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COMMISSIONERS
KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

ORIGINAL



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ARIZONA CORPORATION COMMISSION 41

MEMORANDUM

TO: Kristin K. Mayes, Chairman
Gary Pierce
Paul Newman
Sandra D. Kennedy
Bob Stump

Arizona Corporation Commission
DOCKETED

NOV 22 2010

FROM: Matthew J. Neubert 
Director of Securities

DOCKETED BY 

DATE: November 15, 2010

RE: Miko D. Wady, *et al.* (Docket No. S-20716A-09-0574); Order to Cease and Desist, for Restitution, and for Administrative Penalties and Consent to Same by: Thurston Smith, B.Y.B. Entertainment, L.L.C.

CC: Ernest G. Johnson, Executive Director

Attached is the proposed Order to Cease and Desist, for Restitution, and for Administrative Penalties and Consent to Same by: Thurston Smith, B.Y.B. Entertainment, L.L.C. (the "Order"). The Order finds that, in connection with Miko Wady's 2008 sales to investor Deluxe Designs International, LLC ("Deluxe") of investments related to the production of concerts, Mr. Smith and B.Y.B. Entertainment, L.L.C. ("BYB") violated A.R.S. § 44-1991. The Order requires Mr. Smith and BYB to cease and desist their activity, pay \$74,000 in restitution, and pay an administrative penalty in the amount of \$10,000. The Commission previously entered an order against Respondent Miko D. Wady on April 8, 2010 and Malika S. Smith and CAA General Partnership on November 4, 2010.

The Order finds that Mr. Wady represented to Deluxe that the money Deluxe raised from its investors would be used to fund the production of concerts. Mr. Wady further represented to Deluxe that BYB was a producer of the concerts. Based on these representations, Deluxe paid \$74,000 to BYB. BYB was not a producer of the concerts and Mr. Smith used the BYB bank account for Mr. Wady's banking transactions.

Originator: William W. Black

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

In the matter of:

MIKO D. WADY and JENNIFER L. SAVAGE (f.k.a. JENNIFER L. WADY), formerly husband and wife;

NATO ENTERPRISES, LLC, an Arizona limited liability company;

MALIKA S. SMITH and KORY C. SMITH, formerly wife and husband;

BOBBY G. GOODSON and PAMELA D. GOODSON, husband and wife;

CAA GENERAL PARTNERSHIP, an Arizona general partnership;

MARIO K. REED, a single man;

PHOENICIAN ENTERTAINMENT, L.L.C., an Arizona limited liability company;

THURSTON SMITH and SHAVONE SMITH, husband and wife;

B.Y.B. ENTERTAINMENT, L.L.C., an Arizona limited liability company;

Respondents.

DOCKET NO. S-20716A-09-0574

DECISION NO. _____

ORDER TO CEASE AND DESIST, FOR RESTITUTION, AND FOR ADMINISTRATIVE PENALTIES AND CONSENT TO SAME BY:

THURSTON SMITH

B.Y.B. ENTERTAINMENT, L.L.C.

Respondents THURSTON SMITH ("SMITH") and B.Y.B. ENTERTAINMENT, L.L.C. ("BYB") (collectively "Respondents") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease and Desist, for Restitution, and for Administrative

1 Penalties (“Order”). Respondents admit the jurisdiction of the Arizona Corporation Commission
2 (“Commission”); admit the Findings of Fact and Conclusions of Law contained in this Order; and
3 consent to the entry of this Order by the Commission.

4 I.

5 NATURE OF THE CASE

6 From February to August 2008, Miko D. Wady (“WADY”) and NATO Enterprises, LLC
7 (“NATO”) offered and sold at least \$2,910,000 of unregistered investment contracts in connection
8 with the production of concerts.¹ That amount includes \$2,760,000 sold to Deluxe Designs
9 International, LLC (“Deluxe”).² WADY made representations that Deluxe would fund the
10 production of each concert by paying the producer, then receive the revenue generated by the sale
11 of tickets that would not only repay the cost of the production, but result in a profit for Deluxe.

12 WADY represented to Deluxe that he arranged the funding for the production of concerts
13 nationwide for such artists as Keith Urban, Carrie Underwood, Radiohead, the Dave Matthews
14 Band, the Foo Fighters, 50 Cent, and R. Kelly. WADY further represented to Deluxe that funding
15 these concerts would be profitable and that enough money would be raised from concert ticket sales to
16 repay Deluxe’s principal investment and generate a profit of at least 25 percent.

17 WADY represented to Deluxe that NATO and Deluxe would share in the profit from the
18 ticket sales after Deluxe’s principal investment had been repaid. The profit-sharing with Deluxe is
19 described in the Joint Venture Agreements that identify the concerts to be funded by Deluxe and
20 that state the total amount of money required to produce each concert (“Event Cost”). The Joint
21 Venture Agreements state that, “The cash receipts from the [concert] remaining after payment of
22 the [Event Cost]...shall be referred to as the “Net Profits Receipts” and...shall be divided into
23 thirds and distributed: 1/3 according to the percentage of the amount of the initial cash contributed
24 by each Joint Venturer [one of Deluxe’s investors] for the Event [concert], 1/3 to NATO
25 Enterprises, and 1/3 to [Deluxe].”

26 ¹The findings of fact contained in this section of the Order were made by the Commission in Decision 71600.

² See also Decision 71303 in which the Commission found that Deluxe raised \$2,760,000 from investors.

1 WADY represented to Deluxe that he had a relationship with a "broker" who was to furnish
2 the services of the artists at the concerts. WADY further represented that the production of each
3 concert would be funded by Deluxe entering into a Performance Agreement with the broker and
4 Deluxe paying the producer of the concerts.

5 After forwarding its investment funds to the producer, Deluxe had no duties to perform or
6 responsibilities to fulfill in order to receive its promised profit. The Performance Agreements state,
7 among other things, that "the producer shall have exclusive control over the production...of the
8 [concert]..." WADY represented to Deluxe that the broker and producer, both of whom Deluxe has
9 never met, would produce the concerts, receive the money raised from ticket sales, repay Deluxe's
10 principal investment, and account for/pay Deluxe its profit based on "audit sheets" that purport to
11 show the number of tickets sold and amount of money raised from a concert.

12 All of the concert dates (from February to August 2008) came to pass and, although it received
13 audit sheets, Deluxe has received to date a total of only \$20,000 of its principal investment and none
14 of the promised profit. WADY represented to Deluxe that BYB was one of the producers of the
15 concerts.

16 **II.**

17 **FINDINGS OF FACT**

18 1. SMITH is, and was at all relevant times, a single man residing in Maricopa County,
19 Arizona. SMITH is a member and manager of B.Y.B. ENTERTAINMENT, L.L.C.

20 2. BYB is an Arizona limited liability company.

21 3. WADY having represented to Deluxe that BYB was one of the producers of the
22 concerts, Deluxe paid \$74,000 to BYB for the production of concerts.

23 4. Deluxe's money was deposited into the BYB bank account, but none of it was paid to
24 the broker who was to furnish the services of the artists at the concerts and none of it was paid to an
25 artist or agent thereof.

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1 that the following relief is appropriate, in the public interest, and necessary for the protection of
2 investors:

3 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondents and any of their agents,
4 employees, successors and assigns, permanently cease and desist from violating the Securities Act.

5 IT IS FURTHER ORDERED that Respondents comply with the attached Consent to Entry
6 of Order.

7 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondents, jointly and
8 severally, shall pay restitution to the Commission in the principal amount of \$74,000. Until such
9 time as this restitution obligation (\$74,000) is paid in full, Respondents shall be entitled to an offset
10 of 3% of any monies paid by WADY or any other respondent under Decision No. 71600.³
11 Payment of this restitution obligation is due in full on the date of this Order. Payment shall be
12 made to the "State of Arizona" to be placed in an interest-bearing account controlled by the
13 Commission. Any principal amount outstanding shall accrue interest at the rate of 10 percent per
14 annum from the date of purchase until paid in full. Interest in the amount of \$20,524.93 has
15 accrued from the date of purchase to November 4, 2010.

16 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
17 records of the Commission. Any restitution funds that the Commission cannot disburse because an
18 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
19 investor because the investor is deceased and the Commission cannot reasonably identify and
20 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
21 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
22 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
23 shall be transferred to the general fund of the state of Arizona.

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³ In Decision 71600, Wady, his former spouse Jennifer Savage and NATO were ordered to jointly and severally pay restitution in the principal amount of \$2,910,000 plus interest, which amount includes the \$2,760,000 raised from Deluxe. The \$74,000 principal restitution ordered in this decision is 3% of the total amount of money (\$2,896,236) received from Deluxe by BYB, CAA General Partnership, and Phoenician Entertainment, L.L.C.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents shall, jointly
2 and severally, pay an administrative penalty in the amount of \$10,000. Payment of this penalty
3 obligation is due in full on the date of this Order. Payment shall be made to the "State of Arizona."
4 Any amount outstanding shall accrue interest as allowed by law.

5 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
6 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
7 shall be applied to the penalty obligation.

8 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of
9 default. If any Respondent does not comply with this Order, any outstanding balance may be
10 deemed in default and shall be immediately due and payable.

11 IT IS FURTHER ORDERED that, if any Respondent fails to comply with this order, the
12 Commission may bring further legal proceedings against that Respondent, including application to
13 the superior court for an order of contempt.

14 IT IS FURTHER ORDERED that no finding of fact or conclusion of law contained in this
15 Order shall be deemed binding against any Respondent under this Docket Number who has not
16 consented to the entry of this Order.

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1 IT IS FURTHER ORDERED that this Order shall become effective immediately.

2 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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4 CHAIRMAN

COMMISSIONER

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7 COMMISSIONER

COMMISSIONER

COMMISSIONER

8 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
9 Executive Director of the Arizona Corporation Commission,
10 have hereunto set my hand and caused the official seal of the
11 Commission to be affixed at the Capitol, in the City of
12 Phoenix, this _____ day of _____, 2010.

13 _____
14 ERNEST G. JOHNSON
15 EXECUTIVE DIRECTOR

16 _____
17 DISSENT

18 _____
19 DISSENT

20 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
21 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

22 (ASL)
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CONSENT TO ENTRY OF ORDER

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1. Respondents admit the jurisdiction of the Commission over the subject matter of this proceeding. Respondents acknowledge that they have been fully advised of their right to a hearing to present evidence and call witnesses and they knowingly and voluntarily waive any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondents acknowledge that this Order To Cease And Desist, for Restitution, and for Administrative Penalties (“Order”) constitutes a valid final order of the Commission.

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

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

4. Respondents understand and acknowledge that they have a right to seek counsel regarding this Order and that they have had the opportunity to seek counsel prior to signing this Order. Respondents acknowledge and agree that, despite the foregoing, they freely and voluntarily waive any and all right to consult or obtain counsel prior to signing this Order.

5. Respondents admit the Findings of Fact and Conclusions of Law contained in this Order. Respondents agree that they shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future proceeding in which the Commission or any other state agency is a party concerning the denial or issuance of any license or registration required by the state to engage in the practice of any business or profession.

6. By consenting to the entry of this Order, Respondents agree not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual

1 basis. Respondents will undertake steps necessary to assure that all of their agents and employees
2 understand and comply with this agreement.

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

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

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

13 10. Respondents agree that they will not apply to the state of Arizona for registration as
14 securities dealers or salesmen or for licensure as investment advisers or investment adviser
15 representatives at any time in the future.

16 11. Respondents agree that they will not exercise any control over any entity that offers
17 or sells securities or provides investment advisory services within or from Arizona at any time in
18 the future.

19 12. Respondents agree that they will continue to cooperate with the Securities Division
20 by, including but not limited to, providing complete and accurate testimony at any hearing in this
21 matter and cooperating with the state of Arizona in any related investigation or any other matters
22 arising from the activities described in this Order.

23 13. Respondents consent to the entry of this Order and agree to be fully bound by its
24 terms and conditions.

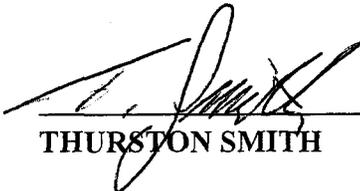
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1 14. Respondents acknowledge and understand that, if they fail to comply with the
2 provisions of the order and this consent, the Commission may bring further legal proceedings
3 against them, including application to the superior court for an order of contempt.

4 15. Respondents understand that default shall render them liable to the Commission for
5 its costs of collection and interest at the maximum legal rate.

6 16. Respondents agree and understand that, if they fail to make any payment as required
7 in the Order, any outstanding balance shall be in default and shall be immediately due and payable
8 without notice or demand. Respondents agree and understand that acceptance of any partial or late
9 payment by the Commission is not a waiver of default by the Commission.

10 17. SMITH represents that he is the member and manager of BYB and that he has been
11 authorized by BYB to enter into this Order for and on behalf of it.

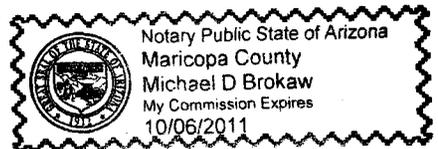
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13 
14 THURSTON SMITH

15 STATE OF ARIZONA)
16) ss
17 County of Maricopa)

18 SUBSCRIBED AND SWORN TO BEFORE me this 22 day of October, 2010.

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21 NOTARY PUBLIC

22 My commission expires:
10-06-2011



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B.Y.B. ENTERTAINMENT, L.L.C.

[Handwritten Signature]

By: Thurston Smith
Its: Managing Member

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STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN TO BEFORE me this 22 day of October, 2010.

[Handwritten Signature]
_____ NOTARY PUBLIC

My commission expires:
10-06-2011



1 SERVICE LIST FOR: In the Matter of Miko D. Wady, et al.

2
3 Thurston Smith and
4 B.Y.B. Entertainment, L.L.C.
5 P.O. Box 3336
6 Chandler, AZ 85244

7
8 Malika S. Smith and
9 CAA General Partnership
10 1175 W. Pecos Rd., No. 1038
11 Chandler, AZ 85224

12
13 Bobby G. Goodson and
14 CAA General Partnership
15 c/o Jennifer Savage
16 1130 W. Longhorn Dr.
17 Chandler, AZ 85286

18
19 Mario K. Reed and
20 Phoenician Entertainment, L.L.C.
21 2310 West Tanque Verde Drive
22 Chandler, AZ 85224-8305

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