

EXCEPTION

2/17/11 ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

GARY PIERCE, Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

Arizona Corporation Commission

DOCKETED

FEB 2 2011

DOCKETED BY

In the matter of:

THEODORE J. HOGAN & ASSOCIATES, LLC a.k.a. TED HOGAN AND ASSOCIATES, an Arizona limited liability company,

THEODORE J. HOGAN a.k.a. TED KILLS IN THE FOG, a married man

and

CHRISTINA L. DAMITIO a.k.a. CHRISTINA HOGAN, a married woman

Respondents.

DOCKET NO. S-20714A-09-0553

SECURITIES DIVISION'S EXCEPTIONS TO RECOMMENDED OPINION AND ORDER

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

2011 FEB - 2 A 10: 32

RECEIVED

Pursuant to R14-3-110(B) of the Arizona Administrative Code, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") submits its exceptions to the Administrative Law Judge's January 24, 2011, Recommended Opinion and Order ("Opinion"). The Division recommends specific changes to the Opinion for the reasons set forth below.

ANALYSIS

The Opinion contains a restitution ordering paragraph (page 13, line 11) that states ". . . restitution in an amount not to exceed \$2,319,310 which restitution shall be made . . ." In this case, the exact amount of restitution is calculable. Therefore, the Division submits that the language "not to exceed" be deleted.

The amount of restitution should be \$2,208,310. Exhibit S-14 lists the accurate amount that each investor invested, however, the total is incorrect. Therefore, the amount of restitution listed in

1 the Opinion, \$2,319,310, should be replaced with \$2,208,310, which represents the total of the
2 amount invested by each investor.

3 The Opinion requires that the restitution ordered, "shall bear interest at the rate of 10
4 percent per year for the period from the dates of investment to the date of payment of restitution by
5 Respondents." (page 13, lines 21 – 23). At the administrative hearing held in this matter, there
6 was no evidence presented that specified the dates of each investment. Therefore, it is not possible
7 to calculate the interest from the investment date. The Division suggests that interest be calculated
8 from the date of the Order by inserting the following language "shall accrue interest at the rate of
9 10 percent per annum on any principal amount outstanding from the date of the Order until paid in
10 full" on page 13, line 21 after "hereinabove."

11 The Division requests clarification as to when the calculation of interest at the rate of 10
12 percent per year begins on the administrative penalty. Currently the Opinion does not specify a
13 date certain when the interest on the administrative penalty begins. Therefore, the Division
14 recommends the following language be added at page 15, at the end of line 2, for clarification,
15 "Payment is due, in full, on the date of this Order. Any amount outstanding shall accrue interest as
16 allowed by law."

17 **CONCLUSION**

18 Based on the foregoing, the Division respectfully requests that the Order paragraphs be
19 amended as follows:

20 Page 13, line 11, DELETE: "not to exceed \$2,319,310"

21 AND INSERT: "of \$2,208,310"

22 Page 13, lines 21 – 23, DELETE: "shall bear interest at the rate of 10 percent per year
23 for the period from the dates of investment to the date of payment of restitution by Respondents."

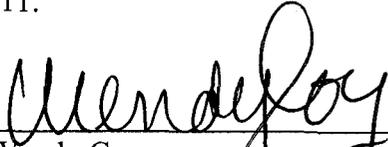
24 AND INSERT: "shall accrue interest at the rate of 10 percent per annum on any
25 principal amount outstanding from the date of the Order until paid in full."

26 ...
...

1 Page 15, line 2, INSERT "Payment is due, in full, on the date of this Order. Any amount
2 outstanding shall accrue interest as allowed by law."

3 Respectfully submitted this 7th day of February, 2011.

4
5 By:



Wendy Coy
Attorney for the Securities Division of
the Arizona Corporation Commission

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2 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
3 filed this 2nd day of February, 2011 with:

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

8 COPY of the foregoing hand-delivered this
9 2nd day of February, 2011 to:

10 Administrative Law Judge Marc Stern
11 Arizona Corporation Commission/Hearing Division
12 1200 West Washington
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed this
15 2nd day of February, 2011 to:

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EXHIBIT A

SECURITIES DIVISION PROPOSED AMENDMENT NO. #1

TIME/DATE PREPARED:

COMPANY:

AGENDA ITEM NO. _____

DOCKET NO(S).

OPEN MEETING DATE:

OPEN MEETING DATE: February 17, 2011

DATE PREPARED: February 2, 2011

COMPANY: Theodore J. Hogan & Associates, LLC a.k.a. Ted Hogan and Associates,
Theodore J. Hogan a.k.a. Ted Kills In The Fog and Christina L. Damitio a.k.a. Christina Hogan

DOCKET NO.

S-20714A-09-0553

AGENDA ITEM NO. S-

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AND INSERT: "of \$2,208,310"

Page 13, lines 21 – 23, DELETE: "shall bear interest at the rate of 10 percent per year for the period from the dates of investment to the date of payment of restitution by Respondents."

AND INSERT: "shall accrue interest at the rate of 10 percent per annum on any principal amount outstanding from the date of the Order until paid in full."

Page 15, line 2, INSERT "Payment is due, in full, on the date of this Order. Any amount outstanding shall accrue interest as allowed by law."

THIS AMENDMENT:		
_____ Passed _____	Passed as amended by _____	
_____ Failed _____	_____ Not Offered _____	_____ Withdrawn _____