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BEFORE THE ARIZONA CORPORATION COMMISSION  
RECEIVED

COMMISSIONERS

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

2014 OCT 23 P 12: 51

ARIZONA CORP COMMISSION  
DOCKET CONTROL

ORIGINAL

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,

Arizona Corporation Commission

DOCKETED

OCT 23 2014

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

DOCKETED BY 

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.

**SIXTH**  
**PROCEDURAL ORDER**  
**(Grants Motion to Withdraw)**

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

1 community.

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

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

4 On November 1, 2011, by Procedural Order, a pre-hearing conference was scheduled on  
5 November 29, 2011. Additionally, by Procedural Order, a Colorado attorney was authorized to  
6 appear Pro Hac Vice on behalf of Respondents.

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

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

12 On January 18, 2012, at the pre-hearing conference, the Division and Respondents appeared  
13 through counsel. The Division indicated that the parties were discussing the issues raised by the  
14 Notice, but in the interim requested that a hearing be scheduled. Respondents' counsel also raised the  
15 question of whether the parties would exchange disclosure statements pursuant to Ariz. R. Civ. P.  
16 26.1. The Division objected to an exchange pursuant to Ariz. R. Civ. P., and the parties were directed  
17 to file briefs on the issue by February 3, 2012.

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

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

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

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1 On March 8, 2012, the Division filed its response to Respondents' brief filed on February 3, 2012.<sup>1</sup>

2 On March 20, 2012, the Division filed a response to the Respondents' Motion to Stay in part  
3 arguing that the three business entities which the Division alleged in the Notice that Mr. Smoot either  
4 "promoted, controlled and bore responsibility" for their investor "solicitation activities" did not have  
5 Fifth Amendment rights. The Division further argued that even if Mr. Smoot invoked his rights  
6 against self incrimination in the administrative proceeding, allowing the proceeding to go forward  
7 against NAW, NATAWA and AITI would not unduly or substantially prejudice his Constitutional  
8 rights.

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

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

19 On April 4, 2012, by Procedural Order, the Respondents' Motion to Stay was granted, and the  
20 Division was directed to file a motion to schedule a status conference when circumstances change  
21 regarding the Respondents.

22 On August 19, 2014, another attorney filed a Notice of Appearance as co-counsel of record on  
23 behalf of all Respondents.

24 On October 16, 2014, another of Respondents' attorneys of record, Mitchell and Associates,  
25 filed a Motion to Withdraw as Counsel for Respondents pursuant to Arizona law. The Division had  
26 no objections to this request.

27 Accordingly, the Motion to Withdraw as Counsel for Respondents should be granted.

28 <sup>1</sup> Respondents' Motion to Stay also included its response due on March 8, 2012.

1 IT IS THEREFORE ORDERED that the Motion to Withdraw as Counsel for Respondents  
2 filed by Mitchell and Associates is hereby granted.

3 IT IS FURTHER ORDERED that the Division shall file a motion to schedule a status  
4 conference upon any changes of the circumstances with respect to the Respondents, as previously  
5 ordered.

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

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

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

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

19 DATED this 23<sup>rd</sup> day of October, 2014.

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22   
23 MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

24  
25 Copies of the foregoing mailed/delivered  
this 23<sup>rd</sup> day of October, 2014 to:

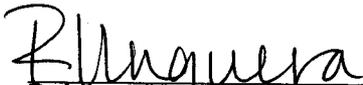
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24 By:   
25 Rebecca Unquera  
26 Secretary to Marc E. Stern  
27  
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