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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

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<p>In the matter of</p> <p>MARK STEVEN MORONEY and LINDA SUE MORONEY, husband and wife</p> <p style="text-align: center;">Respondents.</p>	<p>) DOCKET NO. S-20775A-10-0500</p> <p>)</p> <p>) DECISION NO. <u>72262</u></p> <p>)</p> <p>) ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION AND ORDER FOR ADMINISTRATIVE PENALTIES AGAINST RESPONDENTS</p>
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I.

FINDINGS OF FACT

1. On December 16, 2010, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease And Desist, Order for Restitution, Order for Administrative Penalties And For Other Affirmative Action ("Notice") against respondents MARK STEVEN MORONEY ("MM") and his spouse LINDA SUE MORONEY ("Spouse").

2. On December 21, 2010, the Division filed affidavits executed by Division Special Investigator Clyde J. Hanselman demonstrating that on December 21, 2010, Mr. Hanselman personally served copies of the Notice on both MM and Spouse at their Maricopa, Arizona residence.

3. MM and Spouse have not filed a request for hearing or an answer to the Notice.

4. At all times relevant, MM has been a married man and an Arizona resident. At all times relevant, MM offered and sold the investments discussed below within and from Arizona in his individual capacity and on behalf of Medical Water Technologies, L.L.C. (f.k.a. "C & C Water

1 Technology, L.L.C.”) (“MWT”) as its managing member and investment salesman. MM has not
2 been registered by the Commission as a securities salesman or dealer.

3 5. On February 19, 2009, MM caused MWT to be organized as a manager-managed
4 Nevada limited liability company called C & C Water Technology, L.L.C. (“C&C”). On October 16,
5 2009, a Certificate of Amendment to C&C’s Articles of Organization was filed with the Nevada
6 Secretary of State’s Office (“Nevada SOS”) that changed C & C’s name to MWT. MWT was
7 administratively dissolved by the Nevada SOS’s Office on August 27, 2010. At all times relevant,
8 MWT maintained its principal place of business in Maricopa, Arizona, and it issued investments
9 within or from Arizona. At all times relevant, MWT was not registered by the Commission as a
10 securities dealer.

11 6. Spouse was at all relevant times the spouse of MM. Spouse was joined in this action
12 under A.R.S. § 44-2031(C) solely for purposes of determining the liability of MM and Spouse’s
13 marital community.

14 7. At all times relevant, MM was acting for his own benefit and for the benefit or in
15 furtherance of MM and Spouse’s marital community.

16 **A. The Medical and Disinfecting Water Products**

17 8. At all times relevant, MM represented to investors that he was developing health-
18 based water products and machines that he planned to sell and distribute to commercial and medical
19 industry customers (the “Business”).

20 9. To raise capital to operate and promote the Business, MM offered and sold to the
21 general public manager-managed limited liability company membership interests in MWT from
22 March 2008 to February 2010 (the “Investment(s)”). The Investments were not registered by the
23 Commission as securities to be offered or sold within or from Arizona.

24 10. At all times relevant, MM represented to investors that he would pool and/or
25 combine their Investment funds together to develop, market and sell two types of water products,
26 machines and/or technologies.

1 technologies and Mineral Formulation; (c) production of the Medical and Disinfecting Water
2 products; and, (d) promotion, marketing, and distribution of the Medical and Disinfecting Water
3 products, machines and technologies to potential customers.

4 14. At all times relevant, MM emphasized to investors that his ability to pay them their
5 promised profits, and the investors' risk of loss of their Investments, were interwoven with and
6 dependent on MM's superior experience and/or ability to cost effectively use and/or manage their
7 Investment funds to profitably develop, market and sell the Medical and Disinfecting Water
8 products, machines and/or technologies.

9 15. MM promised investors that he would share with them the profits resulting from his
10 and/or MWT's production and sales of the Medical and Disinfecting Water products, machines
11 and/or technologies. MM promised investors that such profit distributions would equal five, fifteen
12 and/or twenty-five percent of their principal Investments per year. MM represented to one investor
13 that his production and sales of the Medical Water products and machine would enable the
14 investors to "make big money."

15 16. MM sold Investments for varying amounts ranging from approximately \$3,000 to
16 \$225,000. MM sold twenty-one (21) of the Investments totaling \$506,300 to three investors who
17 resided in Arizona, Indiana and Washington.

18 17. Investors received no Investment returns from MM and/or MWT.

19 **C. MM's Use of Investment Funds**

20 18. Investors made their Investment checks or money orders payable to MM and MWT,
21 and they sent the payments to MM in Arizona.

22 19. MM then deposited the Investment funds in Arizona bank accounts owned and
23 controlled by MM and/or MWT (the "Arizona Bank Accounts").

24 20. The Arizona Bank Accounts include, without limitation: (a) a MWT business
25 "checking" account with the last four digits of "6339" on which both MM and Spouse were
26 authorized signers; (b) a MWT business "savings" account with the last four digits of "9829" on

1 which MM and Spouse were authorized signers; (c) a MWT business account with the last four
2 digits of "0368" on which MM was an authorized signer; and, (d) a checking account in the name
3 of Spouse with the last four digits "6301" on which Spouse was the authorized signer.

4 21. MM commingled and pooled Investment funds, in part, by transferring such funds to
5 and from the various Arizona Bank Accounts.

6 22. Unbeknownst to Investment offerees and investors, MM used Investment funds, in
7 part, to pay for personal expenses unrelated to the Medical and Disinfecting Water products and
8 Business. These personal expenditures included, without limitation, the payment of thousands of
9 dollars for: (a) horse feed, vitamins and tack to support MM and Spouse's separate competitive
10 horse roping and/or rodeo endeavors; (b) groceries; and/or, (c) various other personal expenditures
11 such as cable television.

12 **D. MM's Previous Securities Fraud**

13 23. At all times relevant, MM represented to offerees and investors that he would
14 manage the day to day operations of the Medical and Disinfecting Water Business, including the
15 management and control of their Investment funds, as discussed above.

16 24. The Securities Division of the State of Washington's Department of Financial
17 Institutions ("Washington SD") filed a "Statement of Charges and Notice of Intent to Enter an
18 Order to Cease and Desist, Charge Costs and Impose Fines" against MM on April 23, 2008, for his
19 violations of the registration and anti-fraud provisions of the Securities Act of Washington (*See*,
20 Washington Securities Division Order No. S-07-453-08-SC01) (the "Statement of Charges").

21 25. Despite the fact that Investment investors began giving their Investment funds to
22 MM in March 2008, and continued to do so until February 2010, MM failed to disclose to them the
23 existence of the April 23, 2008, Statement of Charges filed by the Washington SD.

24 26. The Statement of Charges, along with a related "Notice of Opportunity to Defend
25 and Opportunity for Hearing" and an "Application for Adjudicative Hearing" were served on MM
26 on July 29, 2008.

1 27. The Washington SD alleged in the Statement of Charges that MM illegally offered
2 and sold \$90,000 worth of unregistered securities to two Washington residents, including a
3 promissory note made by MM and convertible to a one percent ownership interest in a limited
4 liability company called Gitan, L.L.C. ("Gitan") co-owned and controlled by MM. The Statement
5 of Charges alleges that MM represented to offerees and investors that Gitan and MM developed
6 and marketed mold resistant masonry paints and coatings (the "Coating Products"). The
7 Washington SD further alleged in the Statement of Charges that MM and/or his authorized agent
8 represented to offerees and investors that, without limitation, MM: (a) was Gitan's member, "chief
9 technical officer" and "chemist;" (b) personally owned, invented and/or had developed the
10 technology used to manufacture the Coating Products, and that the Coating Products were
11 compliant with U.S. Environmental Protection Agency ("EPA") regulations; and (c) MM was
12 already selling the Coating Products across the country, and had commitments from federal and
13 state agencies to purchase at least \$4,200,000 worth of the Coating Products.

14 28. Also unbeknownst to investors, the Washington SD filed a final "Entry of Findings
15 of Fact and Conclusions of Law and Final Order to Cease and Desist, Charge Costs and Impose
16 Fines as to Mark Moroney" on October 9, 2008 (*See*, Washington Securities Division Order No. S-
17 07-453-08-FO01) (the "Final MM Securities Fraud Order").

18 29. The Final MM Securities Fraud Order entered against MM finds that he violated the
19 registration provisions of the Securities Act of Washington for selling unregistered securities while
20 not registered as a broker-dealer or securities salesperson, to wit Wash. Rev. Code §§
21 21.20.005(10)&(12), 21.20.140 and 21.20.040.

22 30. The Final MM Securities Fraud Order also finds that MM committed securities
23 fraud in violation of Wash. Rev. Code § 21.20.010 because, without limitation: (a) MM "was not a
24 chemist and did not invent" the Coating Products; (b) the Coating Products that MM showed his
25 investors were merely "samples" that he had obtained from another company that actually
26 developed and sold the Coating Products; (c) neither MM nor Gitan had any formal distributorship

1 rights to sell the Coating Products; (d) the Coating Products were not being sold across the country,
2 and MM and Gitan did not have “imminent orders” to purchase the Coating Products totaling
3 \$4,200,000 from federal or state agencies as represented to investors; (e) MM failed to disclose any
4 risks associated with the investments; (f) MM failed to disclose to his investors that their money
5 would be deposited into the personal bank account of Spouse, rather than Gitan’s corporate bank
6 account, and that such funds were not used to promote and sell the Coating Products as represented
7 by MM; (g) the Coating Products were not compliant with EPA regulations as represented to
8 investors; and (h) MM misrepresented the supposed superior financial health of Gitan to his
9 investors to induce their investment purchases. The Final MM Securities Fraud Order also finds
10 that MM’s investors received no returns on their investments.

11 31. The Final MM Securities Fraud Order orders MM to cease and desist violating the
12 Securities Act of Washington, and to pay the Washington SD: (a) \$15,000 in fines; and, (b) \$500
13 in costs.

14 II.

15 CONCLUSIONS OF LAW

16 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
17 Arizona Constitution and the Securities Act.

18 2. MM and Spouse were properly served with copies of the Notice under A.A.C. Rule
19 R14-4-303(D).

20 3. MM and Spouse failed to request a hearing or file an answer within the required
21 time limits pursuant to A.R.S. § 44-1972, A.A.C. R14-4-305 and A.A.C. R14-4-306, and they are in
22 default.

23 4. From March 2008 to February 2010, MM offered or sold securities within or from
24 Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

25 5. MM violated A.R.S. § 44-1841 by offering or selling securities that were neither
26 registered nor exempt from registration.

1 6. MM violated A.R.S. § 44-1842 by offering or selling securities while neither
2 registered as a dealer or salesman nor exempt from registration.

3 7. MM violated A.R.S. § 44-1991 by (a) employing a device, scheme, or artifice to
4 defraud, (b) making untrue statements or misleading omissions of material facts, or (c) engaging in
5 transactions, practices, or courses of business that operate or would operate as a fraud or deceit.

6 MM's conduct included the following:

7 a. Representing to investors that MM would use their Investment funds to develop,
8 distribute and/or sell the Medical and Disinfecting Water products, machines and/or
9 technologies, while further failing to disclose to them that MM and Spouse would
10 instead use their Investment funds, in part, to pay for their personal expenses unrelated
11 to their Business including, without limitation: (a) horse feed, vitamins and tack to
12 support MM and Spouses' separate competitive horse roping and/or rodeo
13 endeavors; (b) groceries; and (c) various other personal expenditures such as cable
14 television;

15 b. Representing to investors that that MM would share with them the profits resulting
16 from his and/or MWT's production and sales of the Medical and Disinfecting Water
17 products, machines and/or technologies, while further failing to disclose to them that
18 he had previously formed and/or controlled a similar limited liability company to
19 develop and sell products for the benefit of his previous investors, and that he
20 defrauded them as set forth in the Final MM Securities Fraud Order discussed
21 above, in part, by misappropriating their investment funds; and,

22 c. Representing to investors that MM would use his superior knowledge and expertise
23 to manage their Investment funds to develop, produce, sell and distribute the
24 Medical and Disinfecting Water products, machines and technologies while further
25 failing to disclose to them that: (1) the Washington SD had recently filed an
26 enforcement action against MM for fraudulently selling \$90,000 worth of

1 unregistered securities/investments based on a myriad of false and misleading
2 statements that he owned and had access to the special, proprietary Coating
3 Products; (2) in October 2008, the Washington SD issued the Final MM Securities
4 Fraud Order that finds that MM sold unregistered securities/investments while not
5 registered as a securities broker-dealer or securities salesperson, and that he
6 committed at least eight separate acts of fraud in violation of the Securities Act of
7 Washington as set forth above at paragraph 29; and, (3) that, as a result, MM was
8 ordered by the Washington SD to cease and desist from further violations of the
9 Securities Act of Washington, and to pay \$15,000 in fines and \$500 in costs.

10 8. MM's conduct is grounds for a cease and desist order pursuant to A.R.S. §44-2032.

11 9. MM's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

12 10. MM's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

13 11. MM acted for the benefit of his marital community with Spouse and, pursuant to
14 A.R.S. §§ 25-214 and 25-215, this order of restitution and administrative penalties is a debt of the
15 community.

16 III.

17 ORDER

18 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the
19 Commission finds that the following relief is appropriate, in the public interest, and necessary for
20 the protection of investors:

21 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that MM, and any of MM's agents,
22 employees, successors and assigns, permanently cease and desist from violating the Securities Act.

23 IT IS FURTHER ORDERED that MM and Spouse comply with terms of this Order.

24 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that MM, individually, and the
25 marital community of MM and Spouse, jointly and severally, shall pay restitution to the
26 Commission in the principal amount of \$506,300. Payment is due in full on the date of this Order.

1 Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account
2 controlled by the Commission. Any principal amount outstanding shall accrue interest at the rate of
3 10 percent per annum from the date of purchase until paid in full. Interest in the amount of \$96,455
4 has accrued from the dates of the Investment purchases to April 12, 2011.

5 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
6 records of the Commission. Any restitution funds that the Commission cannot disburse because an
7 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
8 investor because the investor is deceased and the Commission cannot reasonably identify and
9 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
10 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
11 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
12 shall be transferred to the general fund of the state of Arizona.

13 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that MM, individually, and the
14 marital community of MM and Spouse, jointly and severally, shall pay an administrative penalty in
15 the amount of \$50,000. Payment is due in full on the date of this Order. Payment shall be made to
16 the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law.

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

20 For purposes of this Order, a bankruptcy filing by MM and/or Spouse shall be an act of
21 default. If MM and/or Respondent Spouse do not comply with this Order, any outstanding balance
22 may be deemed in default and shall be immediately due and payable.

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1 IT IS FURTHER ORDERED, that if MM and/or Spouse fail to comply with this Order, the
2 Commission may bring further legal proceedings against MM and/or Spouse, including application
3 to the superior court for an order of contempt.

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

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
7 
8 CHAIRMAN


COMMISSIONER

9
10 
11 COMMISSIONER


COMMISSIONER


COMMISSIONER

12 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
13 Executive Director of the Arizona Corporation Commission,
14 have hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of
16 Phoenix, this 15 day of April, 2011.

17 
18 ERNEST G. JOHNSON
19 EXECUTIVE DIRECTOR

20 _____
21 DISSENT

22 _____
23 DISSENT

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

26 (MD)

1 SERVICE LIST FOR: *In re Mark Steven Moroney, et al.*
2 Docket No. S-20775A-10-0500

3 Mark Steven Moroney
4 50208 W. Gail Lane
5 Maricopa, Arizona 85239

6 Linda Sue Moroney
7 50208 W. Gail Lane
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