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Submitted Feb 8th, 2016 by George Martinez

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Arizona Corporation Commission

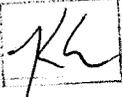
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Response to Docket No – S-20948A-15-0422

AZ CORP COMMISSION
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Opening comment: The order to cease and desist, order for restitution, order for administrative penalties and order for affirmative action are all unjust against the respondents. The Shadow business has not been operating since April 1, 2015, all company documents have been presented to the ACC, a copy of the sales transaction that has the collateral for the creditors was presented to the ACC and the only outstanding issue is collecting and closing the transaction with Mix1 (a public company) that Shadow sold its main asset to for \$12.2M. Out of the transaction that was agreed to the respondents will get nothing other than what the other creditors will get as payment and they have worked the business for 5 years with little to no compensation. The company is in Chapter 7 and in the hands of the trustee and court. The respondents have no control of how the trustee proceeds to collect the funds from the sales transaction or handles the creditors. None of the proceeds from investors or creditors were used for personal gains by any of the respondents.

Arguments to filing of orders:

- 1) Lisa Kay Martinez had no dealing with Shadow Beverages and Snacks and took no actions with the company. She is the wife of George Martinez and has a full time job with Hospice of the Valley as a Community Liaison, and has been with HOV for the past 10 years. Her employment served as the means for which George was allowed to work at Shadow with no pay for the past 6 years. She should be dismissed from this filing immediately.
- 2) Shadow was a start-up company and was always positioned that way with all investors. Everyone knew what Shadow business plan was and what projects they were working on when they made their investments. At all times investors

knew that the company had debt, some past due, but the company was also working on larger financing deals tied to distribution agreements or product agreements.

- 3) The company did not have management issues or money being wrongly spent. 5 executives worked at the company without pay throughout the life of the company. Multiple executives came in and out working on the business that were recruited but left when they could not get paid after 6 months. The company used all the funds to pay employees doing the day to day work and building the business. The company did not take investor money for executives and Sam and George could have earned \$250,000 salaries in other jobs, but choose to work for the company and the investors.
- 4) The company and the investors are here in this position today due to 3 key reasons and none of them due to mis-use of funds or mis-management.
 - i. GNC – License agreement / Shadow, its board and it's investors believed that this brand was a big brand that would lead to big financial success for Shadow. Shadow invested over \$3.5M in the business and then was told by GNC executives that due to change in management, they needed to focus on the retail business due to their stock price and could not support the marketing of the beverage in support of our investment. This lead to Shadow cancelling the agreement and then being sued for the licensing fees. We did not want to continue investing without the support of the parent company.
 - ii. Sysco Foods – we signed an exclusive deal with No Fear Energy and raised \$1.2M in debt to produce product and prepare for a national launch. Then Sysco and announce a potential merger with US Foods and we were told our deal was on hold until the merger was complete. We held product and disposed of product for over 11 months and the merger never came through and Sysco then rolled out a partial program for us and we could not overcome the loss of capital due to the delay.
 - iii. Knowing the previous two big issues had crippled the company we agreed to sell the company's largest asset for \$12.2 M to a public

company Mix1. We had done some operational work for them on a monthly payment basis and they needed a sound beverage company with revenue to finalize their capital plans that included being uplisted to NASDAQ. After working with them for 8 months they have taken our No Fear brand and not paid for the transaction as agreed to. Their business dealings have caused the stock price to decline and we believe some unethical decisions on their part have caused this. They have knowingly caused damage to Shadow and their creditors to benefit their brands and themselves.

- 5) Shadow, George and Sam are being singled out by the ACC and an internal employee who is a friend of an ex angry employee of Shadow's – Rick Peterson. Rick and his contact inside the ACC filed for the inquiry and have targeted Shadow for his personal gain. Rick came to Shadow and asked to join the executed group and agreed to work for no pay, but was given stock and became a member of Shadow. He then represented that he had been in the financial capital raising business for the past 7 years and had raised capital for many small beverage companies. He told us he could help us raise capital through his network. The majority of the lawsuits and complaints now come from him and the investors he brought to Shadow. He presented the Shadow story, opportunity and risk. Then he came back and charged Shadow a fee for raising the money and he is not a licensed broker as he had represented to us. Rick and his contact at the ACC have made this issue personal and have misrepresented the facts about investors and what they were told and what they knew. He personally called each one of them prior to the ACC investigation (I have been told by numerous investors that Rick called them to get them to file against us) and we believe coached them on how to answer the questions. But the facts remain, he was the one that presented the investment opportunity to each investor.

Violation of A.R.S. 44-1841 – (Offer or Sale of Unregistered Securities)

The violation is not applicable per exempt transactions of A.R.S. 44-1841 registered securities:

44-1844. Exempt transactions

A. Except as provided in subsections B and C of this section, sections 44-1841 and 44-1842, section 44-1843.02, subsections B and C and sections 44-3321 and 44-3325 do not apply to any of the following classes of transactions:

1. Transactions by an issuer not involving any public offering.
3. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt.
4. The sale in good faith and not for the purpose of avoiding the provisions of this chapter of securities by the bona fide owner of such securities, other than an issuer or underwriter, in an isolated transaction, in which the securities are sold either directly or through a dealer as agent for the owner but where the sales are not made in the course of repeated or successive transactions of similar character by the owner and are not made directly or indirectly for the benefit of the issuer or an underwriter of the securities.

Violation of A.R.S. 44-1842 – (Transactions by Unregistered Dealers or Salesmen)

The violation is not applicable per exempt transactions of A.R.S. 44-1841 registered securities:

44-1844. Exempt transactions

A. Except as provided in subsections B and C of this section, sections 44-1841 and 44-1842, section 44-1843.02, subsections B and C and sections 44-3321 and 44-3325 do not apply to any of the following classes of transactions:

1. Transactions by an issuer not involving any public offering.
3. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt.
4. The sale in good faith and not for the purpose of avoiding the provisions of this chapter of securities by the bona fide owner of such securities, other than an issuer or underwriter, in an isolated transaction, in which the securities are sold either directly or through a dealer as agent for the owner but where the sales are not made in the course of repeated or successive transactions of similar character by the owner and are not made directly or indirectly for the benefit of the issuer or an underwriter of the securities.

Violation of A.R.S. 44-1991 – (Fraud in connection with the offer or Sale of Securities)

This violation is not valid and the officers of the company operated as managers of the company with a board and did not make decisions for personal benefits. This is justified by the fact that over the course of the time frame listed on this violation, the officers of the company were not on the payroll 80% of the time and never had a salary of more than \$80,000 on a yearly basis. Fraud is defined by actions taken for personal benefit or actions to deceive others, and that was never the case with any investor. No material presented to investors or creditors had untrue statements or claims. All investors understood the risks and upside of the investments.

- a) All investors were shown a balance sheet of the company and what debt was owed. It was explained all notes due at different times with different lenders and some notes being discussed on extensions. If an investor had a question on specifics that information was discussed or would have been presented, never withheld.
- b) Investors knew the company had debt and that loans were being extended or discussed. The new loans never paid off old debt, except for the one-time large investment with Spyglass when all judgements and defaulted notes were paid.
- c) Investors were told that we were working with investors on re-writing or extending debt that had come due. All investors knew we had debt and their investments were coming in to grow the topline revenue that would allow us to address all debt based on the contracts that Shadow had signed and the projections those contracts had.
- d) Investors knew we had notes due and those notes were being extended and that their investment would grow the topline to cover the debt. They viewed the projections on new business and balance sheet with current debt.
- e) At all time the collateral pledged to creditors was enough to cover the debt being secured. This is evidenced by the fact that Shadow sold the collateral for \$12.2 million to Mixx 1 on April 1, 2016.
- f) At all time the collateral pledged to creditors was enough to cover the debt being secured. This is evidenced by the fact that Shadow sold the collateral for \$12.2 million to Mixx 1 on April 1, 2016.
- g) We discussed with those investors that we had ceased the license with GNC for numerous reasons and were in the process of closing the agreement. We had

numerous discussions with GNC on options to settle the agreement and judgement with bottle molds and formulas. We spoke to their attorneys and executives numerous times and the investors were aware that we had assets to close the agreement with GNC.

- h) The investor knew we had ceased the license with GNC for numerous reasons and were in the process of closing the agreement. We had numerous discussions with GNC on options to settle the agreement and judgement with bottle molds and formulas. We spoke to their attorneys and executives numerous times and the investors were aware that we had assets to close the agreement with GNC.
- i) The investor knew of our debt issues and had questions on if we had enough collateral and George agreed (when he forced the issue after he sent the money) that I sign a personal guarantee just in case. My personal information was never part of the deal until after the transaction and he and Rick Peterson told me that they had discussed this the whole time and thought that they had mentioned it to me. I agreed because we had already done the deal.
- j) Martinez never made that comment to any investor. He was loaning the money on a monthly basis while the company struggled to implement the new contracts and keep the business going, while not getting paid and living off of his wife's income.
- k) No discussion with investor M on a judgement was had with Martinez and at the time the judgement had been satisfied per the investment by Spyglass into the Shadow business. The judgement was a Shadow investment that was pushed on to Martinez and Jones as they made a personal guarantee.
- l) The investor knew we were working on restructuring debt and that the company had debt.

Summary:

Never through the time Shadow Beverages was formed and operated did Sam Jones nor George Martinez benefit financially or otherwise from the company or investors of the business. They did not collect pay checks and were never taking money out of the company for personal use. All bank records show clearly where all the money taken

from the company was spent and it was used to operate the company and executives never made a cent from the company income or investors.

All Investors knew that the company was a start-up and all facts presented were accurate at the time of each and every discussion. Information was never withheld and at each request information was granted.

Two major contracts that the company secured failed and that was why Shadow sold to mix1 before the company could not pay off the debts to investors. The sale of No Fear for \$12.2 Million is evidence that the company had an asset that collateralized its debt to all creditors and investors.

Shadow employed employees in the state that paid taxes and they were paid above the state average income. Shadow paid and filed all taxes as a responsible business in the state of AZ. Shadow represented the state of AZ and conducted business with all respect to laws of AZ and not to the personal benefits of any individuals.