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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

ROBERT "BOB" BURNS – Chairman
BOYD DUNN
SANDRA D. KENNEDY
JUSTIN OLSON
LEA MÁRQUEZ PETERSON

Arizona Corporation Commission
DOCKETED
MAY 14 2020
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In the matter of: ANTHONY ELADIO RAMOS, an unmarried man, WESTERN GATEWAY REGION RURAL BROADBAND COMPANY, INC., a Delaware corporation, Respondents.	DOCKET NO. S-21063A-18-0401 DECISION NO. 77619 **OPINION AND ORDER**

DATES OF PRE-HEARING CONFERENCES:	January 23, 2019 February 8, 2019 April 2, 2019
DATES OF HEARING:	April 25 and 26, 2019
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Yvette B. Kinsey
APPEARANCES:	Mr. Anthony Eladio Ramos, *pro per*, and Mr. Christopher Nichols, Staff Attorney, on behalf of the Securities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

Procedural History

On December 14, 2018, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("TO/Notice") against Anthony Eladio Ramos ("Respondent Ramos") and Western Gateway Region Rural Broadband Company, Inc. (Respondent "Western Gateway" or "WGR") (collectively "Respondents"). The Division alleges that Respondents are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801 *et seq.*, the Arizona Securities Act ("Securities Act") and that the public welfare requires immediate action.

The Division also alleges that Respondent Ramos is a person controlling Western Gateway, within the meaning of A.R.S. § 44-1999, so that he is jointly and severally liable under A.R.S. § 44-1999, to the same extent as Western Gateway, for its violations of the Securities Act.

On January 3, 2019, the Division filed an Affidavit of Service regarding Western Gateway Region Rural Broadband Company, Inc.

On the same date, the Division filed an Affidavit of Service regarding Anthony Eladio Ramos.

On January 7, 2019, Respondents each filed, separately, a Demand for Discovery, an Emergency Motion to Compel the Sworn Telephonic Statement of William C. Woerner, and a Proposed Order Granting Emergency Motion to Compel the Sworn Telephonic Statement of William C. Woerner ("Woerner").

On the same date, Respondents each filed, separately, a Notice of Supplemental Authority on Emergency Motion to Compel the Sworn Telephonic Statement of William C. Woerner.

On January 9, 2019, Respondent Ramos filed a Notice of Filing Request for Attorney General Action as to Criminal Impersonation by Third-Party Respondent Woerner.

On January 11, 2019, Respondents each filed, separately, a Motion for an Extension of Time to File Answer, requesting a 90-day extension of time to file an Answer to the TO/Notice.

On January 14, 2019, Respondent Ramos filed, on behalf of Western Gateway, a Notice of Mailing Address, stating that as an Issuer Representative, Respondent Ramos will act as Western Gateway's representative in this matter.

Also on January 14, 2019, Respondent Ramos filed a Request for Hearing and an Exhibit to the Proceedings – Affidavit of Anthony Eladio Ramos as to Acts of Criminal Impersonation and of Fraud in the Purchase of Securities, by Commission Employee, William C. Woerner.

On January 15, 2019, Respondent Ramos filed an Emergency Motion to Strike the Temporary Order.

On January 16, 2019, by Procedural Order, a pre-hearing conference was scheduled for January 23, 2019, to discuss potential dates for a hearing as well as oral argument on the pending motions filed in this matter. Also, Respondents were permitted to appear by telephone for the pre-hearing conference. Further, Respondents were placed on notice that the failure to appear for the pre-hearing conference

may result in a Default Order being issued in this matter.

On the same date, a Procedural Order regarding consent to email service was issued.

Also on January 16, 2019, the Division filed a Response to Respondents' Discovery Demands and Emergency Motions to Compel the Sworn Telephonic Statement of William C. Woerner.

On January 22, 2019, the Division filed a Response to Respondents' Motion for Extension of Time to File an Answer.

On January 23, 2019, Olekanma A. Ekekwe filed a Notice of Appearance on behalf of Respondent Western Gateway.

On the same date, the pre-hearing conference was held as scheduled before a duly authorized Administrative Law Judge ("ALJ") for the Commission. The Division appeared through counsel, and Respondents failed to appear. Due to Respondents' failure to appear for the pre-hearing conference, it was determined that the pre-hearing conference would be rescheduled for a future date to allow the Respondents to participate.

On January 25, 2019, by Procedural Order, the pre-hearing conference in this matter was rescheduled to be held on February 8, 2019. Further, Western Gateway was ordered to file, by February 4, 2019, its compliance with Arizona Supreme Court Rules 31, 38, 39, and 42 and A.R.S. § 40-243, with respect to the practice of law and admission *pro hac vice*. Also, Respondents were provided permission to appear by telephone for the pre-hearing conference and placed on notice that the failure to appear for the pre-hearing conference could result in a Default Order being issued in this matter.

On January 28, 2019, the Division filed a Response to Ramos' Emergency Motion to Strike the Temporary Order.

On the same date, Respondent Ramos filed a Supplement to Emergency Motion to Strike Temporary Order, a proposed Order Granting the Motions of Respondents for an Extension of Time to File an Answer, a Reply to Securities Division's Response to Respondents' Motion for Extension of Time to File an Answer, and a proposed Order Granting Emergency Motions of Respondents to Strike the Temporary Order with Prejudice.

Also on January 28, 2019, Respondent Western Gateway filed a Consent to Email Service and a Notice of Concurrence and Adoption of Supplement to Emergency Motion to Strike Temporary Order

of Respondent Ramos.

On January 29, 2019, Respondent Western Gateway filed a Reply to Securities Division's Response to Respondents' Discovery Demands, and Emergency Motion to Compel the Sworn Telephonic Statement of William C. Woerner.

On the same date, Respondent Ramos filed a Reply to Securities Division's Response to Respondents' Motion for Extension of Time to File an Answer, a Reply to Securities Division's Response to Respondents' Discovery Demands and Emergency Motion to Compel the Sworn Telephonic Statement of William C. Woerner, and a proposed Order Granting Emergency Motion of Respondents to Compel Discovery Demands and Emergency Motion to Compel the Sworn Telephonic Statement of William C. Woerner.

On January 30, 2019, by Procedural Order, Respondent Western Gateway's Consent to Email Service was granted.

On February 1, 2019, Respondent Western Gateway filed an Answer and Affirmative Defenses to the TO/Notice.

On February 4, 2019, Respondent Ramos filed a Reply to Emergency Motions of Respondents, to Strike Pleadings with Prejudice.

On the same date, Respondent Western Gateway filed a Notice of Concurrence and Adoption of Respondent Ramos' Reply to Motion for an Extension of Time to File an Answer.

On February 5, 2019, Respondent Ramos filed an Answer and Affirmative Defenses and a Third-Party Petition.

On February 8, 2019, the pre-hearing conference was held as scheduled before a duly authorized ALJ. The Division appeared through counsel, and Respondents again failed to appear. During the pre-hearing conference, oral arguments were heard on the pending motions filed in this matter, and the ALJ ruled from the bench on the motions. Also, Western Gateway was ordered to file in this docket by February 15, 2019,[1] a sworn document demonstrating its compliance with respect to the practice of law and admission *pro hac vice* in Arizona. Further, it was determined that the hearing in the matter would

[1] This deadline was subsequently extended by the Procedural Order issued on February 13, 2019.

be held on March 25, 2019, with the exchange of copies of Witness Lists and Exhibits to occur by February 25, 2019.

On February 12, 2019, Respondents Ramos filed a Consent to Email Service.

On February 13, 2019, by Procedural Order, the rulings made during the February 8, 2019, pre-hearing conference were memorialized, and the hearing in this matter was scheduled to commence on March 25, 2019. Further, Respondent Western Gateway was ordered to file, by February 20, 2019, a sworn document demonstrating its compliance with Arizona Supreme Court Rules 31, 38, 39, and 42 and A.R.S. § 40-243 with respect to the practice of law and admission *pro hac vice*. Also, the parties were ordered to exchange copies of Witness Lists and Exhibits by February 25, 2019.

On the same date, by Procedural Order, Respondents Ramos' consent to email service was approved.

On March 7, 2019, the Division filed the Securities Division's Notice of Receipt of Unfiled Documents, stating that the Division had received from Respondent Ramos several documents, styled as motions and notices, that to date had not been filed in this docket.

On March 20, 2019, the Hearing Division filed a Memorandum, along with an attached email and the attachment to the email, stating that it had received the emailed document from Respondent Ramos, and that the document appeared not to have been filed in the docket. The emailed document requested that Respondent Ramos be allowed to participate telephonically for the hearing scheduled for March 25, 2019, and asserted that the Division did not oppose the request.

On the same date, a Procedural Order was issued granting Respondent Ramos's request to appear by telephone.

On March 21, 2019, the Hearing Division filed a second Memorandum, along with an attached email and the attachment to the email, stating that it had received the emailed document from Respondent Ramos, and that the document appeared not to have been filed in the docket. The emailed document was a Notice of Receipt of Procedural Order, Notice of Compliance, and Response to Sections of the Procedural Order.

On March 25, 2019, a hearing was convened in this matter as scheduled. The Division appeared through counsel, and Respondent Ramos appeared telephonically on his own behalf. Discussion was

held regarding the filing made by Respondent Ramos on March 21, 2019, in which he stated that he had not received a courtesy copy of the Procedural Order issued on January 25, 2019, setting the pre-hearing conference for February 8, 2019. The ALJ advised the parties that, upon researching the issue, it was determined that the Hearing Division had attempted to provide Respondent Ramos with a courtesy copy email of the January 25, 2019 Procedural Order, but that the Hearing Division's administrative Staff had inadvertently emailed the Procedural Order to the wrong email address. Therefore, it was determined that the pre-hearing conference would be rescheduled for April 2, 2019, at 10:00 a.m., to allow Respondent Ramos to participate in oral argument on his previously ruled upon motions, and the hearing in this matter was postponed. Respondent Ramos was also allowed to appear telephonically for the pre-hearing conference.

On March 26, 2019, by Procedural Order, a pre-hearing conference was scheduled for April 2, 2019.

On March 27, 2019, the Division filed Notice of Attempts to Exchange Exhibits, stating that the Division had emailed and mailed copies of its preliminary list of witnesses and exhibits to Respondent Ramos, but that the documents were later returned via U.S. Mail bearing a handwritten note stating "REJECTED."

On April 1, 2019, Respondent Ramos filed a Notice of Filing of Respondent, Ramos, of Proposed Memorandum Order.

Also, on April 1, 2019, Respondent Ramos filed a Notice of Filing of Respondent, Ramos, of Proposed Alternate Memorandum Order and Scheduling Order.

On April 2, 2019, the pre-hearing conference was convened as scheduled before a duly authorized ALJ for the Commission. The Division appeared through counsel, and Respondent Ramos appeared telephonically on his own behalf. Additional oral argument was heard on the following motions filed by Respondent Ramos, which were denied: Emergency Motion to Compel Telephonic Statement of William C. Woerner[2]; Demand for Discovery related to Respondent Ramos' disbarment

[2] Respondent Ramos's Emergency Motion to Compel Telephonic Statement of Woerner failed to demonstrate a reasonable need for the deposition of Woerner, pursuant to the Administrative Procedures Act, A.R.S. § 41-1062A(4), as well as A.A.C. R14-3-109(P) and (O). Further, Respondent Ramos will have an opportunity to cross examine Woerner, who is listed as a witness for the Division.

by the State of Florida[3]; Demand for Discovery for the complete file of William Woerner a/k/a Wynn Phillips and a/k/a William Phillips[4]; Motion to Strike Temporary Orders[5]; and Third-Party Petition of Anthony Ramos.[6] Discussion was also held regarding the proper procedures for filing and the decorum expected in pleadings in this matter. Respondent Ramos was ordered to refrain from name calling and from making disparaging remarks about witnesses or Division counsel in his pleadings. Respondent Ramos was also ordered to abstain from threatening to "order" sanctions against Division counsel or any other party to this proceeding. The parties agreed to a hearing date of April 25, 2019, and continuing to April 26, 2019, if necessary.[7]

On April 8, 2019, Respondent Ramos filed a Request for Pre-Trial Conference.

On the same date, Respondent Ramos filed a Notice of Admission Against Interest by the Division at the Hearing of April 2, 2019.

On April 9, 2019, Respondent Ramos filed a Notice of Plea of No Contest as to Sections IV, V, and VI of the Temporary Order.

On the same date, Respondent Ramos Filed a Notice of Concurrence with Notice of Western Gateway Region Rural Broadband Company, Inc. of Plea of No Contest as to Sections IV and V of the Temporary Order.

On April 12, 2019, Respondent Western Gateway filed a Notice of Plea of No Contest as to Sections IV and V of the Temporary Order.

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[3] Respondent Ramos's Demand for Discovery related to his disbarment by the State of Florida failed to demonstrate a reasonable need for the documents. In its exchange of exhibits, the Division provided documents related to Respondent Ramos's alleged disbarment. Further, this ruling is consistent with A.R.S. § 41-1062(A)(4), A.R.S. § 44-2042, and A.A.C. R14-3-108 and R14-3-109.

[4] Respondent Ramos's Demand for Discovery for "the complete file of Woerner" fails to provide enough specificity to determine the nature and scope of the discovery request. Further, the parties will be required to exchange witness lists and exhibits prior to the hearing. This ruling is consistent with A.R.S. § 41-1062(A)(4), A.R.S. § 44-2042, and A.A.C. R14-3-108 and R14-3-109.

[5] Respondent Ramos has failed to show that the allegations set forth in the TO/Notice are not within the Commission's jurisdiction or that the allegations raised in the TO/Notice are analogous to those raised in *Polaris Int'l Metals Corp. v. Arizona Corp. Comm'n,* 133 Ariz. 500 (1982).The Commission has jurisdiction over the issues raised in this docket pursuant to the Arizona Constitution, Article XV; A.R.S § 44-1801 *et.seq*; and A.A.C. Title 14, Chapter 4.

[6] Respondent Ramos's Third-Party Petition purports to name the Commission, the Division's Director, the Division's attorney assigned to this matter, and the Division's Investigator to a legal action through which Respondent Ramos seeks to have the Commission issue a summons for itself and the named parties and demands that the Commission issue a ruling against itself and the named parties. Respondent Ramos's Third-Party Petition does not cite to any statute or rule that allows the Commission to act against its own interest and therefore does not state a claim upon which relief can be granted.

[7] At the Procedural Conference, the Division stipulated that Division's investigator William C. Woerner was the "offeree" identified in the TO/Notice. Tr. at 9.

On the same date, Respondent Western Gateway filed a Motion of Attorney, Olekanma A. Ekekwe, to Withdraw as Counsel for Western Gateway and Notice of Compliance by Respondent, Western Gateway Region Rural Broadband Company, Inc., with Arizona Supreme Court Rules 31, 38, 39, and 42 and A.R.S. § 40-243.

On the same date, Respondent Western Gateway filed a Notice of Plea of No Contest to Default Upon Withdrawal of Counsel, Olekanma A. Ekekwe.

On the same date, Respondent Western Gateway filed a second Motion of Attorney, Olekanma A. Ekekwe, to Withdraw as Counsel for Western Gateway and Notice of Compliance by Respondent, Western Gateway Region Rural Broadband Company, Inc., with Arizona Supreme Court Rules 31, 38, 39, and 42 and A.R.S. § 40-243.

On the same date, Respondent Western Gateway filed a Notice of Concurrence with Notice of Anthony Ramos of Plea of No Contest as to Sections IV, V, and VI of the Temporary Order.

On April 16, 2019, Respondent Western Gateway filed a second Notice of Concurrence with Notice of Anthony Ramos of Plea of No Contest as to Sections IV, V, and VI of the Temporary Order.

On April 23, 2019, the Division filed a Motion to Quash Ramos's Subpoena to Director Dinell.

Also, on April 23, 2019, Respondent Ramos filed Supplements to his Witness and Exhibit Lists.

On April 24, 2019, the Division filed a Motion for Official Notice.

On April 25 and 26, 2019, a hearing was held as scheduled in this matter. The Division appeared through counsel and provided testimony and evidence. Mr. Ramos appeared on his own behalf and provided testimony and evidence. Western Gateway did not appear. During the hearing, a final briefing schedule was established, which required the Division to file its initial brief by June 28, 2019, Respondent Ramos to file his responsive brief by July 29, 2019, and the Division to file its reply brief by August 16, 2019. At the hearing, the Division requested that no surreplies, motions, composites, notices, or other filings be permitted other than the closing briefs in this matter. The Division's request was granted by the ALJ.

On May 3, 2019, Respondent Ramos filed a Post-Hearing Motion to Strike the Temporary Order.

On May 14, 2019, Respondent Ramos filed a Post-Hearing Motion for Final Order on

Unopposed Motion to Strike the Temporary Order with Prejudice, and Taxing Costs.

Also, on May 14, 2019, the Division filed a Response to Ramos's Post-Hearing Motion to Strike the Temporary Order.

On the same date, Respondent Ramos filed a Reply of Respondent Ramos to Petitioner's Response to Respondent's Post-Hearing Motion to Strike the Temporary Order with Prejudice.

On May 20, 2019, by Procedural Order, Respondent Ramos's Post-Hearing Motion to Strike the Temporary Order and Post-Hearing Motion for Final Order on Unopposed Motion to Strike the Temporary Order with Prejudice and Taxing Costs were denied.[8]

On June 28, 2019, the Division filed its Closing Brief.

On July 29, 2019, Respondents filed Post-Hearing Brief, Motion to Strike the Temporary Order, and Motion for Sanctions of Respondent, Anthony Eladio Ramos.

On July 30, 2019, Respondent Ramos filed late-filed exhibits.

On August 16, 2019, the Division filed its Reply Brief.

DISCUSSION

I. Brief Summary

This matter comes before the Commission as an enforcement action brought against the Respondents for alleged violations of the Securities Act. The action brought against Respondents Western Gateway Region Rural Broadband Company, Inc. and Anthony Eladio Ramos alleges that Respondents published an advertisement in the financial services section of Craigslist, offering or selling unregistered securities in the form of shares of stock within or from Arizona, while not registered as dealers or salesmen, pursuant to A.R.S. §§ 44-1841 and 44-1842.

The Division also alleges that Respondents committed fraud in connection with its offer to sale securities by making false and misleading statements in WGR's Offering Circular related to Respondent Ramos and two of WGR's board members.

The Division requests that Respondents be ordered to pay an administrative penalty in the amount of $15,000.

[8] At the hearing, the ALJ ruled that no surreplies, motions, composites, notices, or other filings would be permitted other than the closing briefs in this matter and therefore, Respondents post-hearing filings were unauthorized and denied.

The Respondents dispute that they offered to sell unregistered securities and argue that their offering was exempt from state security laws. The Respondents also dispute that they committed fraud in respect to WGR's offering. The Respondents allege that the Division's undercover investigation resulted in there being no Arizona offeree and therefore, the Commission has no jurisdiction in this matter.

II. Uncontested Facts

From at least February 27, 2017, through at least December 14, 2018, Respondent Ramos has been and/or has held himself out as President and Chairman of the Board of Western Gateway.[9]

Western Gateway is a corporation organized under the laws of the State of Delaware on or around February 27, 2017.[10]

Respondents have never been registered or licensed with the Commission in any capacity.[11]

The securities referred to in the TO/Notice are not registered pursuant to Articles 6 or 7 of the Act.[12]

Respondent Ramos was at all relevant times a resident of the state of Virginia.[13]

The following information was published on Craigslist in reference to Western Gateway:

> American stock companies with exempt limited offerings that are organized to transact business for mass consumer market with blockchain technology using cryptocurrency of vendor companies.[14] Huge e-commerce and streaming video opportunity, plus ad revenue. Authorized to accept cryptocurrency or U.S. dollars in consideration of payment of shares.[15]

William Woernor ("Investigator Woerner"), the Division's special investigator, using the pseudonym Wynn Phillips and/or William Phillips sent an email in response to the information Respondents published on Craigslist.[16]

On October 11, 2018, Respondent Ramos responded by email to Investigator Woerner as Wynn Phillips and identified himself as "Tony Ramos" and stated, "I just emailed a response to you from our

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[9] TO/Notice ¶35, Ans. ¶ 45.
[10] TO/Notice ¶ 3, Ans. ¶ 3.
[11] TO/Notice ¶ 5, Ans. ¶ 7.
[12] TO/Notice ¶ 29, Ans. ¶ 7.
[13] TO/Notice ¶ 2, Ans. ¶ 4.
[14] TO/Notice ¶8, Ans. ¶ 14.
[15] TO/Notice ¶9, Ans. ¶ 15.
[16] The Division stipulated that Investigator Woerner was the "offeree" identified in the TO/Notice. Procedural Conference on April 2, 2019, Tr. at 9; Hearing Tr. at 68-69, 168-169.

company email address. Please let me know that you received it."[17]

Also on October 11, 2018, Investigator Woerner, under the pseudonym Wynn Phillips, received another email from Respondent Ramos on behalf of Respondent Western Gateway, which stated in part that: a) "the offering is the only securities offering that is qualified by the SEC [("Securities and Exchange Commission")] for Reg. A, as a 'blockchain company'", and b) "the company is building a full blockchain platform for all cryptocurrency, but you are buying shares in the company, and not speculative cryptocurrency."[18] The email included an attachment consisting primarily of an Offering Circular ("Offering Circular") which offered of 13,333,333 shares of Western Gateway common stock at a price of $1.50 per share.[19] The Offering Circular identified Respondent Ramos as the president and board chair of Western Gateway.[20] In regards to Respondent Ramos' business experience, the Offering Circular stated:

> Supplemental: Leader. Third generation self-made entrepreneur. Qualified dealer by the State of New York for WGR and Finger Lakes Region Rural Broadband Company, Inc. Member of the elite professional political sector in Washington, D.C. of originators of Congressional legislation. Top tier fundraiser. Member of the elite professional political sector in Washington, D.C., of originators of significant policy/action campaigns. Writer and Issuer of JOBS Act offerings, filings, and shares.[21]

The Offering Circular identified Olekanma A. Ekekwe ("Ekekwe") as the corporate treasurer and as a voting board member of Western Gateway and represented that Ekekwe is an attorney admitted to practice law in Washington, DC.[22]

The Offering Circular information stated that Ekekwe is employed as an attorney was inaccurate and Respondents take full responsibility for the incorrect information.[23]

The Offering Circular identified Thomas A. Burke ("Burke") as a voting board member of Western Gateway and represented that Burke is an attorney admitted to practice law in Connecticut.[24]

Respondents state that the Offering Circular information stating that Burke is employed as an

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[17] TO/Notice ¶ 11, Ans. ¶ 17.
[18] TO/Notice ¶ 12, Ans. ¶ 18.
[19] TO/Notice ¶ 14, Ans. ¶ 21.
[20] TO/Notice ¶15, Ans. ¶ 22.
[21] TO/Notice ¶16, Ans. ¶ 23.
[22] TO/Notice ¶18-19, Ans. ¶ 28-29.
[23] Tr. at 80-81.
[24] TO/Notice ¶21-22, Ans. ¶ 31-32.

attorney was inaccurate and Respondents take full responsibility for the incorrect information.[25]

On October 22, and October 31, 2018, Respondents sent Investigator Woerner, using the pseudonym Wynn Phillips, another email and attached a flyer, which stated in part that "[a]lternative asset securities offerings qualified to accept U.S. dollars or cryptocurrency in consideration of payment of shares of common/voting stock."[26]

On November 12, 2018, Respondents sent Investigator Woerner, using the pseudonym Wynn Phillips, an email which stated in part that "SEC-qualified offering with three full years of scrutiny . . . Purchase shares with cryptocurrency or with U.S. dollars."[27]

III. Witness Testimony

Investigator William Woerner

Investigator Woerner testified that he has been employed by the Division as an investigator since May 2016.[28] Investigator Woerner testified that prior to his position with the Division he worked as an agent for the Federal Bureau of Investigation ("FBI"), working primarily on criminal matters, and that he retired from the FBI in good standing.[29]

Investigator Woerner testified that he has been a full-time resident of Arizona for approximately three years.[30]

Investigator Woerner testified that as an investigator for the Division he is tasked with "conducting investigations, which includes gathering evidence, conducting interviews, [and] maintaining records."[31]

Investigator Woerner testified that the case in this matter originated in October of 2018, when a member of the Division Staff found an advertisement on Craigslist that they thought may indicate or may be an offer of the sale of securities.[32] Investigator Woerner testified that his supervisor assigned the matter to him and asked Investigator Woerner to conduct an investigation, which included

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[25] Tr. at 80-81.
[26] TO/Notice ¶ 25, Ans. ¶ 35.
[27] TO/Notice ¶ 26, Ans. ¶ 36.
[28] Tr. at 57.
[29] Tr. at 57-58.
[30] Tr. at 57.
[31] Tr. at 57.
[32] Tr. at 59.

responding to the Craigslist advertisement in an undercover capacity.[33] As part of his assignment, Investigator Woerner testified that he maintained both an electronic and hard copy file of the evidence and other records related to his investigation.[34]

Investigator Woerner testified that Craigslist is a website that allows individuals to post items and services for sale and that the posting allows people to respond if they have an interest.[35] Investigator Woerner also testified that to see Craigslist postings for Arizona, readers must focus on a certain area within the state where the ad is posted.[36] Investigator Woerner testified that Respondents' ad on Craigslist was placed in the Phoenix section under the financial services section.[37]

Investigator Woerner testified that after reviewing the ad on Craigslist he suspected that the publisher was offering securities.[38] Investigator Woerner testified that the language in the ad specifically stated, "American stock companies with exempt limited offerings. . .".[39] He also testified that in another section the ad stated, "[a]uthorized to accept cyptocurrency or U.S. dollars in consideration for payment of shares."[40]

Investigator Woerner testified that on October 11, 2018, he sent an initial email in response to the Craigslist ad, using the pseudonym Wynn Phillips.[41] Investigator Woerner testified that in his email he asked, "Do you have an office and/or rep here in Phoenix?"[42] Investigator Woerner also testified that his email stated, "I saw your ad and am interested in investing in something crypto and/or blockchain related, but want to make sure I get in to something that is not too risky."[43]

Investigator Woerner testified that on October 11, 2018, he received a reply in response to his email from Respondent Ramos.[44] Investigator Woerner testified that he believed Respondent Ramos was aware that he lived in Phoenix because the first line of Respondent Ramos' reply stated, "Good

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[33] Tr. at 59 and 67.
[34] Tr. at 59.
[35] Tr. at 62, Exh. S-1.
[36] Tr. at 62.
[37] Tr. at 63-64, Exh. S-1.
[38] Tr. at 64.
[39] Tr. at 64, Exh. S-1.
[40] Tr. at 64, Exh. S-1.
[41] Tr. at 65-67, Exh. S-2 ACC000011 at 1.
[42] Tr. at 67, Exh. S-2 ACC000011 at 1.
[43] Tr. at 69-70, Exh. S-2 ACC000011 at 1.
[44] Tr. at 70, Exh. S-2 at ACC000012- ACC000014.

afternoon here in Washington, good morning in Phoenix."[45] Investigator Woerner testified that the email reply went on to state that, "To answer directly, we do not have an office in Phoenix."[46]

Investigator Woerner testified that the language in Respondent Ramos' reply suggested to him that he was offering shares of stock for sale.[47] Investigator Woerner testified that in addition to other specific language in the email reply Respondent Ramos stated, "Now that said, the securities offering document that is attached" . . . "but you are buying shares in the company, and not speculative cryptocurrency."[48]

Investigator Woerner testified that Respondent Ramos' reply email included an attachment containing a copy of the letter of qualification by the United States Securities and Exchange Commission (hereinafter "S.E.C.") for this Reg. A filing; the email confirmation dated August 7, 2018, showing that the Offering Circular had been uploaded to EDGAR;[49] and a PDF version of the Offering Circular that was uploaded onto EDGAR.[50] Investigator Woerner also testified that the Offering Circular stated in part that, "The United States Securities and Exchange Commission and the State of New York- Office of Attorney General- Investor Protection Unit do not pass upon the merits or give approval to any securities offered or the terms of the offering, or pass upon the accuracy or completeness of any Offering Circular . . ."[51] and that, ". . . neither the Commission nor the State of New York have made an independent determination that the securities offered hereunder are exempt from registration."[52] Investigator Woerner testified that the date of the Offering Circular was August 1, 2018.[53] Investigator Woerner testified that the Offering Circular stated it was a Tier 1 offering and qualified to sell as of August 1, 2018.[54] Investigator Woerner further testified that the Offering Circular stated that it was currently qualified to sell shares in Western Gateway and that Western Gateway was

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[45] Tr. at 71, Exh. S-2 at ACC000012.
[46] Tr. at 71, Exh. S-2 at ACC000012.
[47] Tr. at 72.
[48] Tr. at 72-73, Exh. S-2 at ACC000012.
[49] EDGAR stands for Electronic Data Gathering, Analysis and Retrieval and is an online public database for the U.S. Securities and Exchange Commission ("SEC") and contains "submissions by companies and others who are required by law to file information with the SEC." See, U.S. Securities and Exchange Commission, http://www.sec.gov/edgar/about.
[50] Tr. at 73, Exh. S-2 at ACC000015.
[51] Tr. at 75-76, Exh. S-2 at ACC000018.
[52] Tr. at 76-77, Exh. S-2 at ACC000018.
[53] Tr. at 77, Exh. S-2 at ACC000018.
[54] Tr. at 77, Exh. S-2 at ACC000018

offering to sell 13,333,333 shares at a price of $1.50 per share.[55]

Investigator Woerner testified that according to the Offering Circular the issuing company was listed as Western Gateway and that Tony Ramos was listed as the issuer's representative, president and board chair.[56] Investigator Woerner also testified that the Offering Circular listed Tony Ramos as Board Chair[57] and President for Western Gateway and listed Ekekwe as Treasurer.[58] Investigator Woerner testified that the Offering Circular listed Burke and Ekekwe as voting members of Western Gateway.[59] Investigator Woerner testified that the Offering Circular represented that Burke is an attorney admitted to practice law in the State of Connecticut from March 1, 2012 to present.[60] Investigator Woerner testified that the Offering Circular represented that Ekewe is an attorney admitted to practice law in Washington, DC, and the State of Maryland from March 1, 2012 to present.[61]

Investigator Woerner testified that the Offering Circular indicated that Respondent Ramos is a:

> Supplemental Leader. Third-generation self-made entrepreneur. Qualified dealer by the State of New York for WGR and Finger Lakes Region Rural Broadband Company, Inc. Member of the elite professional political sector in Washington, DC of originators of Congressional legislation. Top-tier fundraiser. Member of the elite professional political sector in Washington, DC of originators of significant political policy/action campaigns. Writer and issuer of JOBS ACT offerings, filing, and shares.[62]

Investigator Woerner testified that on October 22, 2018, he received a second email addressed to him as Wynn Phillips from Respondent Ramos, and that the email included an attachment which contained a flyer.[63] Investigator Woerner testified that the language in the flyer indicated stock was being offered for sale and stated, "Alternative asset securities offerings qualified to accept U.S. dollars or cryptocurrency in consideration for payment of shares common/voting stock."[64]

Investigator Woerner testified that on October 24, 2018, he responded to Respondent Ramos' October 22, 2018 email, using the psuedonym Wynn Phillips.[65] Investigator Woerner testified that he

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[55] Tr. at 77, Exh. S-2 at ACC000018.
[56] Tr. at 74 and 78, Exh. S-2 at ACC000018.
[57] Tr. at 77-78, Exh. S-2 ACC000056 at 32
[58] Tr. at 78, Exh. S-2 ACC000058 at 34.
[59] Tr. at 78, Exh. S-2 ACC000057 at 33.
[60] Tr. at 77-80, Exh. S-2 ACC000061 at 37.
[61] Tr. at 80, Exh. S-2 ACC000063 at 39.
[62] Tr. at 79, Exh. S-2 ACC000059 at 35.
[63] Tr. at 81-82, Exh. S-3 ACC000086.
[64] Tr. at 82-83, Exh. S-3 ACC000088.
[65] Tr. at 83, Exh. S-4 ACC000333 at 1.

stated the following, "Thank you for sending . . . [w]ill review and be in touch with questions. . . [h]ave been busy so excuse the delay in responding."[66] Investigator Woerner testified that he signed the email Wynn Phillips.[67]

Investigator Woerner testified that on October 31, 2018, Respondent Ramos sent him another email using the name Wynn Phillips.[68]

Investigator Woerner testified that on November 6, 2018, Respondent Ramos sent an email to the email address Investigator Woerner maintained under the name William Phillips or Wynn Phillips.[69]

Investigator Woerner testified that on November 12, 2018, Respondent Ramos sent an email to the email address Investigator Woerner maintained under the name William Phillips.[70] Investigator Woerner testified that the language in the email suggested that shares were being offered for sale.[71] Investigator Woerner testified that the email language stated "Purchase shares with cryptocurrency or with U.S. dollars."[72]

To further his investigation into this matter, Investigator Woerner testified that he sent another email to Respondent Ramos on December 5, 2018, using the email account he maintained and using the name Wynn Phillips, stating he was interested in investing in Western Gateway and asking how he should go about paying and what he needed to sign.[73] Investigator Woerner testified that on December 5, 2018, Respondent Ramos responded to Investigator Woerner/Wynn Phillips' email and that the email provided a new share price of $0.37.5 per share and stating that Woerner/Wynn Phillips would need to sign a subscription agreement and mail it to Ekekwe.[74] Investigator Woerner testified that the email provided that money for the purchase of the stock would be held in the attorney trust account for Ekekwe.[75] Investigator Woerner testified that in the email Respondent Ramos recommended that he

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[66] Tr. at 83, Exh. S-4 ACC000333 at 1.
[67] *Id.*
[68] Tr. at 85, Exh. S-5 at ACC000340.
[69] Tr. at 86, Exh. S-6 at ACC000343.
[70] Tr. at 87, Exh. S-7 at ACC000348.
[71] Tr. at 88.
[72] Tr. at 88, Exh. S-7 at ACC000348.
[73] Tr. at 89-90, Exh. S-8 at ACC000462.
[74] Tr. at 90-91, Exh. S-8 ACC000467 at 1.
[75] Tr. at 92, Exh. S-8 ACC000467 at 1.

purchase shares in both Western Gateway and Finger Lakes Region Rural Broadband Company ("Finger Lakes").[76]

Investigator Woerner testified that on December 7, 2018, Respondent Ramos sent an additional email to the email address of Investigator Woerner/Wynn Phillips/Williams Phillips and attached to it an amended Offering Circular for Finger Lakes.[77] Investigator Woerner also testified that on December 7, 2018, Respondent Ramos emailed to Investigator Woerner/Wynn Phillips/Williams Phillips an amended Offering Circular for Western Gateway showing the $0.37.5 price per share and that 18,750,000 shares were being offered.[78] Investigator Woerner testified that the information regarding Western Gateway's officers and directors appeared to remain substantially the same in the amended Offering Circular for WGR.[79]

Investigator Woerner testified that also on December 7, 2018, Respondent Ramos emailed Investigator Woerner/Wynn Phillips/William Phillips, seeking acknowledgement whether he would like to invest and if so, to reply to the email providing additional information so that a subscription agreement could be prepared.[80]

Investigator Woerner testified that as part of his continuing investigation he obtained documents from the State of Delaware, Division of Corporations related to Western Gateway.[81] Investigator Woerner testified that the documents included a certificate of incorporation showing Western Gateway had been incorporated on February 27, 2017, Tony Ramos as Western Gateway's incorporator, and as of March 7, 2019, Western Gateway was still a Delaware Corporation.[82]

Investigator Woerner testified that he obtained from the Commission's Securities Division a certification of non-registration for Western Gateway, which states that as of February 22, 2019, Western Gateway had not registered any securities with the Commission or registered as a dealer.[83]

Investigator Woerner also testified that his investigation into this matter included a background

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[76] Tr. at 92, Exh. S-8 ACC000467 at 1-2.
[77] Tr. at 93-95, Exh. S-9 at ACC000470-472.
[78] Tr. at 94-97, Exh. S-10 at ACC000527.
[79] Tr.at 97.
[80] Tr. at 99, Exh. S-11 at ACC000580-ACC000581.
[81] Tr. at 101, Exh. S-12a.
[82] Tr. at 103-104, Exhs. S-12a, S-12b and S-12c.
[83] Tr. at 104-106, Exh. S-13.

investigation into whether Respondent Ramos has ever been registered or licensed with the Commission.[84] Investigator Woerner testified that he obtained a certification of non-registration that as of February 22, 2019, Respondent Ramos has not been registered as a securities salesman or dealer or licensed with the Commission as an investment advisor or as an investment advisor representative.[85]

Investigator Woerner testified that his background investigation into Respondent Ramos included running checks of both public and proprietary fee for service databases.[86] Investigator Woerner testified that documents found on Westlaw revealed that Respondent Ramos had been disbarred as an attorney by the Supreme Court of Florida and that Respondent Ramos had a criminal history related to theft.[87] Investigator Woerner testified that the Westlaw document showed that the Supreme Court of Florida issued an opinion on December 18, 1997, and that the disposition of the case showed Respondent Ramos as disbarred.[88] Investigator Woerner also testified that he obtained from Westlaw a court opinion issued on June 11, 1998, that showed Respondent Ramos as disbarred.[89] Investigator Woerner also testified that he obtained from the United States District Court, Southern District of Florida an Order of Disbarment for Respondent Ramos dated August 3, 1998.[90] Investigator Woerner testified that Respondent Ramos had been disbarred from practice effective immediately.[91]

Investigator Woerner testified that his investigation into Respondent Ramos revealed a Westlaw opinion issued on November 4, 2004, by the District of Columbia Court of Appeals, showing that Respondent Ramos applied to the District of Columbia State Bar and disclosed in his Bar application that he had been disqualified from practicing law in the Federal and States Courts for the State of Florida as of November 1997, as a result of employee embezzlement of trust funds.[92] Investigator Woerner, reading from the DC Court of Appeals opinion, testified that Respondent Ramos in his Bar application disclosed in response to a question regarding complaints alleging fraud and/or deceit that part of his disciplinary proceedings [in the State of Florida] involved allegations of forgery and that

[84] Tr. at 106.
[85] Tr. at 106-107, Exh. S-15.
[86] Tr. at 107.
[87] Tr. at 110-114, Exh. S-16.
[88] Tr. at 114, Exhs. S-16 and S-18.
[89] Tr. at 116, Exh. S-18.
[90] Tr. at 118-119, Exh. S-17.
[91] Tr. at 118, Exh. S-17.
[92] Tr. at 121-122, Exh. S-19

Respondent Ramos was tried on two counts of grand theft, related to trust account issues, and that the jury in the case was deadlocked, and his motion for mistrial was granted.[93] Investigator Woerner further testified, by reading from the DC Court of Appeals opinion, that the [State of Florida] case was settled with Respondent Ramos' plea of "guilty, best interest," to two counts of petit theft, and that Respondent Ramos was placed on probation for twelve months as to the two counts.[94] Investigator Woerner testified that the judgment against Respondent Ramos was signed on May 25, 2000.[95]

Investigator Woerner also testified that his investigation revealed an opinion issued on December 1, 2008, by the U.S. District Court, District of Columbia, in which Respondent Ramos was the named Plaintiff in an action against the U.S. Department of Justice.[96] During testimony, Investigator Woerner read from the opinion in which the Court stated "[t]he plaintiff [Respondent Ramos] is an attorney who formerly practiced law in Florida . . . As a result of numerous instances of professional misconduct including lying to a tribunal, misappropriation of client funds, forging client signatures, misrepresentation to successor counsel, improper collection of excessive fees, and representing a client without authority, the Supreme Court of Florida disbarred the plaintiff from practice in that state on December 18, 1997."[97]

Investigator Woerner testified that his investigation revealed an Order issued by the Supreme Court of Florida on August 27, 2009, in which the Florida Bar of Examiners, et. al. and Anthony Eladio Ramos were the named parties.[98] Reading from the Order, Investigator Woerner testified that Respondent Ramos was disbarred for 20 years, effective December 18, 1997.[99] Continuing to read from the Order, Investigator Woerner testified that "the Bar filed a nineteen count complaint against Ramos alleging over 160 rule violations, including: massive trust account deficits from 1990-1996 demonstrating that he took over $200,000 from fourteen clients; trust account checks returned for insufficient funds; failure to inform clients of settlements and to disburse settlement proceeds; premature withdrawal of trust account funds; excessive fees; forgery of client signatures; and failure to

[93] Tr. at 122-123, Exh. S-19.
[94] Tr. at 122-123, Exhs. S-19 and S-20.
[95] Tr. at 124, Exh. S-20.
[96] Tr. at 125-126, Exh. S-21.
[97] *Id.*
[98] Tr. at 127, Exh. S-22.
[99] *Id.*

pay medical providers."[100] Investigator Woerner, reading from the Order, testified that "the Bar filed a complaint alleging trust account shortages of approximately $23,000 as to insurance recoveries for two clients and the referee found facts as alleged by the Bar."[101] Continuing to read from the Order, Investigator Woerner testified that "the referee also found that Ramos had utilized the clients' insurance settlement proceeds (the money at issue) without the clients' permission and for reasons that had no nexus with the cases. . . Ramos was found guilty of violating fourteen provisions of the Rules Regulating the Florida Bar."[102]

Investigator Woerner testified that as of November 14, 2018, the Florida State Bar website listed Mr. Ramos as disbarred.[103]

Investigator Woerner testified that his investigation also revealed an opinion issued on December 12, 2016, by the District of Columbia Court of Appeals, Board on Professional Responsibility, Ad Hoc Hearing Committee ("Committee"), in which the Committee found that Ekekwe had engaged in the misappropriation of client funds,[104] and failed to safe-keep advanced unearned fees, and that Ekekwe engaged in conduct involving dishonesty, fraud and misrepresentation.[105] Investigator Woerner testified that according to the Opinion, the Committee recommended that Ekekwe be disbarred.[106] Investigator Woerner testified that District of Columbia Court of Appeals Board of Professional Responsibility ("Board") issued a Report and Recommendation issued on July 27, 2017, pertaining to Ekekwe, in which the Board generally agreed with the Committee's factual findings and conclusions of law.[107] Investigator Woerner testified that according to documents printed from the District of Columbia Bar website, Ekekwe was temporarily suspended as of January 3, 2018, and that there is no indication that Ekekwe's suspension has been lifted.[108]

Investigator Woerner testified that his review of the State of Connecticut Bar website showed

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[100] Tr. at 127-128, S-22 at 4.
[101] Tr. at 128, S-22 at 4.
[102] *Id.*
[103] Tr. at 131, Exh. S-25.
[104] Tr. at 132, Exh. S-26, ACC000381 at 29.
[105] Tr. at 132-133, Exh. S-26, ACC000394 at 42.
[106] Tr. at 133, Exh. S-26, ACC000403 at 51.
[107] Tr. at 134-135, S-27, ACC000406 at 3.
[108] Tr. at 136-137, Exh. S-26 ACC000350.

that as of February 25, 2019, Burke was on administrative suspension from the practice of law.[109] Investigator Woerner testified that in a response to an email he sent to the Connecticut Judicial Branch, he received an email response, stating that Burke had not been in compliance with Connecticut State Bar requirements since 1997, that Burke had been suspended in 2000, and that Burke was not in good standing with the Connecticut State Bar.[110]

Investigator Woerner testified that during his communications with Mr. Ramos, Mr. Ramos did not disclose, and no one on behalf of WGR disclosed, the disciplinary histories of Ramos, Ekekwe or Burke.[111]

On cross-examination, Investigator Woerner testified that he posed as Wynn Phillips or William Phillips in communications with Respondent Ramos.[112]

On examination by the ALJ, Investigator Woerner testified that cases are assigned by the Division's Chief Investigator, that he has no control over which cases he is assigned to, and that there is no formal criteria used in evaluating how or what information is used in his investigative work.[113] Investigator Woerner further testified that during investigations, investigators meet with staff attorneys who know securities law and then the investigator completes specific tasks to further the investigation.[114] Investigator Woerner testified that his job is more of a information-gathering type process.[115]

On cross-examination, Investigator Woerner testified that initially his background investigation was restricted to WGR and Mr. Ramos, but that it was brought to Investigator Woerner's attention that Ekekwe may be a disbarred or suspended attorney and that Burke may not be licensed to practice law in Connecticut.[116]

On cross-examination, Investigator Woerner testified that the information provided in his October 11, 2018 email, was false and that he sent the email to elicit a response.[117] Investigator Woerner

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[109] Tr. at 139-140, Exhs. S-29 and S-30.
[110] Tr. at 139-140, Exh. S-31 at ACC000608- ACC000610.
[111] Tr. at 141-143.
[112] Tr. at 153.
[113] Tr. at 185.
[114] Tr. at 186.
[115] *Id.*
[116] Tr. at 156.
[117] Tr. at 170, Exh. R-1.

testified on cross examination, that he reviewed the information sent by Respondent Ramos, but he never intended to invest in Respondent Ramos' company.[118]

On cross-examination, Investigator Woerner testified that he read the Offering Circulars for WGR as part of his investigation.[119] On cross-examination, Investigator Woerner testified that he did not look to see if the information in the Craigslist advertisement was contained in the Offering Circular for WGR.[120]

On cross-examination, Investigator Woerner testified that he was not aware as to the reason for the drop in price per share for WGR.[121] Also on cross-examination, Investigator Woerner testified that the change in price per share of $1.50 to $0.37.5 did not matter to him because he had not intended to invest in WGR.[122]

On cross-examination, Investigator Woerner testified that his investigation into this matter did not extend beyond Arizona's borders.[123]

On cross-examination, Investigator Woerner testified that as a result of the investigation there was a general concern that "Mr. Ramos would start defrauding investors in Arizona."[124]

Anthony Ramos[125]

Respondent Ramos testified that WGR is an active company.[126]

Respondent Ramos testified that in doing research he discovered there were only two other cryptocurrency blockchain companies that were in the nascent stages and that was the genesis for WGR.[127]

To support his position that the securities referenced in the Craigslist ad were federally exempt, Respondent Ramos testified that the SEC qualified the Offering Circulars for WGR three times.[128]

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[118] Tr. at 171, 174, Exh. R-1.
[119] Tr. at 181.
[120] Tr. at 192.
[121] Tr. at 196.
[122] Tr. at 195.
[123] Tr. at 206.
[124] Tr. at 173.
[125] Mr. Ramos was not represented by counsel and provided a narrative form of direct testimony. Over the objection by the Division's counsel, Respondent Ramos' testimony included both legal and factual assertions.
[126] Tr. at 271, Exh. R-15.
[127] Tr. at 273.
[128] Tr. at 273-274, 277, 280, Exh. R-17.

Respondent Ramos testified that he believes Investigator Woerner is "incompetent to testify as a Securities Division investigator."[129] Respondent Ramos testified that on cross-examination, Investigator Woerner "didn't know a lot of the answers" and he was "unable to produce even a single records custodian."[130] Respondent Ramos testified that Investigator Woerner "holds himself out as a 25-year veteran of the FBI" and that Investigator Woerner "can get a subpoena on anybody" . . . "he can serve anybody he wants to."[131] Respondent Ramos testified that Investigator Woerner "intentionally let 160 days go by with no records custodian produced in this matter."[132]

Respondent Ramos testified that on October 31, 2018, he attached to the email sent to Investigator Worener, an educational and informational flyer[133] and that there is a difference between a non-registered informational flyer for educational purposes and a registered direct sell ad in New York.[134] Respondent Ramos testified that the information contained the educational and informational flyer he sent to Investigator Woerner is "consistent with Reg. A, as a covered security," so the Craigslist ad was proper under the rules.[135]

Respondent Ramos testified that he emailed Investigator Woerner the same informational flyer that Respondents posted in New York and worldwide using Craigslist.[136]

Respondent Ramos testified that during the same time that Investigator Woerner began his investigation, Respondents had two other "instances of impersonators and imposters coming to us and attempting to say they were purchasing securities."[137] Respondent Ramos testified that the Division's investigation "was not an isolated incident". . . and that "our company has been subjected to significant burdens in having to deal with the issue of imposters in the purchase of securities."[138]

Respondent Ramos testified that he is a qualified Blue Sky dealer in New York, but not in Arizona.[139]

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[129] Tr. at 250, Exh. R-3.
[130] Tr. at 251.
[131] *Id.*
[132] *Id.*
[133] Tr. at 253, Exh. R-4a.
[134] Tr. at 252-253, Exh. R-4.
[135] Tr. at 253, 263, Exh. R-4a.
[136] Tr. at 256-260, Exhs. R-5 and R-6.
[137] Tr. at 259, Exh. R-8.
[138] Tr. at 259.
[139] Tr. at 266, Exh. R-13.

Respondent Ramos testified that the SEC has reviewed the Criagslist flyer, WGR's website, and Respondent Ramos' blog many times, and that he was warned by the SEC that he could not say anything that was outside the actual contents of the Offering Circular.[140]

Respondent Ramos testified that there is an 11th Circuit Court of Appeals case that states that Ramos' disbarment records were destroyed.[141] Respondent Ramos testified that when Investigator Woerner testified that Ramos was disbarred he [Investigator Woerner] knew the records had been destroyed.[142] Respondent Ramos testified that the Florida Supreme Court, permanent indexes shows that the disbarment records were destroyed.[143]

On cross-examination, Respondent Ramos testified that WGR's Offering Circular sent to Investigator Woerner contained incorrect information regarding Burke's status as an attorney.[144] Also on cross-examination, Respondent Ramos testified that in regards to Burke's status as an attorney, in light of the allegations made in the TO/Notice, he went to the State of Connecticut Bar Association website, and confirmed that Burke is not listed as a member.[145] Respondent Ramos also testified that he asked Burke about his status with the State Bar of Connecticut and Burke confirmed he is not a member of the Connecticut Bar and that Respondent Ramos accepts full responsibility for the incorrect footnote/information about Burke contained in WGR's Offering Circular.[146] Respondent Ramos testified that he had a non-delegable duty to make sure that the Offering Circulars [for WGR] were accurate.[147]

On cross-examination, Respondent Ramos testified that WGR's Offering Circular contained inaccurate information related to Ekekwe's status as an attorney.[148] Respondent Ramos testified that he takes full responsibility for the inaccurate information in the Offering Circular and that he filed a no contest pleading related to this allegation by the Division.[149] Respondent Ramos testified that Ekekwe

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[140] Tr. at 262-263.
[141] Tr. at 267, Exh. R-14.
[142] *Id.*
[143] Tr. at 268-270, Exh. R-14 at 5-8.
[144] Tr. at 287.
[145] *Id.*
[146] *Id.*
[147] Tr. at 287-288.
[148] Tr. at 288.
[149] *Id.*

has been suspended from the practice of law in Washington, DC pending a final disciplinary ruling in the matter against her.[150]

On cross-examination, Respondent Ramos testified that he was formerly licensed to practice law in the State of Florida.[151] On cross-examination, Respondent Ramos testified that he received his license to practice law on or about April 2, 1981, and that he was licensed to practice law in Florida until on or about December 17, 1997.[152] Respondent Ramos testified that it is true that he was disbarred by the Florida Supreme Court in December 1997.[153] On cross-examination, Respondent Ramos also testified that there are documents that say he was disbarred by the Florida Supreme Court, but that those documents no longer exist.[154] On cross-examination, Respondent Ramos testified that he has not been licensed to practice law in Florida or any other jurisdiction since 1997.[155]

On cross-examination, Respondent Ramos testified that in regards to his disbarment, he ultimately paid $189,000, plus interest to the claimants.[156]

On cross-examination, Respondent Ramos testified that he was disbarred from the practice of law and that he is not currently licensed in Florida or any other jurisdiction.[157]

IV. Legal Arguments/Resolution[158] [159]

A. Did Undercover Investigation Defeat Jurisdiction?

1. Respondents' Position

Respondent Ramos argues that because Investigator Woerner sent emails to Respondents using "imposter" names there was no Arizona resident who was an "offeree".[160] Respondent Ramos argues

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[150] Tr. at 288.
[151] *Id.*
[152] Tr. at 289.
[153] Tr. at 289 and 297.
[154] *Id.*
[155] *Id.*
[156] Tr. at 296.
[157] Tr.at 297.
[158] The parties were directed to file closing briefs at the close of the hearing. Tr. at 315-318. The parties were also directed to include citations to cases and citations to the record in their Closing Briefs. Tr. at 318. Respondents' Closing Brief did not provide citations to the record and did not provided numbered paragraphs or page numbers.
[159] The following documents were entered into the record pursuant to A.A.C. R14-3-109 (Z) and may be used in the resolution of the issues raised in this matter: 1) TO/Notice; 2) Ramos Answer and Affirmative Defenses (without the third-party petition section); 3) Ramos Plea as to Counts IV, V, and VI; and 4) Transcript from the April 2, 2019, Pre-Hearing Conference. *See also*, Tr. at 144-151.
[160] Respondents' Closing Brief at 10.

that because there was no Arizona offeree, the Commission has no jurisdiction in this matter.

Respondent Ramos argues that the Division's undercover investigation "deprived him of his rights to discover who his accuser was, confront his accuser, and obtain evidence against his accuser.[161]

Without providing citations to the record, Respondent Ramos argues that during Investigator Woerner's sworn testimony about the emails Investigator Woerner exchanged with Respondent Ramos[162] Investigator Woerner: 1) created a false email address; 2) used a false email in responding to the Craigslist advertisement on October 11, 2018; 3) sent the email to "Plaintiff" [Respondent Ramos]; 4) intended "Plaintiff" [Respondent Ramos] to believe it was Investigator Woerner's real email address; and 4) intended for "Plaintiff" [Respondent Ramos] to rely on Investigator Woerner's representation that it was a real email address.[163]

Without providing citations to the record, Respondent Ramos contends that Investigator Woerner testified at the hearing that he: 1) used the "imposter names" "William Phillips" and "Wynn Phillips" when responding to the October 11, 2018 Craigslist advertisement; 2) created the false names; 3) knew they were false when he created the names; 4) intended to send the email using the false name to "Plaintiff" [Respondent Ramos]; and 5) intended for "Plaintiff" [Respondent Ramos] to believe they were real names.[164] Respondent Ramos argues that Investigator Woerner's use of "imposter" names is fraud.[165]

Respondent Ramos argues that there is not a "single case where 'undercover' is a defense to impersonation."[166] Respondent Ramos argues that he was deprived of discovery and due process because Investigator Woerner was impersonating someone else during the investigation.[167]

Respondent Ramos contends that Arizona caselaw states that "all of the names of the parties were made known" and that "all of the cases go against the imposter."[168] Respondent Ramos argues

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[161] Respondents' Closing Brief at 45.
[162] Emails exchanged between Mr. Ramos and Investigator Woerner beginning on October 11, 2018, October 24, 2018, and December 5, and 10, 2018.
[163] Respondents' Closing Brief at 10-20.
[164] *Id.* at 12-13.
[165] *Id.* at 10-30.
[166] *Id.* at 45.
[167] *Id.*
[168] Respondents' Closing Brief at 44, referencing *State v. Demaree*, 2015 WL 7755778; *State v. Alvarez*, 2014 WL 4698509; *State v. Smith*, 2017 WL 27384; *Barnes v. Vozack*, 113 Ariz. 269 (1976); *Strom v. Black*, 22 Ariz. App. 102 (1974); and *State v. Gunnison*, 127 Ariz. 110, 113 (1980).

that Investigator Woerner would not state under oath that he was the "Arizona resident offeree."[169]

Respondent Ramos contends that there has never been jurisdiction in this matter because he has only been to Arizona "four times in his entire life, the fourth time [was] for the hearing," [in this matter].[170]

2. Division's Position

The Division disputes that the Commission lacks jurisdiction in this matter.[171]

The Division disputes Respondents' argument that there is no Arizona offeree because Investigator Woerner used a pseudonym. The Division argues that none of the caselaw cited by Respondents addresses undercover communications by state investigators or suggested that the use of a pseudonym would defeat jurisdiction.[172]

The Division asserts that by posting the advertisement on Craigslist, Respondents offered securities "within or from Arizona," that were directed at Phoenix residents, and specifically offered to Investigator Woerner, an Arizona resident.[173]

3. Analysis

The United States Supreme Court has stated that "an undercover officer does not violate the Fourth Amendment merely by accepting an offer to do business that is freely made to the public."[174] The courts have also held that gathering evidence through the use of undercover work is not limited to police agencies, and that, "[u]ndercover work is a legitimate method of discovering violations of civil as well as criminal law."[175]

Further, A.R.S. § 44-2042 (A) provides, in pertinent part:

> The names of complainants and all information or documents obtained by any officer, employee or agent of the commission, including the shorthand reporter or stenographer transcribing the reporter's notes, in the course of any examination or investigation are confidential unless the names, information or documents are made a matter of public record. An officer, employee or agent of the commission shall not make the confidential

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[169] Respondents' Closing Brief at 5.
[170] *Id.* at 30.
[171] Division's Reply Brief at 3.
[172] Division's Reply Brief at 4 citing *In the Matter of: Jordan Crossing Properties, LLC, an Arizona Limited Liability Company Chris Blackford and Nicole Blackford, Husband and Wife Respondents*, 2009 WL 284481 (Ariz. Corp. Comm. 2009).
[173] Division's Reply Brief at 3, Division's Initial Closing Brief, SOF ¶¶6-11, 14-22.
[174] *Maryland v. Macon*, 472 U.S. 463, 470, 105 S. Ct. 2778,2782, 86 L. Ed. 2d 370 (1985).
[175] *United States v. Centennial Builders, Inc.*, 747 F.2d 678, 683 (11th Cir. 1984).

> names, information or documents available to anyone other than a member of the commission, another officer or employee of the commission, an agent who is designated by the commission or director, the attorney general or law enforcement or regulatory officials, except, pursuant to any rule of the commission or unless the commission or the director authorizes the disclosure of the names, information or documents as not contrary to the public interest.

Investigator Woerner testified that at the time of the hearing, he had been a full-time resident of Arizona for three years.[176]

Investigator Woerner testified that he has been employed as an investigator with the Division since May 2016.[177] Investigator Woerner testified that prior to being employed by the Division he was an FBI agent for 25 years, working primarily on criminal matters.[178] Investigator Woerner testified that as an investigator for the Division he is tasked with "conducting investigations, which includes gathering evidence, conducting interviews, [and] maintaining records."[179] Investigator Woerner testified that cases are assigned by the Chief Investigator for the Division, that he has no control over which cases he is assigned to.[180] Investigator Woerner further testified that staff meetings are held with attorneys who know securities law and then the investigator completes specific tasks to further the investigation.[181] He also testified that his job is more of a information-gathering type process.[182]

Investigator Woerner testified that his investigation into this matter was started when a Division staff member found an advertisement on Craigslist that they thought may indicate or be an offer of the sale of securities.[183] Investigator Woerner testified that his supervisor assigned the case to him and asked him to conduct an investigation, in an undercover capacity, by responding to the Craigslist advertisement.[184] Investigator Woerner testified that he posed as Wynn Phillips or William Phillips in email communications with Respondent Ramos.[185]

Here, Respondents published an advertisement on Craigslist, directed at the public and specifically to Phoenix residents, representing that they had an opportunity to invest in "American

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[176] Tr. at 57.
[177] *Id.*
[178] Tr. at 57-58.
[179] Tr. at 57.
[180] Tr. at 186.
[181] *Id.*
[182] *Id.*
[183] Tr. at 59.
[184] Tr. at 59 and 67.
[185] Tr. at 153.

stock companies" using U.S. dollars or cryptocurrency in consideration of payment of shares.[186] The evidence of record shows that Investigator Woerner was directed by the Division's Chief Investigator to respond to the Craigslist advertisement, in an undercover capacity, as a way of investigating whether violations of the Security Act were occurring.[187] The evidence shows that Investigator Woerner had 25 years' experience as an FBI investigator, working primarily on criminal matters, before coming to work for the Division.[188] The evidence also shows that Investigator Woerner retired from the FBI in good standing.[189] The evidence does not show or suggest that Investigator Woerner acted independently of his position with the Division during his investigative work.[190] Investigator Woerner testified that cases are assigned by the Division's Chief Investigator and that the investigator's job is primarily an information-gathering process.[191] Investigator Woerner also testified that he has no control over which cases he's assigned.[192] Investigator Woerner testified that he reviewed the information sent by Respondent Ramos, but he never intended to invest in Respondent Ramos' company.[193] The record in this case does not show that Investigator Woerner's undercover work in this matter was done with the intent to defraud Respondents, but was part of the Division's proper investigative process and enforcement procedures to determine if violations of the Securities Act were occurring. Further, in weighing the public interest, if Investigator Woerner had revealed his true identity during the investigation or communications with Respondents it would have been potentially damaging to the investigation and caused harm to the public. In addition, disclosure of Investigator Woerner's identity would have violated the statutory requirement that such information be kept confidential.

Respondents have failed to show that the Division's undercover work was done with the intent to defraud Respondents or for fraudulent purposes. Therefore, we find that Investigator Woerner's undercover work was a legitimate method of discovering violations of the Securities Act. We also find that Investigator Woerner was an Arizona resident for the purposes of establishing the Commission's

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[186] Exh. S-1.
[187] Tr. at 59 and 67.
[188] Tr. at 57-58.
[189] *Id.*
[190] Tr. at 185-186.
[191] Tr. at 186.
[192] Tr. at 185.
[193] Tr. at 171, 174, Exh. R-1.

jurisdiction in this matter.

Respondent Ramos also claims that the Division's undercover investigative work deprived him of discovery and due process.

Due process requires notice and an opportunity to be heard in administrative proceedings, and due process has been achieved where an agency's "procedures not only provide the claimant with an effective process for asserting his claim prior to any administrative action, but also assures a right to an evidentiary hearing."[194] Further, discovery in administrative proceeding is limited by the agency's specific statutes and rules.[195]

Here, Respondent Ramos was served with the TO/Notice.[196] Respondent Ramos requested a hearing and his request was granted.[197] Throughout the proceeding, Respondent Ramos raised multiple discovery issues, which were resolved.[198] The evidence of record shows that at a Procedural Conference held April 2, 2019, the Division's attorney stated that "it would appear that the only purpose of Mr. Ramos taking investigator Woerner's deposition would be to establish that investigator Woerner is the [Arizona] offeree identified in the Division's temporary order". . . "[b]ut that is not a fact the Division would dispute."[199] At hearing, Respondent Ramos was given an opportunity to cross examine Investigator Woerner.[200] Respondent Ramos also had an opportunity to obtain evidence related to his cross-examination of Investigator Woerner and Respondent Ramos was allowed to admit that evidence into the record.[201] Therefore, we do not find that the record establishes that the undercover work in this case deprived Respondents of due process or discovery.

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[194] *Mathews v. Eldridge*, 424 U.S. 319, 349 (1976).

[195] *Pacific Gas & Electric C. v. F.E.R.C.*, 746 F.2d 1383, 1387 (9th Cir. 1984); *See also* 73A C.J.S. *Public Administrative Law and Procedure*, § 124 (1983)("Insofar as the proceedings of a state administrative body are concerned, only the methods of discovery set forth by the pertinent statute are available, and the methods not set forth therein are excluded").

[196] See, Procedural History *supra* showing that on January 3, 2019, affidavits of service for WGR and Respondent Ramos were filed in this matter.

[197] See, Procedural History *supra* at 2, showing that on January 14, 2019, Respondent filed a Request for Hearing and by Procedural Order issued on January 16, 2019, and a pre-hearing conference was scheduled.

[198] See Procedural History *supra*.

[199] Procedural Conference held on April 2, 2019, Tr. at 9.

[200] Tr. at 153-283.

[201] Exh. R-3.

B. Was the Issuance of the TO/Notice Lawful?

1. Respondents' Position

Respondents challenge the issuance of the TO/Notice claiming that Division employees as well as the "hearing examiner" were biased.[202]

Respondent Ramos alleges that there was a "coordinated scheme by [i]nternet predators to bring ruination to Ramos, to his partners, and to his companies . . ."[203] Respondent also alleges that the only reason for the issuance of the TO/Notice was a "political hoax" by the Division.[204]

In his Closing Brief, Respondent Ramos claims that there has been "extreme bias and callous indifference by the hearing examiner."[205] Respondent Ramos also claims, among other things, that:

1) The Division's Acting Director of Securities, Mark Dinell ("Dinell"), "snooped on his Linkedin [sic] page" and that Respondent Ramos contacted Dinell "to see if there was a problem," but that "Dinell never responded."[206]
2) Because the year 2018 was "winding down" and Dinell was the Acting Director and "it did not appear that the Governor was interested in elevating him". . . Dinell. . . "had gone dirty."[207]
3) Dinell hired Investigator Woerner "because Dinell wanted a dirty tricks guy on[sic] the office."[208]
4) "On October 11, 2018, Dinell told Woerner to make the first contact [with Respondent Ramos], which he did, using two alias[sic]."[209]
5) "On October 24, 2018, Dinell, Woerner, Nichols [counsel for the Division], and Clapper [Division Chief Investigator], met". . . "nothing was happening, so they instructed Woerner to send out another email" . . . "Ramos knew Woerner as a fake and he continued to bleed him."[210]
6) "[T]he key to the hoax is that the temporary order was signed not by Nichols [counsel for the Division]". . . "but by Dinell" . . . "Dinell needed to prove to the Governor that he would be a tough Director" . . . "[t]he filing sealed his appointment" . . . "Dinell's mistake was picking Ramos."[211]

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[202] Respondents' Closing Brief at 39.
[203] Respondents' Closing Brief at 1, 4. Respondent Ramos claims that because of the alleged "coordinated scheme . . ." "an appropriate counter-attack has ensued with the filing of a fraud action in Maricopa County Superior Court, seeking compensatory and punitive damages in the amount of $2,000,000." Ramos claims that he has named the Commission's Executive Director, the Division attorney in this matter, Investigator Woerner, Investigator Woerner's supervisor Gary Clapper, and the Commission as defendants in his Maricopa County Superior Court action.
[204] Respondents' Closing Brief at 39-41.
[205] *Id.* at 39.
[206] *Id.*
[207] *Id.*
[208] *Id.*
[209] *Id.* at 40.
[210] *Id.*
[211] *Id.*

2. Division's Position

The Division argues that Respondent Ramos claims should be rejected because they are not supported by citations to the record and that Respondent Ramos' claims are not supported by any evidence.[212] The Division asserts that Respondent Ramos' statements have no "bearing on the violations alleged by the Division and were apparently offered only to support Ramos' long-since dismissed 'third party petition' against the Commission."[213]

3. Analysis

Pursuant to A.R.S. § 44-2032, the Commission has authority to issue an order to cease and desist when it appears that a person is engaging in any act, practice or transaction in violation of the Securities Act. Under A.R.S. § 44-1972(C), before entering an order to cease and desist, generally the Commission must serve on each respondent a notice of hearing or a notice of opportunity for hearing. In some circumstances, the Commission may issue a temporary cease and desist order when it determines that the public welfare requires immediate action, pursuant to A.R.S. § 44-1972(C) and A.A.C. R14-4-307(A). As set forth in A.A.C. R14-4-307(C), after being served with a temporary cease and desist order, a respondent may request a hearing. Subsequently, the Commission may, following a hearing, upon written findings of fact and conclusions of law, vacate, modify or make permanent the temporary cease and desist order, pursuant to A.A.C. R14-4-307(D).

Arizona courts have stated that "[a]ll decision makers, judges and administrative tribunals alike, are entitled to a presumption of 'honesty and integrity.'"[214] The courts have also stated that "[t]o rebut this presumption, the challenging party must show actual bias; mere speculation about bias is not sufficient."[215] Further, the courts have defined actual bias as a violation of conflict of interest statutes; whereby a "public officer or employee has a substantial interest in any decision of a public agency. . ." and a substantial interest is defined as "any pecuniary or proprietary interest. . .".[216]

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[212] Division's Reply Brief at 2.
[213] Division's Reply Brief at 3. *See also*, footnote 6 at pg. 7
[214] See, *Emmet McLoughlin Realty, Inc. v. Pima Cnty.*, 212 Ariz. 351,357, 132 P.3d 290, 296 (App. 2006), as corrected (Mar. 9, 2006).
[215] *Id.*
[216] *Id.*

Arizona courts have stated that "due process requires a "fair trial, in a fair tribunal."[217]

Here, the Division's TO/Notice demonstrates (as well as the findings *supra* regarding Investigator Woerner's undercover work) that there was an immediate need for action to be taken to protect the public. The Division determined that Respondents were offering to sell shares of stock in WGR on Craigslist, and that those stock sales were directed at Phoenix residents.[218] The Division also determined that Respondents were not registered as dealers or salesmen with the Commission[219] and the shares of stock being offered by Respondents were not registered with the Commission.[220] The Division, through its undercover investigative work, received multiple emails from Respondents representing to sell shares of stock in WGR.[221]

Based on the facts asserted in the TO/Notice, the issuance of a temporary cease and desist order was reasonable. The Division was aware that Respondents were unregistered salesmen, who were actively engaged in selling unregistered securities and that Respondents had identified Arizona residents as potential investors.

The record is void of evidence showing actual bias in the issuance of the TO/Notice. The claims raised by Respondent Ramos regarding the process used in issuing the TO/Notice are not also supported by testimony in the record and a review of the record establishes that no such evidence or testimony exists. We also note that Respondent Ramos' claims that the issuance of the TO/Notice was for unlawful purposes, are refashioned claims that were previously denied.[222]

Therefore, we find there is no evidence in the record to support Respondents' claims that there was bias during the Division's investigative process or in the issuance of the TO/Notice.

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[217] *United States v. Superior Court*, 144 Ariz. 265, 280, 697 P.2d 658, 673 (quoting) *In re Murchison*, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99, L.Ed. 942, 946 (1955).
[218] TO/Notice ¶¶ 6-15.
[219] TO/Notice ¶ 5.
[220] TO/Notice ¶27.
[221] TO/Notice ¶¶ 10-14, 24-26.
[222] See, Procedural History *supra* showing January 15, 2019, Respondents Emergency Motion to Strike Temporary Order; January 28, 2019, Respondents Supplement to Emergency Motion to Strike Temporary Order; May 3, 2019, Post-Hearing Motion to Strike Temporary Order; July 29, 2019, Post-Hearing Brief, Motion to Strike Temporary Order and Motion for Sanctions.

C. Were WGR's Shares of Stock a Security?

1. Division's Position

The Division alleges that Respondents have been offering or selling securities in the form of shares of stock within or from Arizona.[223] The Division asserts that WGR's stock is a security because it is included in the statutory definition for a security under the Securities Act.[224]

2. Respondents' Position

Respondents do not dispute that shares of stock in WGR are a security, but Respondents contend that the sale of shares of stock in WGR is exempt under federal law.[225]

3. Analysis

A.R.S. §44-1801(27)(a), states in part, that a security means "any note, stock, treasury stock, bond commodity investment contract . . ."

Here, the evidence shows that the following information was published on Craigslist in the Phoenix/Central/South/Financial Services Section:

> American stock companies with exempt limited offerings that are organized to transact business for mass consumer market with block chain technology using cryptocurrency of vendor companies. . . Huge e-commerce and streaming video opportunity, plus ad revenue. . . Authorized to accept cryptocurrency or U.S. dollars in consideration of payment of shares.[226]

The evidence shows that Respondent Ramos sent a reply email on behalf of WGR to Wynn Phillips aka Investigator Woerner, that stated in part: a) "the offering is the only securities offering that is qualified by the SEC for Reg. A, as a 'blockchain company,'"[227] and b) "the company is building a full blockchain platform for all cryptocurrency, but you are buying shares in the company, and not speculative cryptocurrency"[228]. . . "Now that said, the securities offering document is attached."[229] The evidence also shows that WGR's Offering Circular attached to the email on October 11, 2018, offered 13,333,333 shares of WGR common stock at a price of $1.50 per share.[230] Further, the evidence shows

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[223] TO/Notice ¶ 5, Division Post Hearing Brief at 16.
[224] Division's Initial Closing Brief at 16.
[225] See generally Respondents' Closing Brief.
[226] Tr. at 64, Exh. S-1, Ans. ¶¶ 14-15.
[227] Exh. S-2 at ACC000012.
[228] *Id.*
[229] Tr. at 72-73, Exh. S-2 at ACC000012, Ans. ¶18.
[230] Exh. S-2 at ACC000018, Ans. ¶21.

that the reply email from Respondent Ramos included the letter of qualification by the S.E.C. for Reg. A filing;[231] an email confirmation dated August 7, 2018, showing that WGR's Offering Circular had been uploaded to EDGAR;[232] and a PDF version of WGR's Offering Circular that was uploaded to EDGAR.[233]

The evidence shows that on October 22, 2018, Investigator Woerner/Wynn Phillips received a second email from Respondent Ramos that included a flyer.[234] The flyer stated, "Alternative asset securities offerings qualified to accept U.S. dollars or cryptocurrency in consideration of payment of shares common/voting stock."[235]

The evidence shows that on October 31, 2018, Respondent Ramos sent an email to Wynn Phillips aka Investigator Woerner and attached a supplemental flyer.[236] The supplemental flyer stated in part that: "Alternative asset securities offerings qualified to accept U.S. dollars or cryptocurrency in consideration of payment of shares common/voting stock. . . Eligible for Self-directed IRA and Solo 401(k) programs. . . American stock companies. . . with securities offerings qualified by New York Attorney General and by the United States Securities and Exchange Commission."[237]

The language in the Craigslist ad refers to "American stock companies with limited offerings. in the email correspondence and the language contained in WGR's Offering Circular identifies the shares of stock in WGR as securities. Further, the flyer sent on October 22, 2018, and the supplemental flyer sent on October 31, 2018, both refer to securities offerings and state that payment can made for shares of common/voting stock. The plain language in A.R.S. §44-1801(27)(a) identifies any stock as a security. Therefore, we find that the shares of stock in WGR are securities.

D. <u>Were the Sale of WGR's Stock Federally Exempt or Preempted?</u>

1. <u>Division's Position</u>

The Division alleges that Respondents violated A.R.S. § 44-1841(A) by selling or offering

[231] Exh. S-2 at ACC000016.
[232] Exh. S-2 at ACC000017.
[233] Exh. S-2 at ACC000018-ACC000083.
[234] Tr. at 81-82, Exh. S-3 at ACC000086.
[235] Exh. S-3 at ACC000088.
[236] Tr. at 85, Exh. S-5 at ACC000340- ACC000342.
[237] Exh. S-5 at ACC000340- ACC000342.

unregistered securities within or from Arizona.[238] The Division further alleges that WGR's stock has never been registered with the Commission in violation of the statute.[239]

The Division alleges that Respondents' securities offering is not exempt from state securities laws.[240] The Division contends that the S.E.C.'s 2015 revisions to Reg. A. (known as "Reg. A-Plus") created two tiers of securities offerings, Tier-1 and Tier-2.[241] The Division asserts that while Tier-2 security offerings may be exempt from state security regulations, if all requirements are met, Tier-1 securities offerings are not.[242] The Division argues that even if Respondents' securities offering complied with Reg. A-Plus, Tier-1 securities offerings still must comply with state securities laws.[243]

The Division disputes that Respondents complied with Commission rules for posting securities offerings on the internet.[244] The Division asserts that Respondents failed to meet the requirements set forth in A.A.C. R14-4-142(B)(1) by failing to "conspicuously state that the securities are not being offered to persons in Arizona, or specify the states other than Arizona, where the securities are offered."[245] The Division also disputes that Respondents met the requirements set forth in A.A.C. R14-4-143 or R14-4-118 which governs the general dissemination of materials on the internet and require statements in a prospectus, respectively.[246] The Division asserts that Respondents failed to place the required disclaimers on its internet communications, offered WGR stock to Investigator Woerner in Arizona, and that there is no evidence that Respondents' offering was exempt prior to offering securities in violation of A.A.C. R14-4-143.[247]

2. Respondents' Position

Respondents argue that their security offering is federally exempt from state security law because the S.E.C. allows issuers to "test the water" by providing solicitation materials to the general

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[238] TO/Notice ¶ 5, Exhs. S-13, S-15, Division's Initial Closing Brief at 14-15.
[239] TO/Notice ¶ 5, Exhs. S-13, S-15.
[240] Division's Initial Closing Brief at 15, referencing: JOB Act, Pub. L. No. 112-106, 126 Stat. 306 (2012); 15 U.S.C. § 77r(b)(4)(D); *Lindeen v. Sec. & Exch. Comm'n*, 825 F.3d 646, 651 (D.C. Cir. 2016); and *Amendments to Regulation A: A Small Entity Compliance Guide*, https://www.sec.gov/info/smallbus/secg/regulation-a-amendments-secg.shtmal.
[241] Division's Initial Closing Brief at 15.
[242] *Id.* at 17.
[243] *Id.* at 15.
[244] Division's Reply Brief at 4.
[245] *Id.*
[246] Division's Initial Closing Brief at SOF ¶ 45 and Division's Reply Brief at 4-5.
[247] Division's Reply Brief at 5.

public before or after the filing of a offering statement.[248]

Respondents also claim that Arizona rules allow for securities offerings to be posted on the internet[249] and allow issuers to distribute a prospectus.[250]

Alternatively, Respondents argue that Arizona securities registration rules are preempted by federal S.E.C. rules.[251] Respondents contend that Arizona has added "secret rules" that require audited financial statements for securities offerings that are not required by the S.E.C.[252] Respondents argue that S.E.C. rules only require that Offering Circulars be uploaded to EDGAR and the completion of Form 1-A.[253] Respondents contend that Arizona security laws have expanded S.E.C. requirements for Offering Circulars.[254] Further, Respondents argue that Arizona security regulations are a "direct attack on Reg. A" and that caselaw supports their position that federal law preempts Arizona state security regulations.[255]

3. Analysis

The S.E.C. has promulgated rules regulating securities offerings. In 2015, the S.E.C. implemented final rules revising Section 401 of the JOBS Act, which expanded Reg. A creating two tiers of security offerings, known as Reg. A-Plus.[256] Tier-1 allows security offerings of up to $20 million in a 12-month period and Tier-2 allows for security offerings of up to $50 million in a 12-month period.[257] Under Reg. A-Plus, issuers are allowed to choose to participate in either Tier-1 or Tier-2 security offerings.[258] Because states have long regulated securities offerings, known as "blue-sky" laws, Reg. A-Plus establishes an interplay between federal regulations and blue-sky laws.[259] Reg. A-Plus, provides that "[i]n addition to qualifying for Reg. A offerings with the Commission [S.E.C],

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[248] Respondents' Closing Brief at 46.
[249] Respondents' Closing Brief at 46, referencing *Amendments to Regulation A: A Small Entity Compliance Guide*, June 18, 2015 (revised February 4, 2019) and A.A.C. R14-4-141, 14-4-142, 14-4-143.
[250] Respondents' Closing Brief at 63, citing A.A.C. Rule R14-4-118.
[251] Respondents' Closing Brief at 51.
[252] *Id.* at 52-53.
[253] *Id.* at 58-59, and 61.
[254] *Id.* at 61.
[255] Respondents' Closing Brief at 54, citing *Whistler Investments, Inc. v. Depository Tr. & Clearing Corp.*, 539 F.3d 1159 (9th Cir. 2008).
[256] *Amendments to Regulation A: A Small Entity Compliance Guide*, June 18, 2015 (revised February 4, 2019) at Section 1.
[257] *Id.*
[258] *Id.*
[259] *Id.* at Section 7.

issuers of Tier-1 offerings must register or qualify their offering in any state in which they seek to offer or sell securities pursuant to Reg. A."[260] Tier-2 offerings may be exempt from state registration and issuers are not required to qualify offerings with state securities regulators, when various safeguard measures are in place.[261]

Under Reg. A-Plus, Section 4, allows issuers to "test the waters" with, or solicit interest in a potential offering from, the general public either before or after the filing of the offering statement, provided that all solicitation materials include legends required by the final rules and, after publicly filing the offering statement they are preceded or accompanied by a preliminary Offering Circular or contain a notice informing potential investors where and how the most current preliminary Offering Circular can be obtained.[262]

In Arizona, "it is unlawful to sell or offer for sale within or from this state any securities unless the securities have been registered pursuant to article 6 or 7 of this chapter or are federal covered securities if the securities comply with section 44-1843.02 or chapter 13, article 12 of this title," pursuant to A.R.S. § 44-1841(A).

Additionally, A.R.S. § 44-1843.02(A) states in part that, "[a]ny advertising and sales materials, other than the notices required by law to be published or posted, that is used in connection with offers or sales to the public of any securities to which § 44-1843.01, subsection A applies shall be filed with the division three business days before its proposed use. Further, under subsection (D), Section 44-1842 applies to federal covered securities transactions.

A.R.S. § 44-2033, places the burden of proving the existence of any exemption on the party raising the defense.

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[260] *Amendments to Regulation A: A Small Entity Compliance Guide,* Section 7(a).
[261] *Id. at* Section 7(b).
[262] *Id.* at Section 4.

Arizona has rules governing securities offerings posted to the internet. Pursuant to A.A.C. R14-4-142(B), an offer for sale of securities placed on the internet by or on behalf of an issuer, shall be exempt from A.R.S. §§ 44-1841 and 44-3321, and the offeror of such securities shall be exempt from A.R.S. § 44-1842(B) provided that:

1. The internet offer for sale prominently and conspicuously indicates on the cover page of any offering document and on any subscription agreement document (a) that the securities are not being offered to persons in Arizona, or (b) in which specific states, other than Arizona, the securities are being offered;
2. The offer of sale is not otherwise specifically directed to any person in Arizona by, or on behalf of, the issuer; and
3. No sales of the issuer's securities are made in Arizona as a direct or indirect result of the internet offer for sale.

Additionally, under A.A.C. R14-4-143 dealers or salesmen are allowed to use the internet to distribute information on products and services directed generally to anyone having access to the internet and shall not be deemed to be selling, purchasing, or offering to sell or buy any securities in Arizona for purposes of Article 4 of the Securities Act of Arizona based solely on the activity if the following conditions are observed:

1. The internet communication included a clear and prominent statement that the dealer or salesman may only sell, purchase, or offer to sell or buy any securities in Arizona if first compliant with or exempt from registration requirements.
2. The dealer or salesman complies with the statement contained in the internet communication under subsection (A)(1).
3. The internet communication is subject to a mechanism, policy, or procedure reasonably designed to ensure that, prior to any sale, purchase, or offer to sell or buy in connection with prospective customers or clients in Arizona, the dealer or salesman is first compliant with or exempt from registration requirements.
4. The internet communication does not involve either effecting or attempting to effect transactions in securities, the rendering of investments advice for compensation, or individualized solicitation or negotiations for the sale of investment advisory services in Arizona.

Here, it is undisputed that Respondents were not registered with the Commission as a dealer or salesman.[263] The securities referenced in the TO/Notice are not registered pursuant to Articles 6 or 7 of the Act.[264]

The evidence shows that WGR's Offering Circular states that neither the S.E.C. nor the state of

[263] TO/Notice ¶ 5, Ans. ¶ 7, Exhs. S-13 and S-15.
[264] TO/Notice ¶ 29, Ans. ¶ 7, Exh. S-13.

New York have made an independent determination that securities offered are exempt from registration.[265]

Respondent Ramos has stated himself that WGR's offering is a Reg. A-Plus Tier-1 offering, and as such must be registered under blue sky laws.[266]

The plain language in the Amendments to Reg. A, Section 7(a) states that in addition to qualifying under Reg. A-Plus, issuers of Tier-1 offerings must register or qualify their offering in any state in which they seek to offer or sell securities pursuant to Reg. A. Thus, even if Respondents have complied with Reg. A-Plus, for Tier-1 offerings, they must register or qualify their offerings in compliance with Arizona securities laws. Therefore, Respondents would not be allowed to "test the waters" with or solicit interest in a potential offering, unless they first registered or qualified such an offering in compliance with Arizona securities laws.

Respondents have the burden of proof to show that the Craigslist ad and WGR's security offering are federally exempt. Respondents have failed to show that they were registered or that either the Craigslist ad or WGR's securities offering were qualified. Therefore, we find that the Craigslist ad and WGR's security offering were not federally exempt and Respondents violated A.R.S. § 44-1841(A).

Alternatively, Respondents argue that conflict preemption exists between Arizona securities laws and Reg. A. Respondents rely on *Whistler Investments, Inc. v. Depository Tr. & Clearing Corp.*,[267] in support of their position that conflict preemption exists in this matter.

Respondents claim that Arizona's rules are "secret" and therefore in conflict with Congress' intent for the JOBS Act; Respondents could never have discovered the "secret" rules; Arizona rules are a "direct attack" on Reg. A; and that Arizona has changed Reg. A-Plus Tier-1 regulations to require audited financial statements.[268]

In *Whistler*, the 9th Circuit Court of Appeals articulated the standard for conflict preemption, stating "conflict preemption only exists where federal law actually conflicts with state law meaning

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[265] Tr. at 76-77, Exh. S-2 at ACC000018.
[266] Respondents' Closing Brief at 52.
[267] *Whistler Investments, Inc. v. Depository Tr. & Clearing Corp.*, 539 F.3d 1159 (9th Cir. 2008).
[268] Respondents' Closing Brief at 60.

that either compliance with both state and federal law is impossible, or where state law imposes an obstacle to Congress's objectives."[269] In *Whistler*, the court stated that Congress directed the S.E.C. to establish a national program to insure the prompt and accurate clearance and settlement of securities transactions.[270] The S.E.C. created the Stock Borrow Program as a result of Congress' directive. The *Whistler* court held, that state-law changes to the Stock Borrow Program were federally preempted because they would be in conflict with Congress' directive.

In analyzing Respondents' claims, we turn to the Amendments to Reg. A., Tier-1 Section 7(a), where the S.E.C. urges issuers wishing to obtain information on state-specific registration requirements to contact state securities regulators on state law compliance requirements. In the same section, the S.E.C. specifically encourages issuers of Tier-1 offerings, who plan to conduct multiple state offerings, to have the North American Securities Administrators Association ("NASAA") review their offerings pursuant to a coordinated state review program. Here, we find no conflict between Reg. A-Plus Tier-1 requirements and state security laws. The Amendments to Reg. A, Section 7(a) unequivocally state that Reg. A Tier-1 offerings are subject to state security laws. Further, through NASAA and prior to offering securities in Arizona, Respondents could have discovered how to comply with Arizona's registration or qualification requirements for Tier-1 offerings. Respondents' claims are contrary to the plain language found in the Amendments to Reg. A-Plus for Tier-1 offerings. Further, there is no evidence in the record that Respondents utilized the resources available to them through NASAA. The Division asserts that the allegations raised against Respondents in the TO/Notice are pursuant to the Security Act and not Reg. A. We agree. Respondents have failed to show how it would have been impossible for them to comply with state laws as well as federal law or that Arizona law conflicts with federal law.

Respondents argue that the Commission's rules allow for securities offerings to be posted on the internet. Respondents rely on A.A.C. R14-4-142 in support of their position. Without citation to the record or to the evidence admitted, Respondents claims that the Craigslist ad fully complies with A.A.C. R14-4-142 (A) and (B)(2) ("142(A)" and "142(B)(2)"). However, Section 142(B)(1) of the

[269] *Whistler Investments, Inc. v. Depository Tr. & Clearing Corp.*, 539 F.3d 1159 (9th Cir. 2008) citing *Cosby*, 530 U.S. at 373, 120 S.Ct. 2288.
[270] *Id.*

rule requires compliance with all subparts. Here, the evidence shows that Respondents failed to meet the requirement that "[t]he internet offer for sale prominently and conspicuously indicates on the cover page of any offering document and on any subscription agreement document (a) that the securities are not being offered to persons in Arizona, or (b) in which specific states, other than Arizona, the securities are being offered."[271] Further, 142(B)(2) requires that [t]he offer of sale is not otherwise specifically directed to any person in Arizona by, or on behalf of, the issuer. The evidence (as discussed *supra*) shows that Respondents published an ad on Craigslist in the Phoenix/Central/South/Financial Services Section, and directed the ad at Arizona residents on behalf of WGR.[272] The evidence also shows that after publishing the Craigslist ad, Respondents directed subsequent offers to Investigator Woerner, who is an Arizona resident. Because Respondents failed to comply with 142 (B)(1) and (2), Respondents internet offer of sale was not exempt from state registration under A.R.S. §44-1841 and §44-1842.

Moreover, the evidence shows that Respondents failed to comply with A.A.C. R14-4-143(A)(1) and (A)(2) and their internet communications were not exempt from registration requirements. Here, Respondents' internet communications failed to "included a clear and prominent statement that the dealer or salesman may only sell, purchase, or offer to sell or buy any securities in Arizona if first compliant with or exempt from registration requirements," in violation of 143(A)(2).[273] Because Respondents failed to comply with 143(A)(2) they also failed to comply with 143(A)(1).

Likewise, the evidence shows that Respondent Ramos was never registered with the Commission as a salesman or dealer prior to publishing the Craigslist ad[274] and the record is void of evidence that Respondents employed a "mechanism, policy, or procedure" to ensure that prior to their offer on Craigslist that they were exempt from Arizona's registration requirements. Therefore, Respondents failed to comply with 143(A)(3).

Under 143(A)(4) internet communication must not involve either effecting or attempting to effect transactions in securities. Here, the evidence shows that Respondents' Craigslist ad stated in part "American stock companies with exempt limited offerings. . . authorized to accept cyptocurrency

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[271] Exhs. S- 1 through S-11.
[272] Exh. S-1.
[273] *Id.*
[274] Ans. ¶ 7.

or U.S. dollars in consideration for payment of shares."[275] The plain language of the flyer shows that Respondents were involved in effecting or attempting to effect securities transactions on the internet. Therefore, Respondents failed to comply with 143(A)(4).

Respondents also rely on A.A.C. R14-4-118 in support of its position that allows security offerings to be posted on the internet.[276] Rule 4-118 governs statements that are required in a prospectus. The rule does not discuss Offering Circulars as the Respondents have purported. There is no evidence in the record that Respondents issued a prospectus and the TO/Notice does not allege that fact. Therefore, Rule 4-118 does not apply to the evidence in this matter.

E. Did Respondents Offer Securities in Violation of A.R.S. §§ 44-1841 and 44-1842?

1. Division's Position

The Division alleges that Respondents violated the Securities Act and A.R.S. § 44-1841(A) by failing to register their security offerings.

The Division alleges that Respondents' Craigslist ad and communications with Investigator Woerner constitute "offers for sale" in violation of A.R.S. §44-1841(A) and 44-1801(16).[277]

The Division alleges that Respondents violated A.R.S. §44-1801(16) by attempting to dispose of shares of WGR's stock for value, by publishing an ad on Craigslist on the internet.[278] The Division asserts that Respondents further violated the statute with subsequent email communications with Investigator Woerner which constitute additional offerings.[279]

The Division contends that Respondents' Craigslist ad and email communications were "within or from Arizona" as set forth in A.R.S. § 44-1841(A). The Division asserts that Respondents' conduct was within or from Arizona because: 1) they posted the Craigslist ad in the Phoenix section; 2) Respondents were aware they were communicating with a person who was located in Phoenix; and 3) Respondents continued to communicate with Woerner via email and provided other documents.[280]

The Division alleges that Respondent Ramos was acting as a "dealer" or "salesman" when he

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[275] Exh. S-1.
[276] Respondents' Closing Brief at 63-64.
[277] Division's Initial Closing Brief at 16.
[278] *Id.* at 16.
[279] *Id.*
[280] *Id.* at 17.

acted on behalf of WGR to sell shares of WGR stock in violation of A.R.S. § 44-1801(10)(b).[281]

The Division disputes Respondents' assertion that Arizona caselaw requires a "direct sale" to constitute an offer.[282] The Division asserts that Arizona law does not require the sale of securities and that offers are sufficient.[283] The Division argues that the evidence shows that Respondents directed their offers at Arizona residents, and at Investigator Woerner in particular.[284]

2. Respondents' Position

Respondent Ramos argues that Arizona caselaw requires that the "seller direct email potential buyers" to be deemed an offer and that the Division has failed to prove that Respondent Ramos directly emailed potential buyers. Respondent Ramos also appears to argue that Arizona caselaw supports that there is no Arizona offeree where there is a failure of "Petitioner's proof" of "a direct sell."[285]

Without citations to the record, Respondent Ramos argues that during the course of several email exchanges between he and Investigator Woerner, Respondent Ramos sent Investigator Woerner "an authorized flyer" and that Investigator Woerner responded with an offer, not Respondent Ramos.[286] Respondent Ramos claims that "not only was it [Investigator Woerner] who made the offer, not the other way around, but that the offer itself, was made for fraudulent purposes."[287]

Respondent Ramos claims that he did not have the benefit of a "live potential investor" in this matter.[288]

3. Analysis

A.R.S. § 44-1841 states that it is "unlawful to sell or offer to sale within or from the state any securities unless they have been registered pursuant to article 6 or 7 of this chapter or are federal covered securities if the securities comply with § 44-1843.02 or chapter 13, article 12 of this title.

A.R.S. § 44-1842 (A) states that "[i]t is unlawful for any dealer to sell or purchase or offer to

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[281] Division's Initial Closing Brief at 18.
[282] Division's Reply Brief at 3.
[283] *Id.* at 3-4.
[284] Division's Reply Brief at 4, SOF ¶¶6-11, 14-22.
[285] Respondents' Closing Brief at 44, citing *In the Matter of: Jordan Crossing Properties, LLC, an Arizona Limited Company Chris Blackford and Nicole Blackford, Husband and Wife Respondents,* 2009 WL 2844811 (Ariz. Corp. Comm. 2009)(Consent order finding that Respondents violated A.R.S. §§ 44-1841 and 44-1842, and ordering administrative penalties of $1,000).
[286] Respondents' Closing Brief at 10-29, 44, Exh. S-1.
[287] Respondents' Closing Brief at 44.
[288] *Id.* at 46.

sell or buy any securities, or for any salesman to sell or offer for sale any securities within or from the state unless the dealer or salesman is registered. . ."

A.R.S. § 1801(10)(b) defines a dealer as ". . .an issuer, other than an investment company, who directly or through an officer, director, employee or agent who is not registered as a dealer under this chapter, engages in selling securities issued by such issuer."

A.R.S. § 1801(23) defines a salesman as "an individual, other than a dealer, employed, appointed or authorized by a dealer to sell securities in this state. . . [t]he partners or executive officers of a registered dealer shall not be deemed a salesmen within the meaning of this definition."

A. R. S. § 44-1801(16) defines an "offer for sale" to include "an attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. . . ."

Arizona courts have held that offers to Arizona residents are "within or from" Arizona even if the offeror is out of state.[289]

Here, Respondents contend that there has to be a "direct sell" in order for there to be an offer. Respondents rely on Arizona caselaw to support their position. In reviewing the cases cited by Respondents, we do not find the cases analogous to the facts in this matter or persuasive that a "direct sell" is required for offer. [290]

The evidence shows that on or about October 10, 2018, Respondents published a Craigslist ad which stated in part "[a]lternative asset securities offerings qualified to accept U.S. dollars or cryptocurrency in consideration of payment of shares common/voting stock."[291] The Craigslist ad refers to "securities offerings" and the acceptance of payment in exchange for stock in WGR. We find that the Craigslist ad was an offer as it attempted to dispose of, or to solicitate an order or offer to buy,

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[289] Division citing *State ex rel. Corbin v. Goodrich*, 151 Ariz. 118, 124 (App. 1986); *R & L Ltd. Investments, Inc. v. Cabot Inv. Properties, LLC* 729 F. Supp. 2d 1110, 1114 (D.Ariz. 2010).

[290] Respondents' Closing Brief at 44, citing *State v. Demaree*, 2015 WL 7755778 (finding Petitioner failed to meet burden of proof that federal preemption exists for state to prosecute social security benefits fraud); *State v. Alvarez*, 2014 WL 4698509 (affirming trial court's decision that defendant charged with criminal impersonation, aggravated assault, sexual abuse, kidnapping and impersonating a peace officer not entitled to severance of the offenses); *State v. Smith*, 2017 WL 27384 (involving the exclusion of impeachment evidence related to an informant); *Barnes v. Vozack*, 113 Ariz. 269 (1976)(in securities transaction offeree who relied on false representations when purchasing shares of stock, offeror committed statutory fraud); *Strom v. Black*, 22 Ariz. App. 102 (1974)(finding business broker who offered and sold stock to investors that contained misleading information "participated in and induced" the sale of unregistered securities in violation of A.R.S. § 44-1991); and *State v. Gunnison*, 127 Ariz. 110, 113 (1980)(scienter is not a necessary element for a civil violations of A.R.S. § 44-1991(2)).

[291] Exh. S-3 at ACC000088.

a security or interest in a security for value.

Moreover, the evidence shows that Respondents published a Craigslist ad directed at Phoenix.[292] The evidence shows that Respondent Ramos was aware that a person in Phoenix read the Craigslist ad when Respondent Ramos responded "[g]ood afternoon here in Washington, good morning in Phoenix."[293] Further, the record shows that Respondent Ramos initiated subsequent communications with Wynn Phillips/William Phillips aka Investigator Woerner after Respondent Ramos' initial response on October 11, 2018.[294] Therefore, we find that Respondents offered securities from within or from Arizona.

The evidence shows that Respondent Ramos responded on October 11, 2018, to Investigator Woerner's email and attached an Offering Circular for WGR.[295] The evidence shows that the Offering Circular offered 13,333,333 shares of WGR common stock for a price of $1.50 per share.[296]

The evidence shows that on October 22, and October 31, 2018, Respondent Ramos sent an email addressed to Wynn Phillips aka Investigator Woerner and attached a supplemental flyer.[297] The supplemental flyers both stated in part that "[a]lternative asset securities offerings qualified to accept U.S. dollars or cryptocurrency in consideration of payment of shares common/voting stock. . . ."[298]

The evidence also shows that on November 12, 2018, Respondents sent an email to William Phillips aka Investigator Woerner which stated in part that "S.E.C. qualified offering" . . . "[p]urchase shares with cyptocurrency or with U.S. dollars."[299]

Further, the evidence shows that on December 5, 2018, Respondents sent another email to William Phillips aka Investigator Woerner stating that the price per share for WGR stock had dropped from $1.50 per share to $.37.5 per share and that Mr. Phillips would need to sign and return a subscription agreement,[300] and that Respondents recommended investing in both WGR and Finger

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[292] Exh. S-1.
[293] Exh. S-2 at ACC000012.
[294] Exh. S-3 at ACC000086-88; Exh. S-5 at ACC000340- ACC000342; Ex. S-7 at ACC0000348; and Exh. S-8 at ACC000467.
[295] TO/Notice ¶13; Ans.¶ 19-20; Exh. S-2 at ACC000012.
[296] TO/Notice ¶14; Ans. ¶ 21; Exh. S-2 at ACC000015-83.
[297] Exh. S-3 at ACC000086-88 and Exh. S-5 at ACC000340- ACC000342.
[298] *Id.*
[299] Ex. S-7 at ACC0000348.
[300] Exh. S-8 at ACC000467.

Lakes.[301]

Based on the foregoing facts, we find that Respondents' emails on October 11, 22, 31, November 5 and December 5, 2018, were subsequent offers attempting to dispose of, or solicitate for value, WGR stock, a security.

We also find that because neither Respondent Ramos nor WGR's stock, was registered with the Commission or exempt, Respondents' offers were in violation of A.R.S. § 44-1841(A).

The evidence shows that during the time period of the internet and email communications, Respondent Ramos acted on behalf of WGR. The evidence shows that from, at least February 27, 2017, through at least December 14, 2018, Respondent Ramos has been, or held himself out as, President and Chairman of the Board for WGR.[302] The evidence also shows that Respondents have never been registered with the Commission in any capacity. WGR, through its officer, Ramos, engaged in selling WGR securities while not being registered in violation of A.R.S. § 44-1842 (A). Further, during the relevant time period, Respondent Ramos acted as a salesman by attempting to sell securities on behalf of WGR while not being registered in violation of A.R.S. § 44-1842 (A).

F. <u>Did Respondents' Offerings Violate A.R.S. § 44-1991?</u>

1. <u>Division's Position</u>

The Division alleges that Respondents violated A.R.S. § 44-1991(A)(2) by making false and misleading statements connected with the sale of WGR stock.[303] The Division claims that WGR's Offering Circular contains misleading information regarding Respondent Ramos' status in the D.C. community considering his disciplinary history and criminal history.[304]

The Division alleges that WGR's Offering Circular also contains false information regarding Burke and Ekekwe's status as attorneys.[305]

The Division alleges that as of July 28, 2018, WGR had no operating history and no cash[306] and that the only assets WGR had were its officers; therefore, Respondents' misleading and false statements

[301] Exh. S-8 at ACC000467-468.
[302] Tr. at 74 and 78; Ans. ¶ 45; Exh. S-2 at ACC000018; and Exh. S-2 at ACC000056 at 32.
[303] Division's Initial Closing Brief at 20.
[304] *Id.* at 21.
[305] *Id.*
[306] Exh. S-2 at ACC000018, ACC000030, ACC000036.

would be material to the deliberations of a reasonable buyer.[307]

The Division disputes Respondents' claim that A.R.S. § 44-1991 does not apply to Reg. A offerings.[308] The Division asserts that both Tier-1 and Tier-2 offerings are subject to state security laws.[309]

The Division also disputes Respondents' claim that A.A.C. R14-4-118 and Form 1-A do not require the disclosure of prior disciplinary actions.[310] The Division argues that neither Rule 4-118 or Form 1-A indicates that false and/or misleading statements would be excused.[311]

The Division claims that Arizona caselaw does not support Respondents' assertion that scienter is required in order to establish violations of A.R.S. § 44-1991(A)(2).[312]

2. Respondents' Position

Respondents assert that the Division has failed to prove fraud under A.R.S. § 44-1991(A)(2) because the Division failed to prove that Respondents had prior knowledge that the statements regarding Burke and Ekekwe were untrue before making them.[313] Respondents claim that the Division waived its right to bring claims under A.R.S. § 44-1991 because the Division did not meet the requirement for subsection (1) which requires scienter or prior knowledge of wrongness.[314] Respondents rely on Arizona caselaw in support of their position.[315]

Respondents argue that Reg. A only requires offering circulars to include a 10-year employment history and a five year criminal history and Respondents suggest that state security fraud laws do not apply to Reg. A. offerings.[316]

Respondents argue that the Division's allegations related to A.R.S. § 44-1991 should be stricken from the TO/Notice because the Division failed to prove scienter.[317]

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[307] Division's Initial Closing Brief at 22.
[308] Division's Reply Brief at 6.
[309] *Id.* at 6-7.
[310] *Id.* at 7.
[311] *Id.*
[312] *Id.*
[313] Respondents' Closing Brief at 64-69.
[314] *Id.* at 65.
[315] *Id.* at 64-69 citing *State v. Superior Court of Maricopa Cty.*, 123 Ariz. 324 (1979); *State v. Gunnison*, 127 Ariz. 110, 113 (1980); *Baker v. Walston & Co.*, 7 Ariz. App. 590 (1968), disapproved by *Greenfield v. Cheek*, 122 Ariz. 57 (1979); *Washington Nat. Corp. v. Thomas*, 117 Ariz. 95 (App. 1977); and *Ernest & Ernst. Hochfelder,*425 U.S. 185 (1976).
[316] Respondents' Closing Brief at 67.
[317] Respondents' Closing Brief at 68, 82.

3. Analysis

A.R.S. § 44-1991(A) states in part that:

> It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from the state involving an offer to sell or buy securities, a sale or purchase of securities, including securities exempted under § 44-1843 or 44-1843.01 and including transactions exempted under § 44-1844, 44-1845 or 44-1850, directly or indirectly to do any of the following:
>
> 1. Employ any device, scheme or artifice to defraud.
> 2. Make any untrue statements of material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

The Arizona Supreme Court has held that "as to civil cases, scienter is not an element of a violation of A.R.S. § 44-1991(A)(2), even though it may be an element of A.R.S.§44-1991(A)(1)."[318] The courts have also held that under A.R.S. § 44-1991(A)(2) "a seller of securities is strictly liable for the misrepresentations or omissions he makes"[319] and has "an affirmative duty not to mislead."[320]

Here, the evidence shows that WGR's Offering Circular listed Tony Ramos as Board Chair[321] and President for WGR and listed Ekekwe as Treasurer[322]and it stated that Burke and Ekekwe were voting members for WGR.[323] Further, the record shows WGR's Offering Circular represented that Burke is an attorney admitted to practice law in the State of Connecticut from March 1, 2012, to present[324] and that Ekewe is an attorney admitted to practice law in Washington, DC, and the State of Maryland from March 1, 2012, to present.[325]

The evidence shows that on December 12, 2016, by the District of Columbia Court of Appeals, Board on Professional Responsibility, Ad Hoc Hearing Committee ("Committee") issued an Opinion, in which it found that Ekekwe had engaged in the misappropriation of client funds,[326] and failed to safe-keep advanced unearned fees, and that Ekekwe engaged in conduct involving dishonesty, fraud

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[318] See, *State v. Gunnison*, 127 Ariz. 110, 113 618 P.2d 604, 607 (1980).
[319] See, *Garvin v. Greenbank*, 856 F.2d 1392, 1398 (9th Cir. 1988).
[320] See, *Aaron V. Fromkin*, 196 Ariz. 224, 227 (App. 2000).
[321] Tr. at 77-78, Exh. S-2 ACC000056 at 32
[322] Tr. at 78, Exh. S-2 ACC000058 at 34.
[323] Tr. at 78, Exh. S-2 ACC000057 at 33.
[324] Tr. at 77-80, Exh. S-2 ACC000061 at 37.
[325] Tr. at 80, Exh. S-2 ACC000063 at 39.
[326] Tr. at 132, Exh. S-26, ACC000381 at 29.

and misrepresentation.[327] The evidence shows that the Committee recommended that Ekekwe be disbarred.[328] Further, the evidence shows that on July 27, 2017, the District of Columbia Court of Appeals Board of Professional Responsibility ("Board") issued a Report and Recommendation pertaining to Ekekwe, in which the Board generally agreed with the Committee's factual findings and conclusions of law.[329] Additionally, the evidence shows that the District of Columbia Bar website, indicates that Ekekwe was temporarily suspended as of January 3, 2018, and that there is no indication that Ekekwe's suspension has been lifted.[330]

Moreover, the evidence shows that as of February 25, 2019, Burke was on administrative suspension from the practice of law[331] and that the Connecticut Judicial Branch confirmed that Burke has not been in compliance with Connecticut State Bar requirements since 1997, that Burke had been suspended from the practice of law in 2000, and that Burke is not in good standing with the Connecticut State Bar.[332]

Respondent Ramos testified that WGR's Offering Circular contained incorrect information regarding Burke's status as an attorney[333] and that in light of the allegations contained in the TO/Notice he went to the State of Connecticut Bar Association website, and confirmed that Burke is not listed as a member.[334] Respondent Ramos also testified that he asked Burke about his status with the State Bar of Connecticut and Burke confirmed he is not a member of the Connecticut Bar.[335] Respondent Ramos testified that he accepts full responsibility for the incorrect information about Burke contained in WGR's Offering Circular.[336] Respondent Ramos testified that he had a non-delegable duty to make sure that the Offering Circulars [for WGR] were accurate.[337]

Respondent Ramos testified that WGR's Offering Circular contained inaccurate information

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[327] Tr. at 132-133, Exh. S-26, ACC000394 at 42.
[328] Tr. at 133, Exh. S-26, ACC000403 at 51.
[329] Tr. at 134-135, S-27, ACC000406 at 3.
[330] Tr. at 136-137, Exh. S-26 ACC000350.
[331] Tr. at 139-140, Exhs. S-29 and S-30.
[332] Tr. at 139-140, Exh. S-31 at ACC000608- ACC000610.
[333] Tr. at 287.
[334] *Id.*
[335] *Id.*
[336] *Id.*
[337] Tr. at at 287-288.

related to Ekekwe's status as an attorney.[338] Respondent Ramos testified that he takes full responsibility for the inaccurate information in the Offering Circular and that he filed a no contest pleading related to this allegation.[339] Respondent Ramos testified that Ekekwe has been suspended from the practice of law in Washington, DC, pending a final disciplinary ruling in the matter against her.[340]

The evidence shows that WGR's Offering Circular listed the issuing company as WGR and stated that Tony Ramos was the issuer's representative, president, and board chair.[341] The evidence also shows that the Offering Circular represented that Respondent Ramos is a:

> Supplemental Leader. Third generation self-made entrepreneur. Qualified dealer by the State of New York for WGR and Finger Lakes Region Rural Broadband Company, Inc. Member of the elite professional political sector in Washington, DC of originators of Congressional legislation. Top-tier fundraiser. Member of the elite professional political sector in Washington, DC of originators of significant political policy/action campaigns. Writer and issuer of JOBS ACT offerings, filing, and shares."[342]

The evidence shows that Respondent Ramos had been disbarred as an attorney by the Supreme Court of Florida and that Respondent Ramos has a criminal history related to theft.[343] The evidence shows that the Supreme Court of Florida issued an opinion on June 11, 1998, that showed Respondent Ramos as disbarred.[344] The evidence shows that the United States District Court, Southern District of Florida issued an Order of Disbarment for Respondent Ramos on August 3, 1998, and that Respondent Ramos was disbarred from practice effective immediately. [345]

The evidence shows that on November 4, 2004, the District of Columbia Court of Appeals issued an Opinion, showing that Respondent Ramos applied to the District of Columbia State Bar and disclosed in his Bar application that he had been disqualified from practicing law in the Federal and States Courts for the State of Florida as of November 1997, as a result of employee embezzlement of

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[338] Tr. at 288.
[339] Tr. at 288. See also, Notice of Respondent Anthony Eladio Ramos, of Concurrence with Notice of Western Gateway Region Rural Broadband Company, Inc., of Plea of No Contest as to Sections IV. and V. of the Temporary Order filed on April 9, 2019.
[340] Tr. at 288.
[341] Tr. at 74 and 78, Exh. S-2 at ACC000018.
[342] Tr. at 79, Exh. S-2 ACC000059 at 35.
[343] Tr. at 110-114, Exh. S-16.
[344] Tr. at 116, Exh. S-18.
[345] Tr. at 118-119, Exh. S-17.

trust funds.[346] The DC Court of Appeals opinion also stated that Respondent Ramos had disclosed in his Bar application, in response to a question regarding complaints alleging fraud and/or deceit that part of his disciplinary proceedings [in the State of Florida] involved allegations of forgery and that he was tried on two counts of grand theft, related to trust account issues, and that the jury in the case was deadlocked, and his motion for mistrial was granted.[347] According to the DC Court of Appeals opinion, the State of Florida case was settled, and Respondent Ramos pled of guilty, best interest, to two counts of petit theft, and was placed on probation for twelve months as to the two counts.[348] The judgment against Respondent Ramos was signed on May 25, 2000.[349]

The evidence shows that on December 1, 2008, Respondent Ramos filed an action with the U.S. District Court, District of Columbia against the U.S. Department of Justice.[350] In the opinion the Court stated that "[t]he plaintiff [Respondent Ramos] is an attorney who formerly practiced law in Florida . . . As a result of numerous instances of profession misconduct including lying to a tribunal, misappropriation of client funds, forging client signatures, misrepresentation to successor counsel, improper collection of excessive fees, and representing a client without authority, the Supreme Court of Florida disbarred the plaintiff from practice in that state on December 18, 1997."[351]

The evidence shows that on August 27, 2009, the Supreme Court of Florida issued an order, in which the Florida Bar of Examiners, et. al. and Anthony Eladio Ramos were the named parties.[352] The Order states that Respondent Ramos was disbarred for 20 years, effective December 18, 1997.[353] The Order also states that "the Bar filed a nineteen-count complaint against Ramos alleging over 160 rule violations, including: massive trust account deficits from 1990-1996 demonstrating that he took over $200,000 from fourteen clients; trust account checks returned for insufficient funds; failure to inform clients of settlements and to disburse settlement proceeds; premature withdrawal of trust account funds; excessive fees; forgery of client signatures; and failure to pay medical providers."[354] The Order also

[346] Tr. at 121-122, Exh. S-19
[347] Tr. at 122-123, Exh. S-19.
[348] Tr. at 122-123, Exhs. S-19 and S-20.
[349] Tr. at 124, Exh. S-20.
[350] Tr. at 125-126, Exh. S-21.
[351] *Id.*
[352] Tr. at 127, Exh. S-22.
[353] *Id.*
[354] Tr. at 127-128, S-22 at 4.

stated that "the Bar filed a complaint alleging trust account shortages of approximately $23,000 as to insurance recoveries for two clients and that the referee found facts as alleged by the Bar.[355] Further, the Order states that "the referee found that Ramos had utilized the clients' insurance settlement proceeds (the money at issue) without the clients' permission and for reasons that had no nexus with the cases and that Ramos was found guilty of violating fourteen provisions of the Rules and Regulations of the Florida Bar."[356]

The evidence shows that as of November 14, 2018, the Florida State Bar website listed Respondent Ramos as disbarred.[357]

Respondent Ramos testified that he was formerly licensed to practice law in the State of Florida[358] and that he received his license to practice law on or about April 2, 1981, and that he was licensed to practice law in Florida until on or about December 17, 1997.[359] Respondent Ramos testified that it is true that he was disbarred by the Florida Supreme Court in December 1997.[360] Respondent Ramos also testified that there are documents that say he was disbarred by the Florida Supreme Court, but that those documents no longer exist.[361] Respondent Ramos testified that he has not been licensed to practice law in Florida or any other jurisdiction since 1997.[362] Respondent Ramos testified that he was disbarred from the practice of law and that he is not currently licensed in Florida or any other jurisdiction.[363]

Respondent Ramos testified that in regards to his disbarment, he ultimately paid $189,000, plus interest to the claimants.[364]

The evidence also shows that during Respondent Ramos' communications with Investigator Woerner he did not disclose, and no one on behalf of WGR disclosed, the disciplinary histories of Ramos, Ekekwe or Burke.[365]

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[355] Tr. at 128, S-22 at 4.
[356] *Id.*
[357] Tr. at 131, Exh. S-25.
[358] Tr. at 288.
[359] *Id.* at 289.
[360] *Id.* at 289 and 297.
[361] *Id.*
[362] *Id.*
[363] *Id.* at 297.
[364] *Id.* at 296.
[365] Tr. at 141-143.

The evidence shows that as of July 28, 2018, WGR had no operating history and no cash and that its only assets at the time the Offering Circular was issued were WGR's officers. [366]

Based on the above facts, Respondents made untrue statements in WGR's Offering Circular related to Ekekwe, and Burke. The facts as discussed above would have been material to the deliberations of a reasonable buyer. Further, Arizona caselaw does not support Respondents' claim that A.R.S. § 44-1991(A)(2) requires proof of scienter.[367] The Arizona Supreme Court's ruling in *Gunnison* is controlling and is clear that scienter is not a necessary element in civil matters brought under A.R.S. § 44-1991(A)(2). Therefore, we find that Respondents violated A.R.S. § 44-1991(A)(2) in relation to the untrue statements contained in WGR's Offering Circular regarding the professional status of Ekekwe and Burke as attorneys.

We also find that the information contained in WGR's Offering Circular related to the business and professional background of Respondent Ramos was misleading given the circumstances involving Respondent Ramos' disbarment history, his plea of "guilty/best interest" to criminal matters related to theft, and WGR's lack of operating history. We find that Respondent Ramos' business and professional background as well as WGR's lack of operating history and lack of cash would be material to the deliberations of a reasonable buyer looking to invest in WGR. Therefore, we find Respondents violated A.R.S. § 1992(A)(2) by placing misleading statements in WGR's Offering Circular related to Respondent Ramos' business and professional background.

G. <u>Was Respondent Ramos a Control Person for WGR?</u>

The Division contends that Respondent Ramos was a controlling person for WGR, pursuant to A.R.S. § 44-1999(B). A.R.S. § 44-1991(B) imposes a "presumptive control liability on those persons who have the power to directly or indirectly control the activities of those persons or entities liable as primary violators of §§ 44-1991 or 44-1992."[368] Under A.R.S. § 44-1999(B), a person may include

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[366] Exh. S-2 at ACC000018, ACC000030, ACC000036.

[367] *State v. Gunnison*, 127 Ariz. 110, 113 (1980) (expressly overruling) *State v. Superior Court of Maricopa Cty.*, 123 Ariz. 324 (1979) and *Greenfield v. Cheek*, 122 Ariz. 57 (1979) and *Ernest & Ernst. Hochfelder,*425 U.S. 185 (1976) (holding that scienter required for violation of subsection 2 of A.R.S. § 44-1991); *Baker v. Walston & Co.*, 7 Ariz. App. 590 (1968) and *Washington Nat. Corp. v. Thomas*, 117 Ariz. 95 (App. 1977) (both holding that scienter not required for a violation of subsection 2 of A.R.S. § 44-1991).

[368] *Eastern Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, 206 Ariz. 399, 412, 79 P.3d 86,99 (App. 2003).

an individual, corporation, or limited liability company.[369] Further, "[t]he evidence need only show that the person targeted as a controlling person had the legal power, either individually or as part of a control group, to control the activities of the primary violator.[370]

The Division argues that Respondent Ramos: 1) organized WGR; 2) has been WGR's president and board chair during all relevant times; 3) represented WGR for purposes of the stock offering to Investigator Woerner; and 4) attempted to represent WGR as its "issuer representative" in this proceeding.

Respondents failed to address the allegation of control person liability in their closing brief.

The evidence in the record supports the facts identified by the Division demonstrating control person liability. The record demonstrates that not only did Respondent Ramos have the power to control and manage WGR, but that he actively exercised his control in WGR by conducting the sale of securities. Therefore, we find Respondent Ramos is a controlling person for WGR as defined by A.R.S. 44-1999(B). We also find that Respondent Ramos is jointly and severally liable with WGR for the violations of A.R.S. § 44-1991.

H. <u>Are Respondents Liable for Administrative Penalties?</u>

The Division recommends that Respondents be ordered to pay, jointly and severally, administrative penalties in the amount of $15,000. The Division alleges that Respondents violated A.R.S. §§ 44-1841(A) and 44-1842(A) by offering unregistered WGR stock to Investigator Woerner while not being registered with the Commission as a salesman or dealer. The Division also contends that Respondents committed fraud in violation of A.R.S.§ 44-1991(A)(2) by making false and misleading representations to Investigator Woerner during the offering.

Respondents did not address the amount of the administrative penalties recommended by the Division in their closing brief.

Pursuant to A.R.S. § 44-2036(A), "[a] person who, in an administrative action, is found to have violated any provision of this chapter or any rule or order of the commission may be assessed an administrative penalty by the commission, after a hearing, in an amount of [sic] not to exceed five

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[369] A.R.S. § 44-1801(16).

[370] *Eastern Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, 206 Ariz. 399, 412, 79 P.3d 86,99 (App. 2003).

thousand dollars for each violation. . .".

Here, the record establishes that WGR and Respondent Ramos acted as unregistered dealers or salesmen in the offer of unregistered securities to Investigator Woerner. Therefore, we find that Respondents violated A.R.S. §§ 44-1841 and 44-1842, as well as, committed fraud under § 44-1991(A)(2), based on false and misleading statements contained in WGR's Offering Circular and given to Investigator Woerner. Therefore, we find that the Division's recommendation to impose administrative penalties of $15,000 is appropriate and we will so order.

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

* * * * * * * * * *

FINDINGS OF FACT

1. At all times relevant, Anthony Eladio Ramos has been and/or has held himself out as President and Chairman of the Board for Western Gateway Region Rural Broadband Company, Inc.[371]

2. Western Gateway Region Rural Broadband Company, Inc. is a corporation organized under the laws of the State of Delaware on or around February 27, 2017.[372]

3. At all times relevant, Anthony Eladio Ramos and Western Gateway Region Rural Broadband Company, Inc., were not registered or licensed with the Commission in any capacity.[373]

4. The securities referred to in the TO/Notice are not registered pursuant to Articles 6 or 7 of the Act.[374]

5. Antony Eladio Ramos was at all times relevant a resident of the state of Virginia.[375]

6. The following information was published on Craigslist in reference to Western Gateway:

> American stock companies with exempt limited offerings that are organized to transact business for mass consumer market with blockchain technology using cryptocurrency of vendor companies. Huge e-commerce and streaming video opportunity, plus ad revenue. Authorized to accept cryptocurrency or U.S. dollars in consideration of

[371] TO/Notice ¶35, Ans. ¶ 45.
[372] TO/Notice ¶ 3, Ans. ¶ 3.
[373] TO/Notice ¶ 5, Ans. ¶ 7.
[374] TO/Notice ¶ 29, Ans. ¶ 7.
[375] TO/Notice ¶ 2, Ans. ¶ 4.

payment of shares.

7. On October 11, 2018, William Woernor, the Division's special investigator, using the pseudonym Wynn Phillips and/or William Phillips sent an email in response to the information Respondents published on Craigslist.[376]

8. Investigator Woerner, at all times relevant, was an Arizona resident.[377]

9. On October 11, 2018, Respondent Ramos responded by email to Wynn Phillips/Investigator Woerner and identified himself as "Tony Ramos" and stated, "I just emailed a response to you from our company email address. Please let me know that you received it."[378]

10. Also on October 11, 2018, Investigator Woerner, under the pseudonym Wynn Phillips, received another email from Respondent Ramos on behalf of Respondent Western Gateway, which stated in part that: a) "the offering is the only securities offering that is qualified by the SEC [("Securities and Exchange Commission")] for Reg. A, as a 'blockchain company'", and b) "the company is building a full blockchain platform for all cryptocurrency, but you are buying shares in the company, and not speculative cryptocurrency."[379] The email included an attachment consisting primarily of an Offering Circular which offered of 13,333,333 shares of Western Gateway common stock at a price of $1.50 per share.[380] The Offering Circular identified Respondent Ramos as the president and board chair of Western Gateway.[381] In regards to Respondent Ramos' business experience, the Offering Circular stated:

> Supplemental: Leader. Third generation self-made entrepreneur. Qualified dealer by the State of New York for WGR and Finger Lakes Region Rural Broadband Company, Inc. Member of the elite professional political sector in Washington, D.C. of originators of Congressional legislation. Top tier fundraiser. Member of the elite professional political sector in Washington, D.C., of originators of significant policy/action campaigns. Writer and Issuer of JOBS Act offerings, filings, and shares.[382]

11. The Offering Circular identified Olekanma A. Ekekwe as the corporate treasurer and as a voting board member of Western Gateway and represented that Ekekwe is an attorney admitted to

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[376] The Division stipulated that Investigator Woerner was the "offeree" identified in the TO. Procedural Conference on April 2, 2019, Tr. at 9; Hearing Tr. at 68-69, 168-169.
[377] Tr. at 51.
[378] TO/Notice ¶ 11, Ans. ¶ 17.
[379] TO/Notice ¶ 12, Ans. ¶ 18.
[380] TO/Notice ¶ 14, Ans. ¶ 21.
[381] TO/Notice ¶15, Ans. ¶ 22.
[382] TO/Notice ¶16, Ans. ¶ 23.

practice law in Washington, DC.[383]

12. The Offering Circular identified Thomas A. Burke as a voting board member of Western Gateway and represented that Burke is an attorney admitted to practice law in Connecticut.[384]

13. The Offering Circular information stating that Ekekwe and Burke are employed as attorneys was inaccurate.[385]

14. Respondent Ramos was disbarred from the practice of law by the Supreme Court of Florida, effective December 18, 1997.[386]

15. The information contained in WGR's Offering Circular related to the business and professional background of Respondent Ramos was misleading given the circumstances involving Respondent Ramos' disbarment history, and his plea of "guilty/best interest" to criminal matters related to theft. [387]

16. In email communications, neither Respondent Ramos nor WGR disclosed, the disciplinary histories of Ramos, Ekekwe or Burke. [388]

17. Between October 11 and December 7, 2018, Respondents sent multiple email communications offerings to Investigator Woerner regarding investments in WGR and Finger Lakes and including instructions to execute a subscription agreement.[389]

18. These findings of fact are based upon the Procedural History and Discussion sections set forth above which are incorporated herein.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et. seq*.

2. The findings and conclusions of law contained in the Discussion above are incorporated herein.

3. Within or from Arizona, Respondents Anthony Eladio Ramos and WGR offered to sell

[383] TO/Notice ¶18-19, Ans. ¶ 28-29.
[384] TO/Notice ¶21-22, Ans. ¶ 31-32.
[385] Tr. at 80-81.
[386] Tr. at 127, Exh. S-22.
[387] Tr. at 128, S-22 at 4.
[388] Tr. at 141-143.
[389] TO/Notice ¶ 25; Ans. ¶ 35; TO/Notice ¶ 26, Ans. ¶ 36; Exhs. S-2; S-3; S-4; S-5; S-6; S-7; S-8; S-9; S-10 and S-11.

securities in Arizona within the meaning of A.R.S. § 44-1801.

4. Respondents failed to meet their burden of proof pursuant to A.R.S. § 44-2033 to establish that the securities offered were exempt from regulation under the Act.

5. Respondents Anthony Eladio Ramos and WGR violated A.R.S. § 44-1841 by offering unregistered securities in Arizona.

6. Respondents Anthony Eladio Ramos and WGR violated A.R.S. § 44-1842 by offering securities in Arizona while not being registered as dealers or salesmen.

7. Respondents Anthony Eladio Ramos and WGR committed fraud in the offer of securities, in violation of A.R.S. § 44-1991, in the manner described herein.

8. Respondents Anthony Eladio Ramos' and WGR's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

9. Respondents Anthony Eladio Ramos' and WGR's conduct is grounds to order administrative penalties pursuant to A.R.S. § 44-2036 and should be jointly and severally liable subject to the limitations of A.R.S. § 44-1999.

ORDER

IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under A.R.S. § 44-2032, Respondents Anthony Eladio Ramos, Western Gateway Region Rural Broadband Company, Inc., and any of Respondents' agents, employees, successors and assigns, shall permanently cease and desist from their actions described herein, in violation of the Securities Act, A.R.S. §§ 44-1841, 44-1842 and 44-1991.

IT IS FURTHER ORDERED that Respondents Anthony Eladio Ramos individually, and Western Gateway Region Rural Broadband Company, Inc., jointly and severally, shall pay to the State of Arizona administrative penalties in the amount of $15,000 for Mr. Ramos' and Western Gateway Region Rural Broadband Company, Inc.'s multiple violations of the registration and antifraud provisions of the Securities Act, pursuant to A.R.S. §§ 44-2036 and 44-1999. Said administrative penalties shall be payable by either cashier's check or money order payable to "the State of Arizona" and presented to the Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent per annum or at a rate per annum that is equal to one percent 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, may be deemed in default and shall be immediately due and payable, without further notice.

IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, any outstanding balance shall be in default and shall be immediately due and payable with notice or demand. The acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission for its cost of collection and interest at the maximum legal rate.

IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, the Commission may bring further legal proceeding against the Respondent(s) including application to the Superior Court for an order of contempt.

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IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the Commission may grant a rehearing of this Order. The application must be received by the Commission at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant a rehearing within twenty (20) calendar days after filing the application, the application is considered to be denied. No additional notice will be given of such denial.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN BURNS COMMISSIONER DUNN COMMISSIONER KENNEDY

COMMISSIONER OLSON

ABSENT

COMMISSIONER MARQUEZ PETERSON

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 14 day of May 2020.

MATTHEW J. NEUBERT
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
YBK/(gb)ec

SERVICE LIST FOR: ANTHONY ELADIO RAMOS and WESTERN GATEWAY REGION RURAL BROADBAND COMPANY, INC.

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