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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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COMMISSIONERS

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

MAR 8 2011

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

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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 RESPONSE TO
RESPONDENTS' REQUEST FOR
REHEARING**

Pursuant to R14-3-112(B) of the Arizona Administrative Code, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") submits its Response To Respondents' Request For Rehearing. On January 24, 2011, the Administrative Law Judge ("ALJ") issued the Recommended Opinion and Order. The Respondents filed exceptions to the Recommended Order on February 2, 2011 and February 14, 2011. The Commissioners approved the Recommended Order on February 17, 2011. Respondent Hogan was present at the Open Meeting. Decision number 72209 was issued on March 2, 2011.

The document filed by the Respondents requests a rehearing on the Recommended Opinion and Order and cites to the administrative rules related to the filing of exceptions. The Division files this response as if the Respondents requested a rehearing on the Decision issued by the Commission.

1 The Division supports the Decision of the Commission. The Division requests that the
2 Respondents' Request for Rehearing be denied for the reasons set forth below.

3 ANALYSIS

4 Pursuant to R14-3-112(A) of the Arizona Administrative Code, a Respondent may request
5 a rehearing not later than ten days after service of the Decision. On March 3, 2011, the Decision
6 was issued. The Respondent's Request for Rehearing was premature. However, the Division
7 responds to Respondent's Request For Rehearing as if the Request for Rehearing was timely. In
8 addition, Respondents state in the first paragraph of their Request for Rehearing that the Division
9 is requesting rehearing. This is not the case as the Commission approved the Recommended
10 Opinion and Order filed by the ALJ in favor of the Division.

11 Pursuant to R14-3-112(C), a rehearing of the Decision may be granted for seven specific
12 reasons. Respondents assert three of those reasons as a basis of their request for rehearing; 1) error
13 in the admission of evidence, R-14-3-112(C)(6); 2) irregularity in the proceedings before the
14 Commission, or any order or abuse of discretion, R-14-3-112(C)(1); and 3) excessive penalties, R-
15 14-3-112(C)(5).

16 A. The Administrative Law Judge Properly Admitted Evidence At Hearing.

17 Respondents requested and attended the hearing held on June 15, 2010, and June 21, 2010.
18 At hearing, the Division presented evidence to support the allegations in the Notice of
19 Opportunity. Respondents had the opportunity to object to the evidence presented and cross-
20 examine the Division's witnesses. In most instances, the Respondents stated "no comment" to the
21 admission of evidence. The Respondents had an opportunity to present their own evidence,
22 however; they presented **no** evidence. In fact, Respondents did not actively participate in the
23 hearing they had requested.

24 B. There Was No Irregularity In The Commission Proceedings.

25 Respondents assert that there was some type of irregularity in the proceedings before the
26 Commission because the Interests in Commission Agreements ("Agreements") were called

1 investment contracts rather than loans. The Division presented evidence at hearing that the
2 Agreements were securities. The Commission agreed with the ALJ's finding that the Agreements
3 were, in fact, securities. Respondents own emails and other communications with the investors
4 characterized the transactions as investments. *See* Exhibits S-19, S- 20, S-26 and S-27. At this
5 time, for the Respondents to assert that the Agreements are not securities is disingenuous.

6 **C. The Restitution and Penalties Are Justified.**

7 The Respondents assert that the amount ordered for restitution was "exorbitant and never
8 proven at hearing." Pursuant to A.R.S. §44-2032 and A.A.C. R14-4-308(C), the Commission may
9 order restitution in an amount equal to what the investor invested. The Division presented
10 evidence at hearing to support the restitution amount.

11 Pursuant to A.R.S. § 44-2036(A) any person who is found to have violated any provision of
12 the Arizona Securities Act, may be assessed an administrative penalty in an amount not to exceed
13 five thousand dollars for each violation. In this case, the Respondents were found to have violated
14 the Arizona Securities Act ("Act"), specifically, A.R.S. §§44-1841, 44-1842 and 44-1991.
15 Respondents solicited 31 investors. Each of those investor transactions constitutes at least three
16 violations of the Act and each violation is potentially subject to a \$5,000 administrative penalty.
17 Respondents were assessed a \$45,000 administrative penalty.

18 Respondents had the opportunity to cross-examine witnesses and object to the admission of
19 the Division's evidence. They elected not to. Moreover, Respondents had the opportunity to
20 present their own evidence at the hearing and chose not to do so.

21 The restitution and penalty amounts are justified.

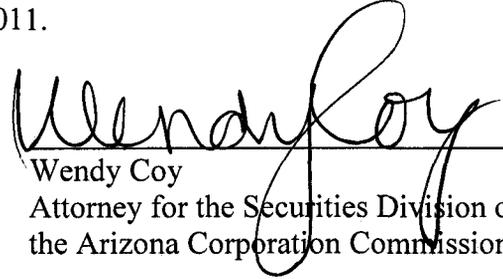
22 **CONCLUSION**

23 The Respondents failed to articulate any reason to justify a rehearing on this matter. First,
24 the Division properly admitted evidence and supported the finding that the Agreements were
25 securities. Second, the Division presented evidence that supported the restitution figure. Finally,
26

1 Respondents had the opportunity to present evidence to refute the Division's assertions but chose
2 not to do so. Therefore, the Respondents' Request for Rehearing should be denied.

3 Respectfully submitted this 9th day of March, 2011.

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5 By:


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

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ORIGINAL AND THIRTEEN (13) COPIES of the foregoing
filed this 8th day of March, 2011 with:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007

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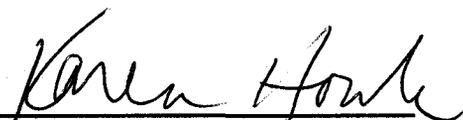
Administrative Law Judge Marc Stern
Arizona Corporation Commission/Hearing Division
1200 West Washington
Phoenix, AZ 85007

COPY of the foregoing mailed this
8th day of March, 2011 to:

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By: 
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