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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION
DOCKET CONTROL

2018 JUN 11 P 2:56

COMMISSIONERS

TOM FORESE - Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON

In the matter of:

DAVID PAUL SMOOT and MARIE
KATHLEEN SMOOT (a.k.a. "KATHY
SMOOT"), husband and wife,

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

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.

DOCKET NO. S-20814A-11-0313

**AMENDED NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED ORDER
TO CEASE AND DESIST, ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER FOR OTHER AFFIRMATIVE
ACTION**

Arizona Corporation Commission

DOCKETED

JUN 11 2018

DOCKETED BY

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

Pursuant to the Procedural Order dated May 9, 2018, and Commission Rule R14-3-106(E), the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") files this Amended Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Order for Other Affirmative Action.

The Division alleges that respondents David Paul Smoot, Native American Water, L.L.C. ("Natawa"), Natawa Corporation ("Natawa-Corp"), and American Indian Technologies International, L.L.C. ("AITI") have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Smoot is a controlling person of Natawa, Natawa-Corp and AITI within the meaning of A.R.S. § 44-1999(B) to the same extent as these entities for their violations of the antifraud provisions of the Securities Act.

I.

JURISDICTION

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

II.

RESPONDENTS

2. At all relevant times, i.e. from 2003 through 2011, Smoot has been a married man and an Arizona resident. Smoot has not been registered by the Commission as a securities salesman or dealer.

3. Natawa is a manager-managed Arizona limited liability company formed on January 17, 2003. At all relevant times, Natawa maintained its principal place of business in Arizona. At all relevant times, Smoot was Natawa's manager. Natawa has not been registered by the Commission as a securities dealer.

4. Natawa-Corp was incorporated by Smoot as a Delaware corporation on or about August 24, 2005. At all relevant times, Natawa-Corp maintained its principal place of business in Arizona. On June 8, 2006, the Corporations Division of the Commission granted Natawa-Corp's application for authority to transact business in Arizona as a foreign corporation. Due to Natawa-Corp's failure to file its 2007 annual report, Natawa-Corp's status as a foreign corporation was revoked by the Corporations Division on or about March 28, 2008. Natawa-Corp was reinstated as a foreign corporation authorized to conduct business in Arizona by the Corporations Division on or about April 16, 2008. Due to Natawa-Corp's failure to file its 2010 Annual Report, Natawa-Corp's status as a foreign corporation was revoked by the Corporations Division on or about June 7, 2011. Natawa-Corp has not been registered by the Commission as a securities dealer.

5. AITI is a manager-managed Arizona limited liability company organized February 10, 2004, with Smoot as its only listed manager, member, and statutory agent. At all relevant times, AITI maintained its principal place of business in Arizona. AITI has not been registered by the Commission as a securities dealer.

6. Natawa, Natawa-Corp and AITI may be collectively referred to as the “Companies” or individually as a “Company.”

7. Smoot and the Companies may be collectively referred to as "Respondents" or individually as a "Respondent."

8. Marie Kathleen Smoot (a.k.a. Kathy Smoot) ("Respondent Spouse") was at all relevant times Smoot's spouse. Respondent Spouse is joined in this action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community.

9. At all times relevant, Smoot was acting for his own benefit and for the benefit or in furtherance of his and Respondent Spouse's marital community.

III.

FACTS

Respondents' Business Model

10. Respondents' business model consisted of Respondents being primarily engaged in the business of financing, developing, building and operating water, waste water, and fiber optic utilities ("Utility(ies)") for residential and commercial real estate developers (the "Business").

11. As explained on the homepage of Respondents' website at www.natawa.com, (the "Website"):

Through industry-leading partnerships, Natawa finances, constructs, owns, and manages advanced water, wastewater, and fiber optic utilities – making them revenue-generating assets for developers, cost effective benefits for municipalities, and valuable services for residents.

1 Natawa's innovative, 100% financed water and wastewater solutions provide an efficient and
2 far-reaching answer to water and sewer problems, while simultaneously conserving the land's
3 most precious resource.

4 And Natawa's quality telecommunications systems bring fiber directly to the home, so
5 community residents can enjoy faster Internet connections, enhanced entertainment options,
6 and other exciting services - conveniently and affordably.

7 12. AITI's business model included assisting with Respondents' Utilities Business by
8 representing Natawa and its affiliates before federal, state and local government agencies and
9 departments in connection with licensing, permitting, land use approvals and other agency actions
10 which Natawa requires in order to pursue its business objectives. AITI would also serve as prime
11 contractor for one or more phases of construction projects which Natawa is obligated to undertake
12 pursuant to agreements with its customers, including cities and municipalities.

13 13. In addition to assisting with the Utilities Business, AITI's proposed business included
14 military defense contracting or consulting and alternative energy development projects.

15 14. Even though they raised over \$6 million from investors to operate the Business and
16 frequently described their operations as involving active, operating Utilities, Respondents' Business
17 remained only a model: Respondents never designed, financed, developed, built, or operated any
18 Utilities.

19 **The Investments**

20 15. Respondents funded their business operations principally with money from investors
21 by selling debentures, stock, limited liability company membership units, and notes.

22 16. None of these investments were registered with the Commission.

23 17. From on or about March 1, 2003 to October 11, 2010, Respondents issued and sold
24 approximately 92 investments totaling approximately \$6,140,000 to 64 widely-disbursed investors
25 residing throughout Arizona and other states. Some investors have received payments from
26 Respondents totaling approximately \$275,785.

1 18. Of the amount invested, (a) \$6,140,000 was issued, offered and sold by Smoot in his
2 individual capacity and on behalf of the Companies; (b) \$4,487,000 was issued, offered and sold by
3 Natawa and Natawa-Corp; and (c) \$1,653,000 was issued, offered and sold by AITI.

4 19. Several of the investors had no pre-existing relationship with Respondents.

5 20. Respondents attempted to locate investors through referrals. To further this goal,
6 Respondents entered into contracts with several persons, pursuant to which the person would receive
7 a commission for bringing investors to Respondents.

8 21. Smoot, Natawa, Natawa-Corp, and AITI, issued, offered and sold approximately fifty-
9 nine debentures to 48 persons.

10 22. These debentures were titled "10% Convertible, Subordinated Debenture..." and
11 included the name of the debenture issuing Company. Nearly all of the debentures were signed by
12 Smoot in his respective capacities as "CEO" of Natawa-Corp, managing member of Natawa, and
13 managing member of AITI.

14 23. The debentures generally had one-year maturity dates and ranged in price from
15 approximately \$7,500 to \$200,000 each.

16 24. Debenture investors could choose between two repayment options. The first was to
17 pay debenture investors interest on their principal investments, most often at the rate of ten percent
18 per year, with the principal and accrued interest repaid only at the conclusion of the debenture term.

19 25. The second repayment option allowed debenture investors to "convert" the debentures
20 into shares of the issuing Company in lieu of receiving back the principal investment amounts and
21 the accrued but unpaid interest.

22 26. To date, many of the non-converting debenture investors have received no repayments
23 on their investments.

24 27. Smoot and Natawa also issued and sold Natawa units (*i.e.*, Natawa LLC membership
25 interests) separate and apart from the debenture investments to at least two persons for a total of
26 approximately \$205,000.

1 28. Smoot and Natawa-Corp issued and sold shares of Natawa-Corp stock separate and
2 apart from the Natawa-Corp debentures to approximately 10 persons for a total of approximately
3 \$550,000.

4 29. Smoot, Natawa, and Natawa-Corp also issued, offered and sold approximately three
5 notes totaling approximately \$155,000. The notes were made and executed by Smoot as the manager
6 or CEO of the respective Company issuing the note.

7 30. Most notes were unsecured, paid interest of 10% per annum, and had maturity dates
8 ranging from approximately six months to one year.

9 31. One of the notes allowed the investor to convert the loan to Natawa equity. An Arizona
10 investor purchased this note from Natawa on or about December 18, 2003, for \$100,000. The note
11 was titled "2% Promissory Convertible Note." Smoot executed the note as Natawa's manager. The
12 note provided that, in lieu of receiving back principal investment with accrued but unpaid interest at
13 the conclusion of the investment, the investor could receive a one-unit ownership interest in Natawa.

14 32. From approximately September 18, 2008, to April 23, 2010, Smoot and AITI issued,
15 offered and sold AITI debentures, notes and units (*i.e.*, AITI LLC membership interests) in fifteen
16 transactions totaling \$1,653,000 to six investors residing in Arizona and Illinois.

17 33. The sales of the AITI units were often documented by a "Membership Interest
18 Agreement" signed by Smoot in his capacity as AITI's manager.

19 **Representations Made to Investors**

20 34. Respondents represented to investors both verbally and in writing that Respondents'
21 ability to repay investors their principal investments and promised profits was interwoven with and
22 primarily dependent on Respondents' ability to profitably develop, finance, construct and operate the
23 Utilities, and AITI's alternative energy and military contracting businesses.

24 35. Respondents further represented to offerees and investors that the Companies were,
25 or would soon become extremely profitable and, as a result, the investments would provide investors
26 with outstanding returns in the form of equity, dividend, or cash-profit-sharing.

1 36. Based on representations by Respondents, several persons believed that Smoot and
2 Respondents had experience or were currently building and operating utilities. Respondents gave
3 documents to at least two persons, prior to those persons investing, that describe Natawa's operations
4 as being actual and currently occurring: "Natawa finances, designs, constructs, owns, and operates
5 water, wastewater, and fiber optic utilities for new investments."

6 37. Respondents frequently used the present tense to describe their operations to investors
7 and potential investors. For example, Respondents' website included an "Established Projects" page
8 indicating and/or advertising that Respondents had in fact installed Utilities for large residential
9 developments encompassing 40,000 total homes.

10 38. A November 1, 2005 document titled "Natawa Investment Opportunity" describes
11 Natawa's operations in the present tense, stating that: Natawa "designs, constructs, owns, and
12 operates water, waste water and fiber optic utilities (phone, internet and cable television over one
13 "wire") for new developments in the Southwest. Natawa partners with developers and shares the
14 profits the utilities earn with our partner developers."

15 39. A written NATAWA "Executive Summary" provided by Smoot to potential and
16 actual investors beginning in February 2008, states that, "NATAWA and their preferred list of
17 regional and national partners have constructed and operated hundreds of utilities infrastructures
18 across the U.S. and Mexico."

19 40. Respondents also frequently represented to investors that the Companies would soon
20 become very profitable. For example, a Natawa "Newsletter and Update" prepared and delivered by
21 Respondents to actual investors on or about February 22, 2005, states that:

22 The tides are changing at NATAWA. Three contracts are in the process of being signed and
23 at least three more in the works for March. This is big news for the company as it pushes the
24 profitability of the deals signed to well over \$150,000,000.00 pre tax... We wanted you to
25 know that the company's future is on solid ground, so you're getting a little advance notice
26 of significant occurrences. In addition to the contracts already signed, these contracts bring

1 an additional 10,000 homes to the company's portfolio for controlling fiber optics and/or
2 wastewater and over \$100,000,000.00 to the bottom line. **Cash [profits] should start about**
3 **Q2 to come into NATAWA.** This of course is from our fees as the General Contractor and
4 financing fees. Once home building starts, which we don't control, we begin our revenue
5 stream from the developments. **The cash position of the company is and will remain to be**
6 **very strong** in a very short time. We have come a long way and the fruits of our efforts will
7 soon pay off.... (emphasis added)

8 41. Respondents also represented to investors and offerees that the Companies had
9 tremendous value because of several contracts signed or that would soon be signed with developers.

10 42. In addition to the examples in the preceding paragraphs, in a detailed, sixty-seven-
11 page prospectus with attachments titled "Natawa Investment Opportunity" dated December 1, 2005,
12 prepared and distributed by Smoot to actual and potential investors explained that:

13 NATAWA has obtained five contracts to build either water, wastewater and/or fiber utility
14 services for a total build-out commitment of approximately 50,000 homes in Arizona and
15 California. **These contracts represent significant revenues and free cash flow for**
16 **NATAWA** and its [real estate development] partners...NATAWA will have a lower
17 volatility in earning and revenue performance, as once we have signed a [development]
18 contract with a developer, NATAWA is the exclusive utility provider for the selected
19 developments...**NATAWA expects to close a significant portion of these transactions in**
20 **the third and fourth quarter of 2005.** NATAWA will also be funding a minimum of one
21 transaction in early first quarter 2006 for our project in Casa Grande, AZ. This project will
22 provide NATAWA with General Contracting fees of \$460,000 upon funding. (emphasis
23 added)

24 43. From 2004 through early 2008, Natawa signed over a dozen documents titled "Master
25 Development Agreement" with land owners pursuant to which Natawa was responsible for the
26 design, finance, and construction of Utilities for a residential development.

1 44. These agreements were subject to numerous contingencies such as, without limitation:
2 (a) the outcome of further project feasibility and environmental impact studies, and extensive
3 government entitlement and permitting processes; (b) actual procurement of third-party financing
4 funds; and (c) the creation of additional entities and agreements that would govern the proposed
5 development.

6 45. Not only did the agreements not provide for remedies or payments for default or
7 failure to perform, in many of the agreements a party simply not performing its obligations is an act
8 of default which terminates the agreement. In others, not performing obligations after given a certain
9 time to correct the conditions results in default and termination. For example, one agreement says
10 that the land owner failing to get all government permits within two years or Natawa not applying
11 for government permits by a certain time terminates the agreement.

12 46. Regarding AITI profits, an AITI prospectus prepared and provided by Smoot to
13 offerees and investors in or about 2008 and 2009 projected AITI's revenues for the years 2011
14 through 2016 totaling approximately \$268,056,000, and "Net Income" for that time period totaling
15 approximately \$96,537,556 for distribution to investors. AITI would have net assets of approximately
16 \$57,500,000 in 2010.

17 47. Although they frequently described their operations in the present tense and also
18 described imminent revenue and profitability, Respondents have not at any time actually received
19 funding for, constructed, or operated any Utilities and the Companies have not earned revenue or
20 profits.

21 48. Smoot expressly acknowledged the failure of Respondents to fund any Utilities deals
22 or generate any Utilities Business revenues on at least two occasions. First, in a November 28, 2006
23 email, when discussing the effect his personal expenditures would have on an audit, Smoot wrote to
24 three investors stating, in part, as follows:

25 the issue of Expenses spent by me has...[an investor] scared that we may not pass an
26 Audit...from the Shareholder's perspective, it's always been discussed that I would pay this

1 expense back **once we fund a deal and I get a bonus allowing me to do so.** [Smoot's
2 purchases of] Cigars, clothes and such are what we're talking about. I have a buyer for some
3 of my stock which will cover these expenses, since we haven't...[obtained any third-party
4 financing] yet. (emphasis added)

5 49. Later, in an "Investor Update" prepared and provided by Smoot to actual and potential
6 investors in 2009 that stated, in part:

7 Also, to clarify any confusion as to current planned projects and potential sources of funding,
8 Native American Water, L.L.C. **has not yet received any income from its planned**
9 **projects...The reason the Company still exists and is able to continue working toward**
10 **project financing today is due to investors continuing to invest in the Company...**Each
11 time a new investor has invested (whether a direct investment in equity or converting their
12 debentures into equity), new membership interests have been issued. This has had the effect
13 of diluting prior investors, but it has been necessary to keep the Company operating and
14 moving toward project financing....

15 We are cautiously optimistic that at least one of these three projects will be successful in
16 being funded in the first half of 2009, however this depends on several things we don't
17 control: the developers, the municipalities agreeing to a municipal bond offering and the
18 lender's ability to sell the bonds....

19 For Natawa to continue to survive, we need money for immediate needs until we receive
20 project financing. If, and when, one of the development deals funds, this issue will be moot.
21 **We have not had any operational/project income to-date, we have few meaningful assets**
22 **as the assets we contemplate building will be utilities,** and we are in arrears on paying some
23 of our consultants and some ongoing bills.... (emphasis added)

24 50. Respondents' primary source of revenue from approximately 2003 to the present has
25 been investor funds, rather than from the successful development, construction and operation of
26 Utilities.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

51. From on or about March 2003 to October 2010, Respondents offered or sold securities in the form of debentures, stock, investment contracts, and notes, within or from Arizona.

52. The securities referred to above were not registered pursuant to Articles 6 or 7 of the Securities Act.

53. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

54. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

55. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

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

56. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) Representing to offerees and investors that the Companies were, or were imminently about to become profitable and valuable, and that the investments would provide

investors with cash and equity profits while failing to disclose that Respondents had not developed, financed, installed, or operated any Utilities;

b) Representing to offerees and investors that the Companies were, or were imminently about to become profitable and valuable, and that the investments would provide investors with cash and equity profits while failing to disclose that Respondents' primary revenue source was investment funds; and

c) Representing to offerees and investors that the Companies were, or were imminently about to become profitable and valuable, and that the investments would provide investors with cash and equity profits due to having several valuable contracts with landowners to develop property, while failing to disclose that the agreements that Natawa had with landowners were contingent on the parties performing and meeting several conditions and that all or the most of the agreements could, in essence, be terminated if either party simply did not perform.

57. This conduct violates A.R.S. § 44-1991.

VII.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

58. Smoot directly or indirectly controlled Natawa, Natawa-Corp and AITI, within the meaning of A.R.S. § 44-1999. As a result, Smoot is jointly and severally liable with, and to the same extent as Natawa, Natawa-Corp and AITI for their violations of the anti-fraud provisions of the Securities Act set forth above.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to \$5,000 for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order that the marital community of Smoot and Respondent Spouses be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

5. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each Respondent including Respondent Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon,

1 ADA Coordinator, voice phone number (602) 542-3931, e-mail kcannon@azcc.gov. Requests should
2 be made as early as possible to allow time to arrange the accommodation. Additional information
3 about the administrative action procedure may be found at
4 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

5 **X.**

6 **ANSWER REQUIREMENT**

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

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

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

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

24 The officer presiding over the hearing may grant relief from the requirement to file an Answer
25 for good cause shown.
26

1 Dated this 11th day of June, 2018.

2 

3
4 Mark Dinell
Assistant Director of Securities

5
6
7 On this June 11, 2018, the foregoing document was filed with Docket Control as a Securities Division
8 - Notice of Opportunity, and copies of the foregoing were mailed on behalf of the Securities Division
9 to the following who have not consented to email service.

10 Joseph E. Mais
11 Brian C. Lake
12 PERKINS COIE LLP
2901 North Central Ave., Suite 2000
13 Phoenix, Arizona 85012-2788
Attorneys for all Respondents

14 Timothy J. Galligan
15 5 Borealis Way
16 Castle Rock, CO 80108
Attorney of record for David Smoot