



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

AUG 24 2004

COMMISSIONERS

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

DOCKETED BY *nr*

In the matter of

FOUNTAIN CAPITAL MANAGEMENT, LLC  
c/o DAVID A. FAZIO  
3616 West Cortez  
Phoenix, Arizona 85029

INTEGROWTH FINANCIAL GROUP  
C/O ROGER ALVIN SANDE  
CDC # V06974  
P.O. Box 2210  
Susanville, California 96130

RICHARD A. FANDRICH  
11424 North 25th Avenue  
Phoenix, Arizona 85029

DAVID A. and DEBORAH FAZIO  
3616 West Cortez  
Phoenix, Arizona 85029

DONALD and HELEN ABERNATHY  
2323 North Central Avenue, #803  
Phoenix, Arizona, 85004

STEPHEN A. and JANE DOE HILTBRAND  
2156 E. Estrella Circle  
Mesa, Arizona 85202

ROGER ALVIN SANDE  
CDC # V06974  
P.O. Box 2210  
Susanville, California 96130

Respondents.

DOCKET NO. S-03505A-04-0000

DECISION NO. 67215

**ORDER TO CEASE AND DESIST,  
ORDER OF RESTITUTION, ORDER  
FOR ADMINISTRATIVE PENALTIES  
AGAINST RESPONDENT RICHARD  
FANDRICH**

On May 7, 2004, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order

1 To Cease and Desist, Order for Restitution, for Administrative Penalties and for Other Affirmative  
2 Relief ("Notice") with respect to Respondent RICHARD FANDRICH ("FANDRICH"). The  
3 Division served the Notice on FANDRICH via certified mail, return receipt requested on May 21,  
4 2004. The Notice specified that the FANDRICH would be afforded an opportunity for an  
5 administrative hearing regarding this matter upon filing a written request with Docket Control of  
6 the Commission within ten days of receipt of the Notice. FANDRICH failed to request a hearing  
7 within the required time.

8  
9 **I.**

10 **FINDINGS OF FACT**

11 1. RICHARD A. FANDRICH ("FANDRICH"), a single man, was served at P.O.  
12 Box 294, Seaside, OR 97138-0194.

13 2. At all times relevant, FANDRICH was a resident of the state of Arizona. He was not  
14 registered with the Division as a broker or a securities salesman.

15 3. In 1999, RESPONDENTS INTEGROWTH FINANCIAL GROUP  
16 ("INTEGROWTH") and ROGER ALVIN SANDE ("SANDE") recruited RESPONDENTS  
17 FANDRICH, ABERNATHY, DAVID A. FAZIO ("FAZIO") and STEPHEN A. HILTBRAND  
18 ("HILTBRAND") (collectively "the INDIVIDUAL RESPONDENTS") to start a branch office of  
19 INTEGROWTH in Phoenix. SANDE told the INDIVIDUAL RESPONDENTS that  
20 INTEGROWTH was his company. The purpose of the company was to sell viatical and other  
21 investment opportunities to members of the public in Arizona. SANDE told the INDIVIDUAL  
22 RESPONDENTS that INTEGROWTH marketed viatical policies. SANDE agreed with the  
23 INDIVIDUAL RESPONDENTS that INTEGROWTH would pay all expenses incurred in the sale  
24 of the viaticals and would pay the INDIVIDUAL RESPONDENTS a 7% commission on each  
25 viatical policy they sold.

1 4. In June 1999, the INDIVIDUAL RESPONDENTS formed FOUNTAIN CAPITAL  
2 MANAGEMENT, LLC ("FCM"), and continued their operations under its name. The  
3 INDIVIDUAL RESPONDENTS and FCM (collectively the "FCM RESPONDENTS") continued  
4 to sell viatical policies, just as they had with INTEGROWTH. INTEGROWTH and SANDE  
5 continued to receive an override commission on all products sold by the FCM RESPONDENTS.

6 5. The FCM RESPONDENTS agreed that they would share all commissions among  
7 themselves, without regard to which of them made the actual sale.

8 6. Both INTEGROWTH and FCM ran advertisements in Phoenix newspapers,  
9 offering investments with returns as high as 40%. Once investors called, INTEGROWTH,  
10 SANDE and the FCM RESPONDENTS (collectively "RESPONDENTS") attempted to sell them  
11 the investments.

12 **The Viatical Policies**

13 7. From at least January 1999 through at least June 2000, RESPONDENTS offered and  
14 sold securities in the form of viatical settlement contracts and investment contracts to Arizona  
15 investors. A viatical settlement contract involves the purchase of an interest in the proceeds from a  
16 life insurance policy of a terminally ill individual. Various viatical companies purchase the  
17 policies at a discount and re-sell the benefits to investors at less than the full face value. When the  
18 policy matures, that is when the insured dies, the investor receives the full face value as return of  
19 investment plus profit.  
20

21 8. All viatical policies sold by RESPONDENTS were on behalf of Future First  
22 Financial Group ("Future First") of Pointe Verda Beach, Florida. RESPONDENTS told investors  
23 that the only risk involved with the purchase of viatical policies was the risk that the insured would  
24 die at a later date, thereby reducing the expected return. They informed investors that returns could  
25 be as high as 100%, with the investment being safe and guaranteed.  
26

1 9. Investors did not receive medical information on the insured whose policy they  
2 purchased. Rather, they received a short summary from a medical doctor, simply describing the  
3 life expectancy of the insured. RESPONDENTS never checked and thus did not inform investors  
4 that the doctor who wrote the medical summary was a Florida cosmetic doctor. Investors were  
5 told that Future First viatical policies were 100% correct in their medical assessments with no  
6 insured living past their expected date of death.

7 10. Investors were also informed that they would never have to pay any fees or other  
8 payments after they purchased the viatical policy.

9 11. On or about February 4, 2000, Future First and its vice-president were indicted by  
10 the state of Florida for 81 counts of grand theft and one count of organized fraud in connection  
11 with the marketing of fraudulently obtained policies valued at \$6,900,000. After Future First  
12 defaulted on its management responsibilities with respect to the viatical policies, investors were left  
13 with the choice of making additional payments to keep the policies in effect or allowing policies to  
14 lapse due to nonpayment of premiums. Some Future First viatical policies were found not to have  
15 actual underlying insurance policies.

16 12. RESPONDENTS failed to provide full disclosure regarding the investment  
17 including risk, disclosure statements, prospectuses, financial statements or RESPONDENTS' own  
18 lack of due diligence in investigating the investment. RESPONDENTS failed to provide certain  
19 material information to investors about Future First, including but not limited to past operations,  
20 balance sheets, statements of income, retained earnings, and cash flows that would reflect the  
21 financial position of these entities. RESPONDENTS distributed literature that misrepresented the  
22 investment as a "no risk" opportunity. RESPONDENTS failed to provide investors with certain  
23 material information about the use of investor proceeds, such as the cost to purchase the policy, the  
24 fees and commissions payable to them, medical advisors, or any other participants in the program.  
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1           13.     From January 1999 through at least June 2000, RESPONDENTS offered and sold  
2 securities in the form of viatical settlement contracts and investment contracts to at least 34  
3 Arizona investors, who invested a total of at least \$1,110,482.

4   **The Alpha Pay Telephone Contracts**

5           14.     Alpha Telecom, Inc. ("Alpha") was an Oregon corporation located at 2751 Highland  
6 Avenue, Grants Pass, Oregon 97526.

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

13  
14           16.     Paul S. Rubera ("Rubera") was the president and control person of Alpha, and the  
15 control person of ATC.

16           17.     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           18.     Alpha and ATC, and their affiliates, sold pay telephones with telephone service  
19 agreements pursuant to which the investor would share in the profits of the pay telephone.  
20 Investors would enter into two agreements, a purchase agreement, and a service agreement with  
21 Alpha to manage the phone. The two agreements were presented and promoted simultaneously.  
22 The telephones were presented to potential investors with four options in the way of service  
23 contracts, each varying in the amount of service provided. The four options varied from Level 1,  
24 which included a minimum of service, to Level 4, which provided full service to the purchaser,  
25 including choosing a site and installing the telephone, collecting all revenue from the telephone's  
26

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

9 19. 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 20. 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 21. The FCM RESPONDENTS, directly or indirectly, entered into agreements with  
19 Alpha, ATC, and/or SPA, pursuant to which the FCM RESPONDENTS sold investment contracts  
20 involving Alpha pay telephones (the "Alpha investment contracts") within or from the state of  
21 Arizona. All Alpha investment contracts the FCM RESPONDENTS sold were Level 4 contracts.

22 22. The FCM RESPONDENTS told prospective investors their investments were  
23 insured. The insurers' name varied. Mentioned most often was the Northern and Western  
24 Insurance Company of Grand Turk, Turks and Caicos Islands, British West Indies ("N&W"). Also  
25  
26

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

8       23. The FCM RESPONDENTS presented Alpha to prospective customers as a stable,  
9 profitable, and innovative company that had been in business since 1985. Alpha was said to be  
10 selling and providing a "turn-key" operation.

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

13       25. Alpha has a long regulatory history in which state securities regulators have found that  
14 these purchases of pay telephones and accompanying service contracts were unregistered securities in  
15 the form of investment contracts that were sold by unregistered persons and/or entities, and ordered  
16 Alpha and those working with it to cease and desist. The FCM RESPONDENTS did not reveal these  
17 orders to the investors with whom they dealt. The orders that the FCM RESPONDENTS could have  
18 revealed include:  
19  
20

21       a. February 2, 1999, Cease and Desist Order issued by Pennsylvania Securities  
22 Commission in *In the Matter of Alpha Telcom, Inc., et al.*, No. 9812-06.

23       b. November 17, 1999, Cease and Desist Order issued by North Carolina Secretary  
24 of State in *In the Matter of the North Carolina Securities Division v. ATC, Inc., Paul  
25 Rubera, et al.*, No. 99-038-CC.

26       c. June 30, 1999, Temporary Order of Prohibition issued by Illinois Secretary of  
State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201.

1 d. January 14, 2000, Consent Order of Prohibition issued by Illinois Secretary of  
2 State in *In the Matter of Alpha Telcom, Inc.*, No. 9900201, Alpha agreeing to offer  
3 rescission to all Illinois purchasers.

4 e. November 24, 1999, Cease and Desist Order issued by Wisconsin Department  
5 of Financial Institutions in *In the Matter of Alpha Telcom, Inc. and Paul S. Rubera, et al.*,  
6 No. S-99225(EX).

7 f. March 7, 2000, Temporary Cease and Desist Ordered issued by Rhode Island  
8 Department of Business Regulation in *In the Matter of Alpha Telcom, Inc. and ATC, Inc.*

9 g. July 18, 2000, Florida Department of Banking and Finance filed administrative  
10 action against Alpha and others, seeking a Cease and Desist Order.

11 h. October 24, 2000, Desist and Refrain Order issued by California Department of  
12 Corporations.

13 37. The United States Securities and Exchange Commission sued Alpha and its  
14 affiliates in *SEC v. Alpha Telcom, Inc., et al.*, No. CV 01-1283 PA. The court entered a temporary  
15 restraining order on August 27, 2001 and a preliminary injunction on September 6, 2001. The SEC  
16 alleged that Alpha and its affiliates engaged in a Ponzi-like scheme that never generated enough  
17 income to pay expenses, and that the money paid to existing investors always came from sales to  
18 new investors. A court-appointed receiver subsequently took over the remaining operations of  
19 Alpha. Alpha consented on October 19, 2001 to entry of the Final Judgment of Permanent  
20 Injunction against it, but did not admit the allegations of the Complaint.

21 38. Alpha's monthly payments to investors ceased prior to August, 2001.

22 39. The FCM RESPONDENTS sold Alpha investment contracts involving telephones to  
23 at least 9 individuals or entities within or from the state of Arizona from September 2000 through July,  
24 2001, for a total sales amount of at least \$250,000.

25 **Chemical Trust Investment Contract**

26 40. Beginning 1999, RESPONDENTS began offering the Chemical Trust investment.  
Investors were told that Chemical Trust was a "Members Only Investment Trust" located in West  
Palm Beach, Florida. Agents, such as RESPONDENTS, were instructed to market the investment  
to investors at a minimum of \$10,000 per contract for 12 months or more. RESPONDENTS were



1 given authority to offer as much as 25% interest for each investment. Of that 25%,  
2 RESPONDENTS were able to choose how much to offer to investors as interest and how much they  
3 would keep for their commissions for selling the investment.

4 41. Investors were told that the investments are guaranteed two ways. First, the  
5 investments are guaranteed by Chemical Trust which allegedly held \$450,000,000 in assets.  
6 Second, the investments were guaranteed by a surety payment bond totaling "in excess of \$6  
7 billion dollars" that was provided "for 100% of their principal amount invested" at no cost to the  
8 investor. The surety payment bond was allegedly provided by U. S. Guarantee Corporation  
9 located in Phoenix, Arizona. In fact, U. S. Guarantee Corporation is not licensed in Arizona as a  
10 surety insurer. USGC allegedly had assets of \$2,415,142,120, which backed up the bond  
11 guaranteeing the investment. Those funds turned out not to exist.  
12

13 42. RESPONDENTS informed investors that Chemical Trust had been in business for  
14 14 years. Chemical Trust allegedly made profits by purchasing U.S. Treasury notes and  
15 distressed property at discount, selling for an immediate profit.

16 43. On January 7, 2000, the SEC filed a complaint against Chemical Trust, USGC,  
17 and others alleging that the money invested with them was misappropriated and sent to offshore  
18 bank accounts. It also alleged that Chemical Trust represented to investors that their funds would  
19 be used to purchase U.S. Treasury notes and distressed properties, and the investment was 100  
20 percent guaranteed through the security bond with U.S. Guarantee. According to the SEC's  
21 complaint, Chemical had not purchased any U.S. Treasury notes or distressed properties, and  
22 investor funds were not secured. The complaint alleges that, in a classic Ponzi scheme fashion,  
23 Chemical Trust used new investor funds to pay interest to existing investors, in a Ponzi scheme.  
24 Subsequently, a preliminary injunction and final judgment was issued against the defendants and  
25 a receiver appointed to attempt to collect assets.  
26

1 44. On June 30, 2000, the ACC entered an Order against Chemical Trust and others,  
2 finding that they violated the Arizona Securities Act. *See In re Alliance Trust, et al.*, DOCKET  
3 NO. S-03363A-99-0000.

4 45. RESPONDENTS sold at least \$856,042 of investments in Chemical Trust to at  
5 least 20 investors.

#### The ATM Program

6  
7 46. The FCM RESPONDENTS sold investments in automatic teller machines  
8 (“ATMs”) to the public through Integrated Cash Systems (“ICS”). Pursuant to the service  
9 contracts promoted with the ATMs, the service companies would manage the equipment for the  
10 purpose of generating a profit for investors. The offering documents for the investments stated that  
11 the ATMs were allegedly placed with retail merchants in order to enable electronic purchase  
12 transactions at the customers’ points of delivery. The services offered include locating and  
13 installing the equipment with retail merchants, handling or processing the transactions, monitoring  
14 and maintaining the equipment, insuring the equipment, and issuing monthly profit distribution  
15 checks to the investors or “business owners.”  
16

17 47. Although the offering documents for the ATMs describe options for different levels  
18 of managing the equipment, in practice, all investors selected the full-service option, which offered  
19 a revenue-sharing feature and a buy-back provision from the recommended service company. Under  
20 the full-service option, investors had no responsibilities with respect to the operation of their  
21 equipment beyond signing the service contracts, no financial obligations apart from the initial  
22 payment to purchase the units, no continuing financial obligation in the operation of their  
23 equipment, and no liability for any expenses or costs related to the operation of the equipment. At  
24 least one of the services offered to investors, i.e., transaction handling, requires special expertise.  
25 That function involves processing transactions, and is the key to generating a profit for investors.  
26



53. On August 24, 1999, the North Dakota Commissioner of Securities issued an order against INTEGROWTH and HILTBRAND for violations of its securities laws.

54. On October 29, 2001, SANDE was arrested on 38 felony counts of theft and unlicensed sales of viaticals, allegedly defrauding investors of over \$2.7 million. On November 19, 2003, SANDE was sentenced to seven years and four months in prison, in addition to paying \$1,453,929.56 in restitution.

55. On November 11, 2003, the Wisconsin Department issued an order for fraud in the sale of securities against FCM, ABERNATHY, FAZIO and FANDRICH.

56. RESPONDENTS did not inform any investors of any of the Orders against them, nor of any of the Orders against the companies whose investments they sold.

II.

CONCLUSIONS OF LAW

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

2. FANDRICH offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. FANDRICH violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. FANDRICH violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

5. FANDRICH violated A.R.S. § 44-1991 by offering or selling securities within or from Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

1 6. FANDRICH directly or indirectly controlled FCM within the meaning of A.R.S. § 44-  
2 1999. Therefore, he is liable to the same extent as FCM for its violations of A.R.S. § 44-1991.

3 7. FANDRICH's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-  
4 2032.

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

7 9. FANDRICH's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

8 **III.**

9 **ORDER**

10 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, the Commission  
11 finds that the following relief is appropriate, in the public interest, and necessary for the protection  
12 of investors:

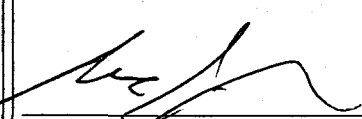
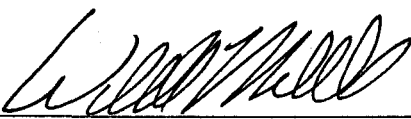
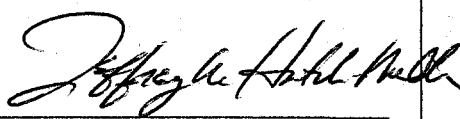
13 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that FANDRICH, his agents, employees,  
14 successors and assigns, permanently cease and desist from violating the Securities Act.

15 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that FANDRICH shall pay  
16 restitution to investors shown on the records of the Commission in the amount of \$2,304,524, plus  
17 interest at the rate of 10% per annum from the date of each investment until paid in full.  
18 FANDRICH shall be entitled to setoffs for restitution paid to investors and verified by the Director  
19 of Securities. Payment shall be made by cashier's check or money order payable to the "State of  
20 Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona  
21 Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to  
22 investors. If all investors are paid in full, any excess funds shall revert to the state of Arizona. If  
23 FANDRICH does not comply with this order of restitution, any outstanding balance shall be in  
24 default and shall be immediately due and payable without notice or demand.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that FANDRICH shall pay an  
2 administrative penalty in the amount of \$25,000, payable to the "State of Arizona." Payment shall  
3 be made in full by cashier's check or money order on the date of this Order. If FANDRICH does  
4 not comply with this order for administrative penalties, any outstanding balance may be deemed in  
5 default and shall be immediately due and payable without notice or demand.

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

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

8   

9 CHAIRMAN

10 COMMISSIONER

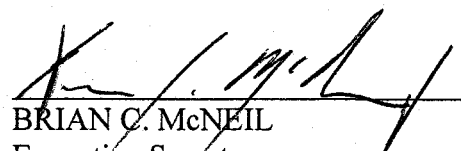
COMMISSIONER

11  

12 COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
14 Executive Secretary of the Arizona Corporation  
15 Commission, have hereunto set my hand and caused the  
16 official seal of the Commission to be affixed at the  
17 Capitol, in the City of Phoenix, this 24<sup>th</sup> day of  
August, 2004

18   
19 BRIAN C. McNEIL  
20 Executive Secretary

21 \_\_\_\_\_  
DISSENT

22 \_\_\_\_\_  
DISSENT

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

26 (md)