

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION

DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

APR - 6 2012

COMMISSIONERS

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

2012 APR 6 AM 9 38

DOCKETED BY [Signature]

In the matter of:  
ARIZONA GOLD PROCESSING, LLC, an  
Arizona limited liability company,  
AZGO, LLC, an Arizona limited liability  
company,  
and  
CHARLES L. ROBERTSON, a married man  
Respondents.

DOCKET NO. S-20846A-12-0135

TEMPORARY ORDER TO CEASE AND  
DESIST AND NOTICE OF  
OPPORTUNITY FOR HEARING

**NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY**  
**EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING**  
**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents ARIZONA GOLD PROCESSING, LLC, AZGO, LLC and CHARLES L. ROBERTSON are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

The Division alleges AZGO, LLC controlled ARIZONA GOLD PROCESSING, LLC within the meaning of A.R.S. § 44-1999 so that AZGO, LLC is jointly and severally liable under A.R.S. § 44-1999 to the same extent as ARIZONA GOLD PROCESSING, LLC, for violations of the Securities Act.

1 **I.**

2 **JURISDICTION**

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

5 **II.**

6 **RESPONDENTS**

7 2. ARIZONA GOLD PROCESSING, LLC (“ARIZONA GOLD”) has been a  
8 manager-managed Arizona limited liability company since December 5, 2011. AZGO LLC, is  
9 the manager of ARIZONA GOLD.

10 3. AZGO, LLC (“AZGO”) has been a manager-managed Arizona limited liability  
11 company since December 5, 2011.

12 4. CHARLES L. ROBERTSON (“ROBERTSON”) is a resident of Texas.  
13 ROBERTSON is one of the two managers of AZGO LLC.

14 5. ARIZONA GOLD, AZGO and ROBERTSON may be referred to collectively as  
15 “Respondents.”

16 **III.**

17 **FACTS**

18 6. According to the private placement memorandum (“PPM”) dated December 5,  
19 2011, ARIZONA GOLD was formed “to provide efficient and cost effective ore processing  
20 services for local gold and silver placer mines. We intend to acquire equipment and machinery that  
21 utilize the latest advances in gold and silver ore processing technologies such as electrostatic  
22 separation.”

23 7. According to the PPM, ARIZONA GOLD “is offering Units of Class A Preferred  
24 Membership Interests (the “Units”) in accordance with Section 4(2) and/or Rule 506 of Regulation  
25 D promulgated under the Securities Act of 1933, as amended, and applicable state laws that  
26 provide an exemption from registration for limited private offerings.”

1           8.       According to the PPM, ARIZONA GOLD asserts that it is not conducting a public  
2 offering and that its Units are not available to the general public.

3           9.       ARIZONA GOLD sent unsolicited emails seeking investors to a resident of  
4 Arizona. In response to one of the unsolicited emails, ARIZONA GOLD was contacted by an  
5 Arizona resident (“Offeree”). The Offeree spoke with ROBERTSON. ROBERTSON provided the  
6 offering materials including the PPM and conducted a presentation to the Offeree. The Offeree had  
7 no pre-existing business relationship with either of the Respondents, nor was the Offeree  
8 accredited.

9           10.       According to the PPM, ARIZONA GOLD is a  
10 Manager-managed limited liability company (LLC) with two (2) classes of  
11 equity ownership:  
12 (1) Managing Membership Interest (voting equity); and (2) Preferred  
13 Membership Interest (non-voting preferred equity with revenue sharing).  
14 [ARIZONA GOLD’s] current sole Managing Member is AZGO LLC, an  
15 Arizona limited liability company.

16           11.       According to the PPM,  
17  
18 [ARIZONA GOLD] was formed to provide efficient and cost effective ore  
19 processing services for local gold and silver placer mines. We intend to  
20 acquire equipment and machinery that utilize the latest advances in gold  
21 and silver ore processing technologies such as electrostatic separation.

22           The primary objectives of [ARIZONA GOLD] are to:

- 23           • Acquire one or more high tension separators;
- 24           • Place such equipment into operation servicing local active  
25 mining operations for gold, silver, and/or other precious  
26 metals pursuant to contracts; and
- Distribute [ARIZONA GOLD’s] revenue from such  
          activities to the Members in accordance with the Operating  
          Agreement.

          12.       The offering materials state that an investor’s “ownership interest will be  
proportionate to the amount invested in the entire gold processing plant. You will receive a Net  
Revenue Interest of all of the profits from the processed gold & silver that’s sold to the refinery.”

          13.       Investors in ARIZONA GOLD will receive a prorata share of seventy percent of the  
net revenue derived from the ore processing, less actual expenses of ARIZONA GOLD. The  
remaining thirty percent is to be allocated to AGO LLC.

          14.       The Investment Overview stated:

- Investment of \$16,750 per unit = (1%). (2 units minimum \$33,500).
- 100 Working Interest units available with a 70% Net Revenue Interest of plant profits.
- Daily production rate at 3 tons a day of gold & silver ore.
- Projected ROI is 9.6 months.
- 5 times cash on cash net return on investment.

15. According to the PPM, ARIZONA GOLD will distribute its net revenues as follows:

- First, 100% to the Class A Preferred Members (0% to the Managing Member) until the Preferred Members have realized 100% of their Capital Contribution;
- Thereafter, 75% to the Class A Preferred Members (25% to the Managing Member) until the Preferred Members have realized 200% of their Capital Contribution;
- Thereafter, 50% to the Class A Preferred Members (50% to the Managing Member) until the Preferred Members have realized 500% of their Capital Contributions (a "Redemption Event")
- Upon the occurrence of a Redemption Event (i.e. Preferred Members' realizing a 5 to 1 cash on cash return on their Capital Contribution) the Preferred Members' Units in the Company shall be automatically redeemed in consideration of cash already received at which time their Membership Interest in the company shall end.

16. According to the PPM, for the first twenty-one Units sold, ARIZONA GOLD will waive the automatic redemption event and those investors will be "eligible to continue to receive distributions pro-rata to their membership interest indefinitely for the life" of ARIZONA GOLD.

17. According to the PPM, ARIZONA GOLD is managed by its managing member, AZGO LLC, whose principals include ROBERTSON. Further, "[c]ontrol of [ARIZONA GOLD] is vested with the Managing Member." Moreover, "since the Managing Member holds 100% of [ARIZONA GOLD'S] voting equity, the ability of the Preferred Members to exercise any degree of control whatsoever will be severely limited."

18. According to the PPM, any investor funds raised by ARIZONA GOLD and ROBERTSON will be used for the "acquisition of equipment, machinery and related assets for processing plant and general working capital."

19. ARIZONA GOLD and ROBERTSON provided offering materials to the Offeree that state that ARIZONA GOLD has a contract with a "fully permitted placer mine deposit to

1 provide their ore” for processing by ARIZONA GOLD. The supplier of the ore is also the supplier  
2 of the processing equipment ARIZONA GOLD is purchasing to process the ore.

3 20. The offering materials state that “[w]e [ARIZONA GOLD] have ‘High Tech’ gold  
4 & silver processing equipment that can extract gold at microscopic levels as well as increasing  
5 extraction beyond what ore shows in assays from mine.” However, based on information and  
6 belief, assays correctly performed by reputable laboratories will state the amount of precious  
7 metals present in each sample, therefore; there would be no increase in the amount of precious  
8 metals by using the equipment as represented by ARIZONA GOLD. For that to occur would be a  
9 physical impossibility and a violation of the basic laws of chemistry and physics.

10 21. ROBERTSON represented to the Offeree that the investors will receive a return  
11 from “all of the profits from the processed gold and silver that’s sold to the refinery.”

12 **IV.**

13 **VIOLATION OF A.R.S. § 44-1841**

14 **(Offer and Sale of Unregistered Securities)**

15 22. From on or about December 5, 2011 to the present, Respondents have been offering  
16 or selling securities in the form of investment contract, within or from Arizona.

17 23. The securities referred to above are not registered pursuant to Articles 6 or 7 of the  
18 Securities Act.

19 24. This conduct violates A.R.S. § 44-1841.

20 **V.**

21 **VIOLATION OF A.R.S. § 44-1842**

22 **(Transactions by Unregistered Dealers or Salesmen)**

23 25. Respondents are offering or selling securities within or from Arizona while not  
24 registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

25 26. This conduct violates A.R.S. § 44-1842.

VI.

**VIOLATION OF A.R.S. § 44-1991**

**(Fraud in Connection with the Offer or Sale of Securities)**

1  
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3  
4 27. In connection with the offer or sale of securities within or from Arizona,  
5 Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii)  
6 making untrue statements of material fact or omitting to state material facts that are necessary in  
7 order to make the statements made not misleading in light of the circumstances under which they are  
8 made; or (iii) engaging in transactions, practices, or courses of business that operate or would  
9 operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not  
10 limited to, the misrepresentation to at least one Offeree regarding the ability of the processing  
11 equipment to obtain amounts of precious metals above what the assays show as recoverable.

12 28. AZGO directly or indirectly controlled persons or entities within the meaning of  
13 A.R.S. § 44-1999, including but not limited to ARIZONA GOLD. Therefore, AZGO is jointly and  
14 severally liable under A.R.S. § 44-1999 to the same extent as ARIZONA GOLD for any violations of  
15 A.R.S. § 44-1991.

16 29. This conduct violates A.R.S. § 44-1991.

VII.

**TEMPORARY ORDER**

**Cease and Desist from Violating the Securities Act**

17  
18  
19  
20 THEREFORE, based on the above allegations, and because the Commission has determined  
21 that the public welfare requires immediate action,

22 IT IS ORDERED, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307, that  
23 Respondents, their agents, servants, employees, successors, assigns, and those persons in active  
24 concert or participation with Respondents CEASE AND DESIST from any violations of the  
25 Securities Act.  
26

1 IT IS FURTHER ORDERED that this Temporary Order to Cease and Desist shall remain in  
2 effect for 180 days unless sooner vacated, modified, or made permanent by the Commission.

3 IT IS FURTHER ORDERED that this Order shall be effective immediately.

4 **VIII.**

5 **REQUESTED RELIEF**

6 The Division requests that the Commission grant the following relief:

7 1. Order Respondents to permanently cease and desist from violating the Securities  
8 Act, pursuant to A.R.S. § 44-2032;

9 2. Order Respondents to take affirmative action to correct the conditions resulting from  
10 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
11 A.R.S. § 44-2032;

12 3. Order Respondents to pay the state of Arizona administrative penalties of up to five  
13 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

14 4. Order that the marital communities of Respondents and Respondent Spouses are  
15 subject to any order of restitution, rescission, administrative penalties, or other appropriate  
16 affirmative action pursuant to A.R.S. § 25-215; and

17 5. Order any other relief that the Commission deems appropriate.

18 **IX.**

19 **HEARING OPPORTUNITY**

20 Each respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. Rule 14-4-  
21 307. **If a Respondent requests a hearing, the requesting respondent must also answer this**  
22 **Temporary Order and Notice.** A request for hearing must be in writing and received by the  
23 Commission within 20 days after service of this Temporary Order and Notice. The requesting  
24 respondent must deliver or mail the request for hearing to Docket Control, Arizona Corporation  
25 Commission, 1200 West Washington, Phoenix, Arizona 85007. Filing instructions may be obtained  
26

1 from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at  
2 www.azcc.gov/divisions/hearings/docket.asp.

3 If a request for hearing is timely made, the Commission shall schedule a hearing to begin 10  
4 to 30 days from the receipt of the request unless otherwise provided by law, stipulated by the parties,  
5 or ordered by the Commission. **Unless otherwise ordered by the Commission, this Temporary  
6 Order shall remain effective from the date a hearing is requested until a decision is entered.**

7 After a hearing, the Commission may vacate, modify, or make permanent this Temporary Order,  
8 with written findings of fact and conclusions of law. A permanent Order may include ordering  
9 restitution, assessing administrative penalties, or other action.

10 If a request for hearing is not timely made, the Division will request that the Commission  
11 make permanent this Temporary Order, with written findings of fact and conclusions of law, which  
12 may include ordering restitution, assessing administrative penalties, or other relief.

13 Persons with a disability may request a reasonable accommodation such as a sign language  
14 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.  
15 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).  
16 Requests should be made as early as possible to allow time to arrange the accommodation.

17 **X.**

18 **ANSWER REQUIREMENT**

19 Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting  
20 respondent must deliver or mail an Answer to this Temporary Order and Notice to Docket Control,  
21 Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30  
22 calendar days after the date of service of this Temporary Order and Notice. Filing instructions  
23 may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet  
24 web site at www.azcc.gov/divisions/hearings/docket.asp.

25 Additionally, the answering respondent must serve the Answer upon the Division.  
26 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-

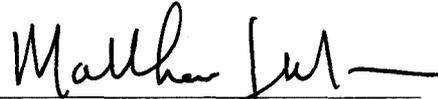
1 delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix,  
2 Arizona, 85007, addressed to Wendy Coy.

3 The Answer shall contain an admission or denial of each allegation in this Temporary  
4 Order and Notice and the original signature of the answering respondent or the respondent's  
5 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial  
6 of an allegation. An allegation not denied shall be considered admitted.

7 When the answering respondent intends in good faith to deny only a part or a qualification  
8 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
9 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

10 The officer presiding over the hearing may grant relief from the requirement to file an  
11 Answer for good cause shown.

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 6th day of April  
13 2012.

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15 Matthew J. Neubert  
16 Director of Securities  
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