STATE OF ALASKA DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION OF BANKING AND SECURITIES

IN THE MATTER OF:)	ORDER NO. 17-40-S
)	NOTICE OF FINAL CEASE AND DESIST
CHARLES FAGERSTROM)	ORDER TO PAY SUSPENDED CIVIL
)	PENALTY AND ASSESSING CIVIL
)	PENALTIES
)	
)	
	Respondent.)	
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The Director of the Department of Commerce, Community, and Economic Development, Division of Banking and Securities ("Administrator"), has conducted an investigation into certain activities of Charles Fagerstrom ("Respondent"), and has determined that Respondent violated certain provisions of the Alaska Securities Act, Alaska Statute (AS) 45.55 *et seq*.

I. BACKGROUND

On April 14, 2017, the Administrator mailed a Temporary Cease and Desist Order Effective Immediately, To Pay Suspended Civil Penalty, Assessing Civil Penalties, with Notice of Hearing Rights and Notice of Final Cease and Desist Order ("Order") to Respondent by certified mail (tracking number 7015 0640 0001 7452 6002). The Administrator never received a return receipt for that mailing. On May 22, 2017, the Administrator mailed the Order to Respondent by certified mail (tracking number 7015 0640 0001 7452 6064). Having received no return receipt for that mailing, on June 2, 2017, the Administrator mailed the Order to Respondent by certified mail (tracking number 7016 2710 0000 2555 6562). On June 7, 2017 the Administrator personally met with Respondent, and the Administrator hand-delivered the

Order to Respondent. On June 14, 2017, the Administrator received the return receipts for tracking numbers 7015 0640 0001 7452 6064 and 7016 2710 0000 2555 6562. To date, Respondent has not requested a hearing.

II. FINDINGS OF FACT

- Respondent is a shareholder and past president of Sitnasuak Native Corporation (SNC).
- 2. SNC is organized pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1601 *et seq*.
- 3. SNC has certified to the Administrator that it has more than 500 shareholders and total assets exceeding \$1,000,000.
- 4. On June 28, 2016, Respondent entered into Consent Order No. 16-97-S with the Department (attached as Exhibit 1), which imposed a \$1,500 civil penalty under AS 45.55.920(c) for violation of AS 45.55.139, 3 AAC 08.307, 3 AAC 08.315(a), and 3 AAC 08.355(2). Under the Order, Respondent was required to pay \$1,500 immediately, with an additional \$1,500 suspended for five years, provided that Respondent comply with all provisions of the Alaska Securities Act and associated regulations. Additionally, if Respondent failed to comply with any term or condition of the Order, the suspended portion of the civil penalty would be immediately due.
- 5. On February 2, 2017, Respondent sent a letter-to-the-editor of the Nome Nugget (attached as Exhibit 2), in which he wrote: "Through the misuse of the discretionary proxy, [J.E.] was able to unseat the shareholders' choice and elect his choice."
- 6. Respondent filed his letter-to-the-editor with the Administrator on February 2, 2017. However, his filing was not preceded or accompanied by a dated, written proxy statement disclosing additional information.

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- 8. Current law allows a shareholder to delegate voting rights through a discretionary proxy to another shareholder, who may then cumulate votes in the election of directors. When shareholders vote via discretionary proxies, they consent to the cumulation of their votes and the proxyholder's voting according to the proxyholder's discretion. No votes are counted until the proxyholder exercises discretion to vote the proxy how he or she chooses.
- 9. On March 6, 2017, the Administrator met with Respondent to review Respondent's letter-to-the-editor, to answer any of Respondent's questions, and to discuss resolution of this matter. The Administrator gave Respondent until March 28, 2017 to pay the suspended portion of Consent Order No. 16-97-S pursuant to the terms of that Order. As of the date of this Order, the Administrator has received no response or payment from Respondent.

III. CONCLUSIONS OF LAW

- 1. Respondent is subject to the filing requirements of AS 45.55.139 because he is a shareholder of SNC and SNC is subject to the filing requirements.
- 2. Respondent violated 3 AAC 08.315(a) and Consent Order 16-97-S by materially misrepresenting that J.E. had misused discretionary proxies.
- 4. Respondent violated 3 AAC 08.355 and Consent Order 16-97-S by failing to file with the Administrator required disclosures relating to proxy solicitation.
- 5. The suspended late fee in Consent Order 16-97-S is now due pursuant to the terms of that order.
- 6. Respondent is subject to a civil penalty pursuant to AS 45.55.920(c) because he violated AS 45.55.139, 3 AAC 08.315(a), and 3 AAC 08.355.

STATE OF ALASKA IERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT ION OF BANKING AND SECURITIES EST SEVENTH AVENUE, SUITE 1850 ANCHORAGE, ALASKA 99501

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IV. **ORDER**

Pursuant to AS 45.55.920, and on the basis of the Findings of Fact and Conclusions of Law, the Administrator ORDERS:

- 1. Respondent to CEASE AND DESIST from distributing proxy solicitations for the SNC annual meeting scheduled for June 3, 2017.
- 2. Respondent to file with the Administrator, for the next three years, the following: proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 for examination and review 10 working days before a distribution to shareholders.
- 3. Respondent to pay an additional civil penalty in the amount of one thousand five hundred dollars (\$1,500) for a total amount due of three thousand dollars (\$3,000). This amount is immediately due to the Administrator.

Pursuant to AS 45.55.920(d), Respondent may obtain review of this Final Order in the Superior Court by filing a notice of appeal pursuant to the Alaska Rules of Appellate Procedure. Pursuant to Appellate Rule 602(a)(2), the notice of appeal must be filed within 30 day from the date this Final Order is mailed or otherwise distributed to Respondent.

This Order is a publicly disclosable document.

IT IS SO ORDERED.

Chris Hladick, Commissioner Department of Commerce, Community and **Economic Development**

/s/ Kevin Anselm DATED: July 12, 2017

> BY: Kevin Anselm, Director Division of Banking and Securities

Charles Fagerstrom Final Cease and Desist Order