whereas I (plaintiff) have been illegally and immorally denied essential information, specifically the full contact details to be able to subpoena and get testimony from the unnamed investigator and the court reporter (whose names were both illegally withheld from me) who were both witnesses to the attempted extortion and abuse of power by lead counsel Wendy Coy, that I have repeatedly requested in discovery motions. Therefore the administrative hearing was unfair, unjust and improper and the charges and fines must be immediately dismissed or a new trial by jury must be granted.

Whereas, the AZ Corporation Commission Securities Division has denied the respondent information required for a fair trial and to subpoena witnesses and the court has abrogated its legal and moral duty to compel the Securities Division to follow the law, the case must be dismissed and the Securities Division must be sanctioned a minimum of \$3,500,000.00 USD for malicious prosecution, attempted extortion, and repeated attempts to deny the respondent a fair trial.

Whereas both the SEC and Arizona Securities Act allow for "statutory private offering exemption" and even the AZ Corporation Commission Securities Division's supposed evidence clearly demonstrates the Respondent was following SEC Regulation D and therefore is exempt from registration from both the Federal Government and the state of Arizona and whereas no law has been broken, the chargers and fines must be immediately vacated.

Whereas, the AZ Corporation Commission Securities Division has from the beginning and continually lied to the Plaintiff, the chargers and fines must be immediately vacated without prejudice or delay.

Whereas, the AZ Corporation Commission Securities Division has from the beginning and continually abused their power with complete disregard for democracy and the intent of the legislature that created the securities laws, the chargers and fines must be immediately vacated without prejudice or delay.

Whereas, the AZ Corporation Commission Securities Division has conducted unfair business practice by abusing their authority of a state agency, the chargers and fines must be immediately vacated without prejudice or delay.

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Whereas, the AZ Corporation Commission Securities Division has from the beginning and continually practiced harassment, intentional misrepresentation, and breach of fiduciary duties in the pursuit of a malicious prosecution, thereby, the charges and fines must be immediately vacated without prejudice or delay, if fairness and justice are of any import to this court.

Additionally, this nefarious, egregious, illegal and immoral behavior of attempted extortion by malicious prosecution demands sanctions against AZ Corporation Commission Securities Division.

Because such malicious prosecution and attempted extortion have prevented Respondent from raising money for his business to create jobs and tax revenue for the state and federal government, and to prevent such illegal and immoral behavior in the future, the Arizona Corporation Commission Securities Division should be additionally sanctioned a minimum of \$3,500,000.00 USD for malicious prosecution and attempted extortion. Their illegal and immoral actions have also tarnished my good name and blocked my ability to raise financing.

I ask the Superior Court, to dismiss the charges and fines against me, to investigate the out of control Securities Division for extortion, abuse of power and violating their mission, and to order a total restructuring of the Securities Division and the way it conducts business so that new businesses and the American dream are not destroyed.

Being an entrepreneur is not a crime. We create most of the jobs. This is America not Communist China, or Iran!

I plead before you as an entrepreneur accused of trying to raise money for my business from wealthy savvy investors. I am a business person accused of having a business plan and using technology to network and meet people to help my business.

The only thing I am guilty of is working very hard to create jobs, trying to live the American dream with honesty and morals!

The irony is that an extremely honest person of the good intent, who has taken utmost care to learn and follow the very complex and unfair securities laws is the person accused of wrong doing. I follow SEC Regulation D very carefully, even though it is unjust. I have done nothing wrong!

I have ever only sought accredited investors and have gone to great length to let people I meet know they must be accredited investors. Proof is provided in my letters and my contracts.

The Securities Division has acted immorally in extortion, lies, and blocking me from getting information to defend myself. They have never had any interest in the truth or fixing a problem. They just want convictions and fees!

I should not be responsible for liars who purposely deceive me. My intentions are honest and moral.

I followed SEC Regulation D very carefully, and Arizona state laws allow me to be exempt from filing if I am exempt under Federal Law.

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Whereas both the SEC and Arizona Securities Act allow for "statutory private offering exemption" and even the AZ Corporation Commission Securities Division's supposed evidence clearly demonstrates the Respondent was following SEC Regulation D and therefore is exempt from registration from both the Federal Government and the state of Arizona and whereas no law has been broken & no party harmed in any way, the chargers and fines must be immediately vacated.

<http://www.cc.state.az.us/divisions/securities/forms/forms-securities.asp>

"A. Statutory Private Placement Exemption.

Section 4(2) of the federal Securities Act of 1933 (the "1933 Act") provides an exemption from the registration provisions of section 5 of the 1933 Act for "transactions by an issuer not involving any public offering." Section 44-1844(A)(1) of the Arizona Securities Act provides a similar exemption. These exemptions from the registration requirements of the 1933 Act and the Arizona Securities Act each are referred to as a 'statutory private offering exemption'." The statutory private placement exemption is self-executing; i.e. has no filing requirement.

(\* from the AZ Corp Commission website – which I had to have a friend contact them to get information, because , Julie Coleman, blocked me from the information - see below \*)

Entrepreneurs create new jobs and this division is damaging the state's economy, democracy and justice itself. The Securities Division is not following the intent of the law created by the law makers. In fact, Julie Coleman, Chief Counsel of Enforcement of the Arizona Corporation Commission, told me angrily that only her interpretation of the law mattered. In point of fact, America is a democracy and her opinions are not important. Her duty is to enforce the laws as the law makers intend and their interpretation of the laws. In a democracy, her opinions are not supreme as she claims. Her attitude is extremely dangerous and arrogant. Her action and the actions of the entire enforcement division have crossed the line and this agency is dangerously out of control. She also stated they will block my ability to register in the future. They claim I must register but then will also not allow it? I offered to register even though I do not believe the law requires me to as a gesture of good will to resolve the matter quickly. Her response was to block me from doing so and even block me from getting information about the charges against me, the laws they claimed I violated, and even speaking with people at the Securities Division about registration requirements. I even had to have a friend contact them on my behalf so I could learn about their procedures and rules. Their blocking of their own demand demonstrates their concern only for fines and winning cases not justice or protecting anyone.

General Solicitation is not defined by SEC. There is no clear definition! This is not settled law. My use of the Internet in no way would be considered reaching the general public by a jury – by normal people. I have placed no ads for securities and I have never pitched to the general public.

Peggy Scozzari – (is that her real name?) had to actively search for me, contact me, then lie to me over and over falsely presenting herself as an accredited investor. No non accredited investor has ever contacted me to invest except her and that is only because she lied! She made effort to find me and then lied! Peggy Scozzari deviously led me to believe she was an accredited investor. The only person victimized and treated immorally is me –the plaintiff.

Furthermore, Americans will be shocked to learn that a business owner and entrepreneur could possibly be considered a criminal for finding investors.

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Instead of punishing me the Arizona Corporation Commission needs to find better ways to fulfill their mission.

<http://www.azcc.gov/Divisions/Securities/>  
Securities Division

Mission: To ensure the integrity of the securities marketplace through investigative actions as well as the registration and oversight of securities, securities dealers and salesmen, and investment advisers and their representatives; to enhance legitimate capital formation; and to minimize the expense of regulatory compliance on legitimate business, consistent with vigorous investor protection.

Arizona and America desperately need entrepreneurs like me to innovate and create new jobs. Stop persecuting us and start helping us. I am not a criminal. I made a great deal of effort to follow the SEC laws despite of their unfairness and stupidity.

I am a good and honest person who is guilty of only believing in the American Dream.

The Superior Court has the opportunity today to do the right thing and dismiss these charges and fines,

The Superior Court has the opportunity today to make a positive difference, to provide justice and make a vow to investigate and sanction an out of control government agency

As a public servant it is The Superior Court's authority and responsibility to make decisions not merely as a judge, but also as a representative of the people's will and with good common sense and morality.

In conclusion, I once again request the Superior Court vacate all the charges and fines against me, Kyle Schmierer, immediately and launch an investigation into the illegal, immoral and dangerous behavior of the Arizona Corporation Commission Securities Division.

If the Court has the authority I also request you consider imposing sanctions upon Arizona Corporation Commission Securities Division a minimum of \$3,500,000.00 USD for malicious prosecution and attempted extortion; and to prevent such illegal and immoral behavior in the future. Their illegal and immoral actions have also tarnished my good name. Such malicious prosecution and attempted extortion have prevented the Plaintiff from raising money for his business to create jobs and tax revenue for the state and federal government,

If you are not able to vacate and dismiss the decision and eliminate all fines of the AZ Corporation Commission, I request a jury trial of my peers. A trial de novo with a jury is hereby officially demanded in this complaint. If all fines and charges are vacated immediately by the Superior Court and an independent investigation is ordered, then no trial will be required or needed.

Sincerely, Kyle Schmierer

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EXHIBIT A

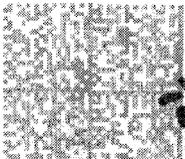
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