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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

2012 APR 4 AM 8 39

Arizona Corporation Commission

DOCKETED

APR -- 4 2012

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

DOCKETED BY
MVA

IN THE MATTER OF:

DOCKET NO. S-20814A-11-0313

DAVID PAUL SMOOT and MARIE KATHLEEN SMOOT (a.k.a. "KATHY SMOOT"), husband and wife,

NATIVE AMERICAN WATER, L.L.C. (d.b.a. "NATAWA"), an Arizona limited liability company,

NATAWA CORPORATION (d.b.a. "NATAWA"), a Delaware corporation with a revoked authorization to conduct business in Arizona as a foreign corporation,

AMERICAN INDIAN TECHNOLOGIES INTERNATIONAL, L.L.C. (a.k.a. "AITI"), an Arizona limited liability company,

RESPONDENTS.

PROCEDURAL ORDER

BY THE COMMISSION:

On October 20, 2011, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against the following individuals and entities: David Paul Smoot and Marie Kathleen Smoot aka Kathy Smoot, husband and wife; Native American Water, L.L.C., an Arizona limited liability company dba NATAWA ("NAW"); NATAWA Corporation, a Delaware corporation ("NATAWA"); and American Indian Technologies International, L.L.C., an Arizona limited liability company ("AITI") (collectively "Respondents") in which the Division alleged multiple violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of debentures, notes, membership interests in limited liability companies and corporate stock.

The spouse ("Respondent Spouse") of Respondent David Smoot is joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the marital community.

1 The Respondents were duly served with copies of the Notice.

2 On October 31, 2011, a request for hearing was filed on behalf of the Respondents.

3 On November 1, 2011, by Procedural Order, a pre-hearing conference was scheduled on
4 November 29, 2011.

5 On November 17, 2011, Respondents' counsel filed a Motion to Continue the pre-hearing
6 conference due to a scheduling conflict. It was indicated therein that the Division had no objections
7 to the continuance and alternative dates for the pre-hearing conference were suggested.

8 On November 21, 2012, by Procedural Order, the pre-hearing conference was continued to
9 January 18, 2012.

10 On January 18, 2012, at the pre-hearing conference, the Division and Respondents appeared
11 through counsel. The Division indicated that the parties were discussing the issues raised by the
12 Notice, but in the interim requested that a hearing be scheduled. Respondents' counsel also raised the
13 question of whether the parties would exchange disclosure statements pursuant to Ariz. R. Civ. P.
14 26.1. The Division objected to an exchange pursuant to Ariz. R. Civ. P., and the parties were directed
15 to file briefs on the issue by February 3, 2012.

16 On February 3, 2012, the parties filed their briefs arguing their respective positions on the
17 issue of disclosure.

18 On February 15, 2012, by Procedural Order, the respective parties were each ordered to file a
19 response to the briefs filed on February 3, 2012.

20 On March 6, 2012, Respondents filed a Motion to Stay the proceeding before the Commission
21 pending the outcome of a criminal proceeding which resulted in Mr. Smoot being indicted by a
22 Maricopa County Grand Jury on February 7, 2012, on four felony counts, which on their face appear
23 directly related to the facts upon which the Notice herein is based. Mr. Smoot has entered a plea Not
24 Guilty and argues that his Fifth Amendment privilege against self incrimination should result in a stay
25 of the civil action before the Commission until the criminal matter is resolved.

26 On March 8, 2012, the Division filed its response to Respondents' brief filed on February 3, 2012.¹

27 On March 20, 2012, the Division filed a response to the Respondents' Motion to Stay in part

28 ¹ Respondents' Motion to Stay also includes its response due on March 8, 2012.

1 arguing that the three business entities which the Division alleged in the Notice that Mr. Smoot either
2 “promoted, controlled and bore responsibility” for their investor “solicitation activities” did not have
3 Fifth Amendment rights. The Division further argued that even if Mr. Smoot invoked his rights
4 against self incrimination in the administrative proceeding, allowing the proceeding to go forward
5 against NAW, NATAWA and AITI would not unduly or substantially prejudice his Constitutional
6 rights.

7 The Division also stated that the automatic stay arising from a Chapter 7 debtor’s bankruptcy
8 that previously stayed a securities regulatory action under 11 U.S.C. § 362(b)(4) was amended in
9 1990 to exempt administrative securities enforcement actions such as this and likened Mr. Smoot’s
10 present criminal indictment to be a similar situation and that the proceeding should go forward.

11 On March 27, 2012, the Respondents filed a reply to the Division’s response to the Motion to
12 Stay. Therein, the Respondents argue that the two proceedings both arise from the same conduct, the
13 same set of facts and same time frame with respect to Mr. Smoot’s alleged activities, and the obvious
14 overlap of the civil and criminal issues. It is made clear that Mr. Smoot’s ability to defend against the
15 allegations in the Commission’s administrative proceeding will be greatly diminished due to the
16 pending criminal proceeding.

17 Accordingly, under the circumstances, the Respondents’ Motion to Stay should be granted.

18 IT IS THEREFORE ORDERED that the Respondents’ Motion to Stay is hereby granted.

19 IT IS FURTHER ORDERED that the Division shall file a motion to schedule a status
20 conference upon any changes of the circumstances with respect to the Respondents.

21 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
22 Communications) applies to this proceeding as the matter is now set for public hearing.

23 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
24 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
25 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
26 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
27 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
28 Administrative Law Judge or the Commission.

1 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
2 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission
3 *pro hac vice*.

4 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
5 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

6 DATED this 4TH day of April, 2012.

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10 
11 MARCE STERN
12 ADMINISTRATIVE LAW JUDGE

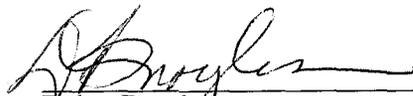
13 Copies of the foregoing mailed/delivered
14 this 4th day of April, 2012 to:

15 Michael D. Kimerer
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18 Phoenix, AZ 85012
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26
27 By: 
28 Debra Broyles
Secretary to Marc E. Stern