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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission
DOCKETED

JUN 29 2004

Decision No. 67088

DOCKETED BY NR

In the matter of:

WESLEY KARBAN WYATT
d/b/a THE FINANCIAL GREENHOUSE
c/o Harry N. Stone, Attorney at Law
3030 North Third Street, Suite 200
Phoenix, Arizona 85012

Respondents.

DOCKET NO. S-03529A-03-0000

**ORDER TO CEASE AND DESIST, FOR
RESTITUTION, FOR ADMINISTRATIVE
PENALTIES, AND FOR OTHER
AFFIRMATIVE ACTION AND CONSENT TO
SAME BY RESPONDENT WESLEY KARBAN
WYATT**

RESPONDENT WESLEY KARBAN WYATT ("WYATT" or "RESPONDENT") elects to permanently waive his right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801, *et seq.* ("Securities Act") with respect to this Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same by: Respondent Wesley Karban Wyatt ("Order"). WYATT admits the jurisdiction of the Arizona Corporation Commission ("Commission"); admits the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission.

I.

JURISDICTION

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

II.

FINDINGS OF FACT

2. At all times material hereto, WYATT was a part-time resident of the state of Arizona. WYATT did acts within or from Arizona out of which the claims in this action arose.

1 WYATT was not registered to sell securities within or from the state of Arizona.

2 3. At all times material hereto, WYATT was doing business as THE FINANCIAL
3 GREENHOUSE (“TFG”). TFG is registered with the state of Pennsylvania as an entity with a
4 fictitious name, but not as a corporation or a limited liability company.

5 4. At all times material hereto, Alpha Telcom, Inc. (“Alpha”) was an Oregon
6 corporation located at 2751 Highland Avenue, Grants Pass, Oregon 97526.

7 5. At all times material hereto, American Telecommunications Company, Inc.
8 (“ATC”) was a Nevada corporation formed as a wholly owned subsidiary of Alpha on or about
9 September 17, 1998. Originally named ATC, Inc., the name was changed to American
10 Telecommunications Company, Inc., sometime in the first half of 2000. Its address was the same
11 as Alpha’s, but was later changed to 620 S.W. 4th Street, Grants Pass, Oregon 97526, then to 2900
12 Vine Street, Suite J, Grants Pass, Oregon 97526, and then to 942 S.W. 6th Street, Suite G, Grants
13 Pass, Oregon 97526.

14 6. At all times material hereto, Paul S. Rubera (“Rubera”) was the president and
15 control person of Alpha, and the control person of ATC.

16 7. ATC was organized by Rubera and operated in conjunction with and as an alter ego
17 of Alpha. The two companies were controlled by Rubera and his associates.

18 8. At all times material hereto, Alpha and ATC, and their affiliates, sold pay
19 telephones with telephone service agreements pursuant to which the investor would share in the
20 profits of the pay telephone. Investors would enter into two agreements, a purchase agreement, and
21 a service agreement with Alpha to manage the phone. The two agreements were presented and
22 promoted simultaneously. The telephones were presented to potential investors with four options
23 in the way of service contracts, each varying in the amount of service provided. The four options
24 varied from Level 1, which included a minimum of service, to Level 4, which provided full service
25 to the purchaser, including choosing a site and installing the telephone, collecting all revenue from
26 the telephone’s operation, repairing the telephone when necessary, and even repurchasing or

1 buying back the telephone at the investor's option. Under Level 4, Alpha would split the net
2 proceeds with the investor on a 70/30 basis, with Alpha retaining 70% and the investor receiving
3 30%. The price of the pay telephones was the same regardless of the service option chosen,
4 \$5,000.00 per telephone. Although investors were given a choice of using a company other than
5 Alpha to manage the phone, no known Arizona investor picked a company other than Alpha to
6 manage their phones. A "typical return" on each pay telephone was touted as 14% per year. In
7 practice, all purchasers received \$58.34 per month per pay telephone purchased, which amounted
8 to exactly 14% per annum.

9 9. ATC's primary role was marketing the contracts. Alpha's main focus was on
10 obtaining phone sites and installing, servicing, and managing the phones.

11 10. ATC was presented to the public as the sales organization for Alpha. In early 1999,
12 ATC engaged Strategic Partnership Alliance, L.L.C., a Nevada limited liability company, and/or
13 SPA Marketing, L.L.C., a Nevada limited liability corporation, (collectively "SPA") as its
14 independent marketing and sales firm(s). SPA thereafter was responsible for hiring, training, and
15 supervising sales agents who were selling the telephone contracts. After SPA came on board, ATC
16 remained as the processing center for the contracts, while Alpha continued to perform the service
17 and maintenance of the phones.

18 11. WYATT, directly or indirectly, entered into agreements with Alpha, ATC, and/or
19 SPA, pursuant to which WYATT sold investment contracts involving Alpha pay telephones (the
20 "Alpha investment contracts") within or from the state of Arizona. All Alpha investment contracts
21 WYATT sold were Level 4 contracts. At the time of the sale, it was Wyatt's good faith belief that
22 the "Alpha investment contracts" were not investment contracts and not subject to registration.

23 12. WYATT believed and told prospective investors their investments were insured.
24 WYATT'S belief was base on written material and literature which received representing that such
25 inverstments were insured. The insurer named varied. Mentioned most often was the Northern and
26 Western Insurance Company of Grand Turk, Turks and Caicos Islands, British West Indies

1 (“N&W”). Also mentioned were Lloyd’s of London and four other insurance companies listed as
2 re-insurers. N&W was a captive insurance company wholly owned by Paul S. Rubera, the
3 President and control person of Alpha, and Robert S. Harrison of Richmond, Texas. N&W is not
4 authorized to write insurance in Arizona. On information and belief, N&W was not authorized to
5 write insurance in any state in which the Alpha pay telephones were located. In a letter dated
6 August 15, 2001, Harrison stated: “There is not now, nor was there ever any insurance coverage
7 for Alpha Telecom, Inc.”

8 13. WYATT presented Alpha to prospective customers as a stable, profitable, and
9 innovative company that had been in business since 1985. Alpha was said to be selling and
10 providing a “turn-key” operation. At the time of the sale, WYATT had a good faith belief that
11 such representations to prospective customers were true.

12 14. On information and belief, sales agents were paid commissions from 12% to 19%
13 per telephone sold.

14 15. Pursuant to this commission schedule, WYATT sold Alpha investment contracts
15 involving at least 289 telephones to at least 46 individuals or entities within or from the state of
16 Arizona from March, 1999 through July, 2001, for a total sales amount of at least \$1,445,000.

17 16. On information and belief, WYATT also received “override” commissions as a result
18 of having recruited other individuals to sell Alpha investment contracts. WYATT received total
19 commissions of at least \$205,400.00

20 6. Alpha has a long regulatory history in which state securities regulators have found that
21 these purchases of pay telephones and accompanying service contracts were unregistered securities in
22 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered
23 Alpha and those working with it to cease and desist. On information and belief, WYATT was not
24 aware of the following orders and did not reveal these orders to the investors with whom he dealt. The
25 orders included:
26

- 1 a. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities
Commission in *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.
- 2 b. November 17, 1999, Cease and Desist Order issued by North Carolina
3 Secretary of State in *In the Matter of the North Carolina Securities Division
v. ATC, Inc., Paul Rubera, et al.*, No. 99-038-CC.
- 4 c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary
5 of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
- 6 d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary
7 of State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201, Alpha agreeing
to offer rescission to all Illinois purchasers.
- 8 e. November 24, 1999, Cease and Desist Order issued by Wisconsin
9 Department of Financial Institutions in *In the Matter of Alpha Telcom, Inc.
and Paul S. Rubera, et al.*, No. S-99225(EX).
- 10 f. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode
11 Island Department of Business Regulation in *In the Matter of Alpha Telcom,
Inc. and ATC, Inc.*
- 12 g. July 18, 2000, Florida Department of Banking and Finance filed
13 administrative action against Alpha and others, seeking a Cease and Desist
Order.
- 14 h. October 24, 2000, Desist and Refrain Order issued by California Department
15 of Corporations.

16 7. Among actions that have proceeded most recently against Alpha, after the time

17 WYATT ceased selling the investments, are the following:

- 18 a. July 26, 2001, Cease and Desist Order issued by Ohio Commissioner of
Securities;
- 19 b. August 27, 2001, Temporary Restraining Order issued by United States
20 District Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No.
CV 01-1283 PA
- 21 c. September 5, 2001, Cease and Desist Order issued by Arkansas Securities
22 Department in *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.
- 23 d. September 6, 2001, Preliminary Injunction issued by United States District
24 Court, District of Oregon, in *SEC v. Alpha Telcom, Inc., et al.*, No.
CV 01-1283 PA.
- 25 e. February 7, 2002, Final Judgment of Permanent Injunction issued by
26 United States District Court, District of Oregon, in *SEC v. Alpha Telcom,
Inc., et al.*, No. CV 01-1283 PA.

- 1 f. March 13, 2002, Final Order to Cease and Desist issued by Washington
2 Department of Financial Institutions in *In the Matter of Alpha Telcom,*
3 *Inc., et al.*, No. SDO-21-02.

4 The SEC's Complaint in the United States District Court, District of Oregon, alleged that Alpha
5 and its affiliates engaged in a Ponzi-like scheme that never generated enough income to pay
6 expenses, and that the money paid to existing investors always came from sales to new investors.
7 Several days before the Temporary Restraining Order was issued on August 27, 2001, Alpha
8 sought bankruptcy protection in Florida pursuant to chapter 11 of the Bankruptcy Code. A court-
9 appointed receiver subsequently took over the remaining operations of Alpha. Alpha consented on
10 October 19, 2001 to entry of the Final Judgment of Permanent Injunction against it, but did not
11 admit the allegations of the Complaint.

- 12 17. Alpha's monthly payments to investors ceased prior to August, 2001.

13 **III.**
14 **CONCLUSIONS OF LAW**

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

17 2. From on or about March 1, 1999, WYATT offered or sold securities in the form of
18 investment contracts, within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-
19 1801(21), and 44-1801(26).

20 3. Without knowledge that he was violating A.R.S. § 44-1841, WYATT offered and
21 sold securities that were neither registered nor exempt from registration.

22 4. Without knowledge that he was violating A.R.S. § 44-1842, WYATT offered and
23 sold securities within or from Arizona while not registered as a dealer or salesman nor exempt from
24 registration.

25 5. WYATT's conduct is grounds for a cease and desist order pursuant to A.R.S.
26 § 44-2032.

6. WYATT's conduct is grounds for an order of restitution pursuant to A.R.S.
§ 44-2032.

1 7. WYATT's conduct is grounds for administrative penalties under A.R.S.
2 § 44-2036.

3
4 **III.**
5 **ORDER**

6 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and WYATT's
7 consent to the entry of this Order, the Commission finds that the following relief is appropriate, in
8 the public interest, and necessary for the protection of investors:

9 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that WYATT, his agents, employees,
10 successors and assigns, permanently cease and desist from violating the Securities Act.

11 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that WYATT shall pay
12 restitution to investors shown on the records of the Commission in the amount of \$205,000.00, ,
13 plus interest at the rate of 3% per annum from the date of this order until paid in full. The
14 principal sum plus interest shall be payable in equal monthly installments of \$200.00 commencing
15 on July 1, 2004 and the first day of each and every month thereafter. Pursuant to A.A.C.
16 14-4-308(C), the amount of WYATT's restitution shall be lessened by any principal, interest, or
17 other distributions received by investors. Payment shall be made by cashier's check or money
18 order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and
19 controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the
20 funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert
21 to the state of Arizona. If restitution is not made in accordance with this Order, any outstanding
22 balance shall be deemed in default and shall be become immediately due and payable.

23 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that WYATT shall pay an
24 administrative penalty in the amount of \$5,000, payable to the "State of Arizona." Payment shall
25 be made by cashier's check or money order, together with interest at the rate of 3% per annum, in
26 equal monthly installments of \$200.00 commencing on the first day of the month after the above
stated restitution is paid in full. If WYATT does not comply with this order for administrative

1 penalties, any outstanding balance shall be deemed in default and shall be become immediately
2 due and payable.

3 IT IS FURTHER ORDERED THAT the order herein applies only to WESLEY KARBAN
4 WYATT individually and does not apply to WYATT'S marital community or his wife who was
5 previously dismissed from this case.

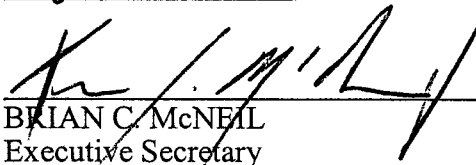
6 IT IS FURTHER ORDERED that this Order shall become effective immediately.

7 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

8   
9 CHAIRMAN COMMISSIONER COMMISSIONER

10  
11 COMMISSIONER COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
13 Executive Secretary of the Arizona Corporation
14 Commission, have hereunto set my hand and caused the
15 official seal of the Commission to be affixed at the
16 Capitol, in the City of Phoenix, this 29th day of
17 June, 2004.

18 
19 BRIAN C. McNEIL
20 Executive Secretary

21 _____
22 DISSENT

23 This document is available in alternative formats by contacting Yvonne McFarlin, Executive
24 Assistant to the Executive Secretary, phone number 602-542-3931, E-mail
25 ymcfarlin@cc.state.az.us.
26 (KCD)

CONSENT TO ENTRY OF ORDER

1
2 1. RESPONDENT WESLEY KARBAN WYATT (“WYATT”), an individual doing
3 business as THE FINANCIAL GREENHOUSE, admits the jurisdiction of the Commission over
4 the subject matter of this proceeding. WYATT acknowledge that he has been fully advised of his
5 right to a hearing to present evidence and call witnesses and WYATT knowingly and voluntarily
6 waives any and all rights to a hearing before the Commission and all other rights otherwise
7 available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code.
8 WYATT acknowledges that this Order to Cease and Desist, Order of Restitution, Order for
9 Administrative Penalties and Consent to Same by: Respondent Wesley Karban Wyatt (“Order”)
10 constitutes a valid final order of the Commission.

11 2. WYATT knowingly and voluntarily waives any right he may have under Article 12
12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
13 resulting from the entry of this Order.

14 3. WYATT acknowledges and agrees that this Order is entered into freely and
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. WYATT acknowledges that he has been represented by counsel in this matter, he
17 has reviewed this Order with his attorney and understand all terms it contains.

18 5. WYATT admits the Findings of Fact and Conclusions of Law contained in this
19 Order, based on information and belief available to him at the time of execution of this Consent to
20 Entry of Order.

21 6. By consenting to the entry of this Order, WYATT agrees not to take any action or
22 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
23 Fact or Conclusion of Law in this Order or creating the impression that this Order is without
24 factual basis. WYATT will undertake steps necessary to assure that all of his agents and
25 employees, if any, understand and comply with this agreement. Nothing in this Order, however,
26 shall in any way limit WYATT’s ability to defend himself and/or take any contrary position of fact

1 or law in any subsequent litigation or other proceeding in which the Commission is not a party.

2 7. While this Order settles this administrative matter between WYATT and the
3 Commission, WYATT understands that this Order does not preclude the Commission from
4 instituting other administrative proceedings based on violations that are not addressed by this
5 Order.

6 8. WYATT understands that this Order does not preclude the Commission from
7 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
8 that may be related to the matters addressed by this Order.

9 9. WYATT understands that this Order does not preclude any other agency or officer
10 of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
11 proceedings that may be related to matters addressed by this Order.

12 10. WYATT agrees that he will not apply to the state of Arizona for registration as a
13 securities dealer or salesman or for licensure as an investment adviser or investment adviser
14 representative at any time in the future.

15 11. WYATT agrees that he will not exercise any control over any entity that offers or
16 sells securities or provides investment advisory services, within or from Arizona.

17 12. WYATT agrees that until restitution and penalties are paid in full, WYATT will
18 notify the Director of the Securities Division within 30 days of any change in home address or any
19 change in WYATT's ability to pay amounts due under this Order.

20 13. WYATT understands that default shall render him liable to the Commission for its
21 costs of collection and interest at the maximum legal rate.

22 ...

23 ...

24 ...

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26 ...

1 14. WYATT consents to the entry of this Order and agrees to be fully bound by its
2 terms and conditions. If WYATT breaches any provision of this Order, the Commission may
3 vacate this Order and restore this case to its active docket.

4 
5 WESLEY KARBAN WYATT

6 SUBSCRIBED AND SWORN TO BEFORE me this 21st day of May, ²⁰⁰⁴~~2003~~

7 
8 NOTARY PUBLIC

9 My Commission Expires: 2-4-08

10 Wyatt Consent.doc



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