

ORIGINAL



0000142149

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

2013 FEB - 7 P 12: 46 Arizona Corporation Commission

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DOCKETED

FEB 07 2013

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

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

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

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

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

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

7 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 22. RESPONDENTS have raised at least \$1.14 million since December 2011 from
13 about fifty investors, including two Arizona residents.

14 23. On July 23, 2012, RESPONDENTS merged the Arizona limited liability companies,
15 ARIZONA GOLD and AZGO, into newly formed Nevada limited liability companies under the
16 same name.

17 24. On April 6, 2012, the Arizona Corporation Commission issued a Temporary Cease
18 and Desist Order against RESPONDENTS. RESPONDENTS continued to offer and sell the
19 interests in Arizona Gold Processing LLC until at least July 23, 2012.

20 25. RESPONDENTS did not disclose to offerees or investors that, as of April 6, 2012,
21 they were subject to a temporary cease and desist order.

22 **IV.**

23 **VIOLATION OF A.R.S. § 44-1841**

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

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

1 27. The securities referred to above are not registered pursuant to Articles 6 or 7 of the
2 Securities Act.

3 28. This conduct violates A.R.S. § 44-1841.

4 V.

5 VIOLATION OF A.R.S. § 44-1842

6 (Transactions by Unregistered Dealers or Salesmen)

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

9 30. This conduct violates A.R.S. § 44-1842.

10 VI.

11 VIOLATION OF A.R.S. § 44-1991

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

13 31. In connection with the offer or sale of securities within or from Arizona,
14 Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii)
15 making untrue statements of material fact or omitting to state material facts that are necessary in
16 order to make the statements made not misleading in light of the circumstances under which they are
17 made; or (iii) engaging in transactions, practices, or courses of business that operate or would
18 operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not
19 limited to:

20 a) Respondents misrepresented to at least one Offeree the ability of the
21 processing equipment to obtain amounts of precious metals above what the
22 assays show as recoverable.

23 b) Respondents failed to disclose to offerees and investors after April 6, 2012,
24 that the Arizona Corporation Commission issued a Temporary Cease and
25 Desist Order against Respondents.

1 Persons with a disability may request a reasonable accommodation such as a sign language
2 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.
3 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov.
4 Requests should be made as early as possible to allow time to arrange the accommodation.

5 **X.**

6 **ANSWER REQUIREMENT**

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

13 Additionally, the answering respondent must serve the Answer upon the Division.
14 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
15 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
16 Arizona, 85007, addressed to Wendy Coy.

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

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

24 ...

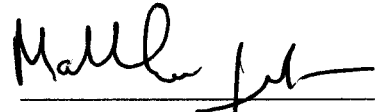
25 ...

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 7th day of February, 2013.


Matthew J. Neubert
Director of Securities