

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

4 IN THE MATTER OF:) **ORDER NO. 17-40-S**
5 CHARLES FAGERSTROM) **TEMPORARY CEASE AND DESIST**
6) **ORDER EFFECTIVE IMMEDIATELY,**
7) **TO PAY SUSPENDED PENALTY,**
8 Respondent.) **ASSESSING CIVIL PENALTIES,**
9) **WITH NOTICE OF HEARING RIGHTS**
10) **and**
11) **NOTICE OF FINAL CEASE AND DESIST**
12) **ORDER**

13 The Director of the Department of Commerce, Community, and Economic
14 Development, Division of Banking and Securities (“Administrator”), has conducted an
15 investigation into certain activities of Charles Fagerstrom (“Respondent”), and has
16 determined that Respondent violated certain provisions of the Alaska Securities Act, Alaska
17 Statute (AS) 45.55 *et seq.*

18 **I. FINDINGS OF FACT**

19 1. Respondent is a shareholder and past president of Sitnasuak Native Corporation
20 (“SNC”).

21 2. SNC is organized pursuant to the Alaska Native Claims Settlement Act
22 (“ANCSA”), 43 U.S.C. 1601 *et seq.*

23 3. SNC has certified to the Administrator that it has more than 500 shareholders
24 and total assets exceeding \$1,000,000.

25 4. On June 28, 2016, Respondent entered into Consent Order No. 16-97-S
26 with the Department (attached as Exhibit 1), which imposed a \$1,500 civil penalty under AS
27 45.55.920(c) for violation of AS 45.55.139, 3 AAC 08.307, 3 AAC 08.315(a), and 3 AAC

1 08.355(2). Under the Order, Respondent was required to pay \$1,500 immediately, with an
2 additional \$1,500 suspended for five years, provided that Respondent comply with all
3 provisions of the Alaska Securities Act and associated regulations. Additionally, if Respondent
4 failed to comply with any term or condition of the Order, the suspended portion of the civil
5 penalty would be immediately due.

6 5. On February 2, 2017, Respondent sent a letter-to-the-editor of the Nome Nugget
7 (attached as Exhibit 2), in which he wrote: “Through the misuse of the discretionary proxy,
8 [J.E.] was able to unseat the shareholders’ choice and elect his choice.”

9 6. Respondent filed his letter-to-the-editor with the Administrator on February 2, 2017.
10 However, his filing was not preceded or accompanied by a dated, written proxy statement
11 disclosing additional information.

12 7. SNC allows shareholders to use discretionary proxies and to cumulate votes in the
13 election of directors.

14 8. Current law allows a shareholder to delegate voting rights through a discretionary
15 proxy to another shareholder, who may then cumulate votes in the election of directors. When
16 shareholders vote via discretionary proxies, they consent to the cumulation of their votes and
17 the proxyholder’s voting according to the proxyholder’s discretion. No votes are counted
18 until the proxyholder exercises discretion to vote the proxy how he or she chooses.

19 9. On March 6, 2017, the Administrator met with Respondent to review
20 Respondent’s letter-to-the-editor, to answer any of Respondent’s questions, and to discuss
21 resolution of this matter. The Administrator gave Respondent until March 28, 2017 to pay the
22 suspended portion of Consent Order No. 16-97-S pursuant to the terms of that Order. As of
23 the date of this Order, the Administrator has received no response or payment from
24 Respondent.

1 **II. CONCLUSIONS OF LAW**

2 1. Respondent is subject to the filing requirements of AS 45.55.139 because he is a
3 shareholder of SNC and SNC is subject to the filing requirements.

4 2. Respondent violated 3 AAC 08.315(a) and Consent Order 16-97-S by materially
5 misrepresenting that J.E. had misused discretionary proxies.

6 4. Respondent violated 3 AAC 08.355 and Consent Order 16-97-S by failing to file
7 with the Administrator required disclosures relating to proxy solicitation.

8 5. The suspended late fee in Consent Order 16-97-S is now due pursuant to the terms
9 of that order.

10 6. Respondent is subject to a civil penalty pursuant to AS 45.55.920(c) because he
11 violated AS 45.55.139, 3 AAC 08.315(a), and 3 AAC 08.355.

12 **III. ORDER and NOTICE**

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

15 1. Respondent to CEASE AND DESIST from distributing proxy solicitations for
16 the SNC annual meeting scheduled for June 3, 2017.

17 2. Respondent to file with the Administrator, for the next three years, the following:
18 proxies, consents or authorizations, proxy statements, or other materials relating to proxy
19 solicitations required under AS 45.55.139 for examination and review 10 working days
20 before a distribution to shareholders.

21 3. Respondent to pay an additional civil penalty in the amount of one thousand five
22 hundred dollars (\$1,500) for a total amount due of three thousand dollars (\$3,000). This amount
23 is immediately due to the Administrator.

24 Pursuant to AS 45.55.920(d), if Respondent desires a hearing, he must file his

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550 WEST SEVENTH AVENUE, SUITE 1850
ANCHORAGE, ALASKA 99501
(907)269-8140

1 request for a hearing within 15 days after receipt of this Order. The request for a hearing must
2 be in writing, must be directed to the Administrator, and must state the grounds for the request
3 to set aside or modify the Order. This Order takes effect immediately, remains in effect until 10
4 days after the hearing is held, and becomes final if a hearing is not requested within 15 days
5 after the receipt of this notice.

6 This Order is a publicly disclosable document.

7 **IT IS SO ORDERED.**

8 Chris Hladick, Commissioner
9 Department of Commerce, Community and
10 Economic Development

11 DATED: April 13, 2017

12 /s/ Kevin Anselm
13 BY: Kevin Anselm, Director
14 Division of Banking and Securities
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