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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman
ANDY TOBIN
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON

Arizona Corporation Commission
DOCKETED
MAR 13 2019
DOCKETED BY

In the matter of THOMAS P. MADDEN and Leslie Madden, husband and wife, Respondents.	DOCKET NO. S-21042A-18-0059 DECISION NO. 77116 **ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES, AND CONSENT TO SAME** **BY: ALL RESPONDENTS**

Respondent Thomas Madden ("Respondent") and his spouse, Leslie Madden ("Respondent Spouse") elect to permanently waive any 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 for Restitution, Order for Administrative Penalties, and Consent to Same ("Order"). Respondent and Respondent Spouse admit the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

I.

FINDINGS OF FACT

1. Madden is a married man who resided in Chandler, Arizona from 2011 through 2016.

2. Respondent Spouse was at all relevant times Madden'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.

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

4. From 2010-2012, Madden worked for Summit Capital USA, Inc. a business advisory firm based in Tempe, Arizona. He was a consultant for Summit thereafter.

5. Summit was not registered as a securities dealer in Arizona.

6. In its filings with the Securities and Exchange Commission, Summit describes its business as "merchant banking and strategic business advisory services."

7. Summit's business advisory services included advising companies on corporate finance strategies, introducing them to the broker dealer community and assisting companies in becoming publicly-traded. Summit would often receive shares from its clients in advance of providing services.

8. Summit worked with some shell corporations that merged with existing companies. Summit would acquire equity in the shell company. After merging the shell company to the existing company, Summit would receive equity in the existing company.

9. From late 2011 through 2014, Madden was Summit's general manager/senior manager and held an option to acquire 20% of Summit. His work involved, among other things, helping clients prepare to go public and assisting clients in raising capital by introducing them to investors and brokers.

10. In June 2014, Summit changed Madden's title to "Of Counsel" when the State of Washington began investigating Madden; while his title changed, Madden continued to perform the same work.

11. Washington's investigation resulted in Washington issuing a consent order against Madden on October 18, 2016, that found Madden in violation of the state's securities registration and anti-fraud provisions.

12. For approximately his first year of employment at Summit, Madden received compensation in the form of a monthly salary and stock of the corporations that contracted with

Summit for business advisory services. After that first year, Madden's compensation consisted mostly of stock from Summit's clients.

13. In April 2011, Dignyte, Inc., a Nevada corporation, was formed. According to its 2013 10-K, filed with the U.S. Securities and Exchange Commission, Dignyte is defined as a "shell" corporation with proposed business activities that would classify Dignyte as a "blank check" company.

14. In 2014, Dignyte merged with eWellness Healthcare Corporation, a start-up company formed in Nevada in 2013. eWellness describes itself as "a Los Angeles based medical technology company that combines digital physical therapy with progressive in-home exercise programs that includes active real-time monitoring and assessment by physical therapists."

15. eWellness had no revenue and no profits from its formation through 2017. eWellness's annual SEC filings report net losses of $466,636 in 2013, $1,325,010 in 2014, $1,554,908 in 2015, and $12,460,694 in 2016.

16. eWellness was a client of Summit and Summit received eWellness stock in exchange for the completion of the merger between eWellness and Dignyte.

17. As a Summit employee, Madden provided several services for eWellness including introducing potential investors to eWellness and Summit executives and forwarding email from eWellness's manager to potential investors. Additionally, Madden introduced eWellness to Summit.

18. Madden received stock in eWellness in exchange for services rendered to complete the merger. He also purchased 350,000 Dignyte shares for $.10/share in the registered initial public offering.

19. Another company for which Summit provided services was Jameson Stanford Mining Corp. In 2012, Jameson described itself as follows: "Through our wholly owned subsidiary, Bolcán Mining, we are a minerals exploration company focused on acquiring and consolidating mining claims and mineral leases with potential production and future growth through exploration discoveries."

20. Effective December 15, 2014 and after a corporate reorganization, Jameson changed its name to Star Mountain Resources, Inc.

21. Jameson/Star Mountain filed Form 10-Ks with the SEC from 2013 through 2016. These reports disclose several risks inherent to a mining company, including regulatory, market fluctuation, and environmental risks.

22. The 10-Ks also disclose that Jameson/Star Mountain's operations included several risks, including dependence on a single executive, lack of capital, lack of operations, lack of income, and litigation. The 10-Ks also disclose risks related to Jameson/Star Mountain's common stock, including that the shares are illiquid, may never meet the listing requirements of a national exchange, are subject to the SEC's rules for "penny stocks."

23. The 10-Ks also showed that Jameson/Star Mountain generated less than $90,000 of revenue in 2011 and no revenue after that. It has not generated any profits. Rather, it incurred net losses since its inception, including net losses of $54,258 in 2011, $648,271 in 2012, $2,978,706 in 2013, $4,156,596 in 2014, and $6,696,000 in 2015.

24. Madden performed services on behalf of Summit for Jameson/Star Mountain that included introducing potential investors to Star Mountain executives.

25. In exchange for his services, Madden received stock in Jameson/Star Mountain. Madden also purchased some shares from Jameson.

26. From October 2012 through July 2016, Madden's income came primarily from offering and selling stock in Dignyte/eWellness, Jameson/Star Mountain, and other start-up companies.

27. During this timeframe, Madden received payments from at least 79 persons, in 169 transactions, for total sales of $3,924,102.

28. The 169 transactions described in the preceding paragraph consisted of Madden's offer and sale, within and from Arizona, of Dignyte/eWellness stock and Jameson/Star Mountain stock, and entering stock-backed loans, i.e. loans where Madden could repay the loan with stock.

29. The purchasers were persons that Madden knew from his church, friends, and acquaintances of these persons.

30. Madden repaid a portion of the proceeds described in paragraph 27 above. These repayments total at least $639,310.

Misrepresentations and omissions

31. In connection with the offer and sale of his stock, Madden failed to disclose or misrepresented several items to investors.

32. Based on Madden's representations, several investors expected a return on their Jameson/Star Mountain investment in a short timeframe. Madden told at least one investor that Jameson/Star Mountain stock was a "bargain" and would soon increase in value. Madden told another investor that the stock could be purchased for $.75 and that they "will be opening it near $2.00."

33. At the time of these representations, the company had no revenue from mining operations, had only earned a small revenue in one year of its existence, and had never had profits.

34. Madden failed to disclose to Jameson/Star Mountain investors the risks relevant to the mining industry and to Jameson/Star Mountain's operations, even though the company had public filings with this information.

35. Madden also failed to disclose to some investors risks connected Jameson/Star Mountain's common stock, including that the stock was sold in private transactions and listed on over-the-counter stock markets and bulletin boards that could result in limited liquidity, difficulty in determining market price due to infrequent trading and potential additional disclosure requirements for "penny stocks" under SEC rules, even though the company had public filings with this information.

36. Madden told some investors that Dignyte/eWellness's value would soon rise significantly, led other investors to believe that they would soon realize a gain on their investment, and told at least one investor that eWellness shares would soon "go public."

37. Dignyte, in fact, was a blank-check, shell company with no operations. Before and after the merger, Dignyte/eWellness had no revenue or profits. To the contrary, it had throughout its existence incurred significant, annual net losses.

38. Madden failed to discuss with some investors the risks involved with purchasing Dignyte/eWellness stocks. These risks include limited liquidity, difficulty in determining market price due to infrequent trading, steps and costs required to sell restricted shares, and potential additional disclosure requirements for "penny stocks" under SEC rules.

39. Madden represented to some investors that he had experience in evaluating stock, was a consultant in the securities industry, a venture capitalist, or that he was in the business of investing. Madden failed to disclose to offerees information that could have been material in assessing Madden's business acumen and competence with finances, including two lawsuits against him based on stock offers and sales, and three loans that he was unable to timely pay back, two of which were never paid back and one that resulted in a civil judgment:

a) A May 17, 2012, civil judgment of $26,373 in principal plus attorney's fees from King County Superior Court, State of Washington, later domiciled in Arizona CV2012-012952. The judgment stemmed from $65,000 of stock sales where Madden sold stock to investors and the stock lost almost all of its value.

b) A March 19, 2008, civil judgment of $497,561 in King Superior Court – Seattle, against Madden and Madden Consulting Inc. The lawsuit involved Madden offering to sell stock to a potential investor. When the investor insisted that he receive promissory notes instead, Madden sold him promissory notes that could be paid by cash or by stock.

c) An October 14, 2009, judgment creditors received a judgment of $157,500 in Utah County District Court, against Madden and his entity, Nascent Value, LLC, for a loan that Madden received from the judgment creditors.

d) On several occasions, Madden also borrowed money from an Arizona resident that had purchased $300,000 in stock from Madden, including one loan for $75,000. Madden gave

the investor two $37,500 post-dated checks when she gave him the money. Then, apparently unable to cover the checks when the date arrived, Madden asked her to hold on to the checks. On a later date, Madden gave the investor two new post-dated checks, and asked her to tear up the old ones; both checks cleared when she cashed them.

e) In January, February and July 2015, Madden received loans totaling at least $150,000 from another Arizona resident that had purchased over $300,000 in stock from Madden. Madden paid back $30,000 of the loans. He also wrote two other checks to pay back the loans, both of these checks bounced.

40. Dignyte/eWellness and Jameson/Star Mountain have failed to operate as profitable businesses, they have only incurred losses, and their stock is currently worth only a few pennies a share.

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. Respondent offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(16), 44-1801(22), and 44-1801(27).

3. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

4. Respondent violated A.R.S. § 44-1991 by making untrue statements or misleading omissions of material facts.

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

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

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

8. Respondent acted for the benefit his and Respondent Spouse's marital community and, pursuant to A.R.S. §§ 25-214 and 25-215, this order of restitution and administrative penalties is a debt of the community.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent and Respondent Spouse consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondent comply with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent and the marital community of Respondent and Respondent Spouse shall, jointly and severally, pay restitution to the Commission in the principal amount of $3,284,792 as a result of the conduct set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission. Any principal amount outstanding shall accrue interest at the rate of ten percent per annum from the date of purchase until the date of this order.

IT IS FURTHER ORDERED that the restitution ordered in the preceding paragraph will accrue interest, as of the date of the Order, at the rate of the lesser of (i) ten percent per annum or (ii) at a rate per annum that is equal to one per cent plus the prime rate as published by the board of governors of the federal reserve system in statistical release H. 15 or any publication that may supersede it on the date that the judgment is entered.

The Commission shall disburse the funds on a pro-rata basis to investors shown on the records of the Commission. Any restitution funds that the Commission cannot disburse because an investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor because the investor is deceased shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent individually, and the marital community of Respondent and Respondent Spouse, jointly and severally, shall pay an administrative penalty in the amount of $75,000 as a result of the conduct set forth in the Findings of Fact and Conclusions of Law. Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest as allowed by law.

IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be applied to the restitution obligation. Upon payment in full of the restitution obligation, payments shall be applied to the penalty obligation.

For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If Respondent does not comply with this Order, any outstanding balance may be deemed in default and shall be immediately due and payable.

IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN BURNS

COMMISSIONER DUNN

COMMISSIONER TOBIN

COMMISSIONER KENNEDY

COMMISSIONER OLSON

IN WITNESS WHEREOF, I, MATTHEW J. NEUBERT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 13th day of March, 2019.

MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Kacie Cannon, ADA Coordinator, voice phone number (602) 542-3931, e-mail kcannon@azcc.gov.

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CONSENT TO ENTRY OF ORDER

1. Respondent and Respondent Spouse admit the jurisdiction of the Commission over the subject matter of this proceeding. Respondent and Respondent Spouse acknowledge that they have been fully advised of their right to a hearing to present evidence and call witnesses and they knowingly and voluntarily waive any and all rights to a hearing before the Commission and all other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. Respondent and Respondent Spouse acknowledge that this Order constitutes a valid final order of the Commission.

2. Respondent and Respondent Spouse knowingly and voluntarily waive any right under Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

3. Respondent and Respondent Spouse acknowledge and agree that this Order is entered into freely and voluntarily and that no promise was made or coercion used to induce such entry.

4. Respondent and Respondent Spouse acknowledge that they have been represented by an attorney in this matter and have reviewed this Order with their attorney, **Mark Chester**, and understand all terms it contains.

5. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order. Respondent agrees that Respondent shall not contest the validity of the Findings of Fact and Conclusions of Law contained in this Order in any present or future proceeding in which the Commission is a party.

6. Respondent and Respondent Spouse further agree that they shall not deny or contest the Findings of Fact and Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding, or (b) non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)"). They further agree that in any such proceedings, the Findings of Fact and Conclusions of Law contained in this Order may be taken as true and correct and that this

Order shall collaterally estop them from re-litigating with the Commission or any other state agency, in any forum, the accuracy of the Findings of Fact and Conclusions of Law contained in this Order. In the event Respondent or Respondent Spouse pursues bankruptcy protection in the future, they further agree that in such bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following circumstances exist:

A. The obligations incurred as a result of this Order are a result of the conduct set forth in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

B. This Order constitutes a judgment, order, consent order, or decree entered in a state proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by Respondent and Respondent Spouse pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine, penalty, citation, restitution payment, disgorgement payment, attorney fee, cost or other payment owed by Respondent and Respondent Spouse pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).

7. By consenting to the entry of this Order, Respondent and Respondent Spouse agree not to take any action or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual basis.

8. While this Order settles this administrative matter between Respondent and the Commission, Respondent understands that this Order does not preclude the Commission from instituting other administrative or civil proceedings based on violations that are not addressed by this Order.

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

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

11. Respondent agrees that he will not apply to the state of Arizona for registration as a securities dealer or salesman or for licensure as an investment adviser or investment adviser representative until such time as all restitution and penalties under this Order are paid in full.

12. Respondent agrees that he will not exercise any control over any entity that offers or sells securities or provides investment advisory services within or from Arizona until such time as all restitution and penalties under this Order are paid in full.

13. Respondent and Respondent Spouse acknowledge that any restitution or penalties imposed by this Order are obligations of their marital community.

14. Respondent and Respondent Spouse consent to the entry of this Order and agree to be fully bound by its terms and conditions.

15. Respondent acknowledges and understands that if he fails to comply with the provisions of the order and this consent, the Commission may bring further legal proceedings against Respondent, including application to the superior court for an order of contempt.

16. Respondent understands that default shall render him liable to the Commission for its costs of collection, including reasonable attorneys' fees and interest at the maximum legal rate.

17. Respondent agrees and understands that if he fails to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondent agrees and understands that acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

Signature Page for Respondent and Respondent Spouse

Thomas P. Madden, Respondent

Leslie Madden, Respondent Spouse

STATE OF WA)
) ss
County of KING)

SUBSCRIBED AND SWORN TO BEFORE me this 19 day of February, 2019.

NOTARY PUBLIC

My commission expires:
10/24/21

NOTARY PUBLIC
STATE OF WASHINGTON
JANAE REYNOLDS
My Appointment Expires October 24, 2021

SERVICE LIST FOR: *In re Thomas P. Madden*

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS - Chairman
ANDY TOBIN
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SANDRA D. KENNEDY
JUSTIN OLSON

In the matter of: THOMAS P. MADDEN and Leslie Madden, husband and wife, Respondents.	DOCKET NO. S-21042A-18-0059 **CERTIFICATION OF SERVICE OF PROPOSED OPEN MEETING AGENDA ITEM**

On this 26 day of February, 2019, the foregoing document was filed with Docket Control as a Securities Division Memorandum & Proposed Order. On this date or as soon as possible thereafter, a courtesy copy of the foregoing will be emailed to the following who have consented to email service.

Mark D. Chester
mchester@mdclawyers.com
Attorney for Respondents

By: Emie R. Bridges
Emie R. Bridges, Executive Assistant