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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission

DOCKETED

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DOCKETED BY nr

In the matter of

THOMAS ANTHONY LABRY, doing
business as IRON HORSE PETROLEUM,
INC., a suspended Oklahoma corporation,
and JANE DOE LABRY, husband and wife,

Respondent.

DOCKET NO. S-20691A-09-0365

DECISION NO. 71335

**ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION ORDER FOR
ADMINISTRATIVE PENALTIES AGAINST:**

I.

FINDINGS OF FACT

1. On July 22, 2009, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and for Other Affirmative Action against respondent THOMAS ANTHONY LABRY ("LABRY"), doing business as IRON HORSE PETROLEUM, INC., a suspended Oklahoma corporation ("IRON HORSE PETROLEUM").

2. On August 6, 2009, the Division filed a First Amended Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and for Other Affirmative Action ("First Amended Notice") against LABRY.

3. On August 27, 2009, the Division served the First Amended Notice on LABRY, doing business as IRON HORSE PETROLEUM, by mailing a copy of it to LABRY's business

1 address at 1048 Irvine Ave., Suite 193, Newport Beach, California 92660 via Federal Express (the
2 "Business Address").

3 4. LABRY has not filed a request for hearing, or an answer to the First Amended
4 Notice within the required time limits.

5 5. At all times relevant, LABRY was a single man who resided in Newport Beach,
6 California. At all times relevant, LABRY conducted business in his individual capacity, and as
7 IRON HORSE PETROLEUM at and/or from the Business Address. LABRY has not been
8 registered as a securities salesman or dealer by the Commission.

9 6. IRON HORSE PETROLEUM is a suspended Oklahoma corporation that at all times
10 relevant maintained a principal place of business in Newport Beach, California at and/or from the
11 Business Address. According to the records of the Oklahoma Secretary of State and Tax
12 Commission, IRON HORSE PETROLEUM was formed as an Oklahoma corporation on May 17,
13 1993. At all times relevant, LABRY conducted business through IRON HORSE PETROLEUM as
14 its owner, president and statutory agent until its corporate status was suspended by the Oklahoma
15 Tax Commission on August 4, 2006 for non-payment of its franchise tax under 68 Okl. St. Ann. §
16 1212. IRON HORSE PETROLEUM has not been registered as a securities salesman or dealer by
17 the Commission.

18 7. LABRY and IRON HORSE PETROLEUM may be referred to as
19 "RESPONDENTS."

20 8. From on or about October 10, 2000, to September 17, 2008, RESPONDENTS
21 offered and sold unregistered securities within Arizona in the form of investment contracts and/or
22 fractional undivided interests in oil and gas.

23 9. On or about September 17, 2008, LABRY caused an unsolicited telephone message
24 to be left on the voice mail of an Arizona resident regarding a "great investment opportunity" (the
25 "Solicitation"). Prior to the Solicitation, the potential Arizona investor was unaware of LABRY
26 and IRON HORSE PETROLEUM, and their business operations.

1 10. When the potential Arizona investor returned the Solicitation phone call as
2 instructed, he spoke to a man who represented that the investment pertained to working interests in
3 Oklahoma oil wells that provided "safe" returns of twenty to twenty-five percent per year. The
4 man offered and, in fact, sent to the potential Arizona investor at his home in Arizona solicitation
5 materials regarding oil investments.

6 11. These investment solicitation materials include: (a) a twelve-page, spiral bound,
7 glossy and color brochure titled, "IRON HORSE PETROLEUM" (the "Brochure"); (b) a seven-
8 page IRON HORSE PETROLEUM "Subscription Agreement" regarding investments in the
9 "Walters Field Priddy Sand Unit Development Program" (the "Subscription Agreement"); and (c) a
10 single-page, color document titled "Iron Horse Petroleum Cotton County, Oklahoma Monthly
11 Projections" (the "Monthly Unit Projections").

12 12. The Brochure includes detailed photographs of working oil wells, maps and
13 geographical diagrams, and states that IRON HORSE PETROLEUM, "is an independent energy
14 company engaged in the acquisition, development, exploration, production and marketing of
15 natural gas and crude oil."

16 13. The Brochure states that IRON HORSE PETROLEUM is seeking investors to assist
17 in the development of forty-one oil and support wells sited on the "Walters Field Priddy Sand
18 Unit" ("WFP") project in Cotton County, Oklahoma. The Brochure states that the WFP contains
19 1,800,000 barrels of proven oil reserves, and nine equipped oil wells producing 527 barrels of oil
20 per day.

21 14. The Brochure and Subscription Agreement state that IRON HORSE PETROLEUM
22 is offering 100 WFP Unit Investments costing \$25,000 each, for a total offering of \$2,500,000 (the
23 "WFP Unit Investment(s)").

24 15. The Monthly Unit Projections state that each WFP Unit Investment represents a .75
25 percent working interest in the entire WFP project. The Monthly Unit Projections further state that
26

1 if IRON HORSE PETROLEUM produces, for instance, 1,000 barrels of oil per day via the WFP
2 project, an investor would earn \$13,162 per WFP Unit Investment, per month.

3 16. The Brochure further states that the WFP Unit Investments provide investors with
4 tax benefits, including the fact that: (a) fifty to seventy-five percent of an investment can be
5 "written off" or deducted from a tax liability for "intangible" drilling costs during the first year of
6 the investment; (b) lease, drilling equipment and development costs can be deducted from taxable
7 income as cost depletion or depreciation over a period of five to seven years; and (c) a tax incentive
8 known as the "Small Producer's Exemption" or "Percentage Depletion Allowance" allows
9 approximately fifteen percent of an investor's net investment income to be "TAX FREE."

10 17. The WFP Unit Investment solicitation materials state that IRON HORSE
11 PETROLEUM manages all aspects of the investments, and will use investor money for the: (a)
12 procurement and management of land and oil equipment leases; (b) operation and maintenance of
13 nine existing and producing oil wells, one water supply well and eight water injection wells; (c)
14 repair and "rework" of eighteen existing oil wells for production; (d) construction of five new oil
15 wells at future drilling sites on the WFP; and (e) the storing, transportation, marketing and selling
16 of the WFP project oil to third parties. The Brochure emphasizes that the success of the WFP
17 project and related WFP Unit Investments will primarily depend on IRON HORSE
18 PETROLEUM's superior knowledge and understanding of oil exploration techniques and
19 strategies. The Brochure further states that a WFP Unit Investment is "NOT a partnership," with
20 IRON HORSE PETROLEUM.

21 18. The potential Arizona investor could have purchased WFP Unit Investments by
22 completing and signing the Subscription Agreement, and mailing the Subscription Agreement and
23 investment money to IRON HORSE PETROLEUM at the Business Address. The Business
24 Address is a private post office box in Newport Beach, California rented and controlled by
25 LABRY.
26

1 19. The Brochure and Subscription Agreement disclose that the WFP Unit Investments
2 are not registered with or "approved" by the S.E.C. However, the WFP Unit Investment
3 solicitation materials discussed above fail to further disclose that both LABRY and IRON HORSE
4 PETROLEUM were respondents in previous securities enforcement proceedings filed against them
5 by four other state securities regulatory agencies for improperly offering and/or selling the
6 unregistered WFP Unit Investments while not being registered as securities salesman or dealers, or
7 exempt from registration. For instance:

8 A. On August 25, 2000, the Illinois Securities Department issued an "Order of
9 Prohibition" to IRON HORSE PETROLEUM for its offer and sale to at least two
10 Illinois residents WFP Unit Investments that were neither registered, nor exempt
11 from registration, in violation of the Illinois Securities Law of 1953 (*See, Ill.*
12 *Administrative File No. 000059*) (the "Illinois Enforcement Order"). The Illinois
13 Enforcement Order was entered after a hearing on the merits, and it: (1)
14 "permanently" prohibits IRON HORSE PETROLEUM from offering and selling
15 securities in Illinois; (2) notes that one investor purchased two separate, quarter
16 interest WFP Unit Investments in the fall of 1999 totaling \$12,500; and (3) that
17 these two investment purchases were acknowledged in a letter signed by LABRY as
18 president of IRON HORSE PETROLEUM.

19 B. On September 26, 2000, the Pennsylvania Securities Commission ("PSC") issued a
20 "Summary Order to Cease and Desist" against LABRY and IRON HORSE
21 PETROLEUM for offering to at least one Pennsylvania resident securities in the
22 form of "fractionalized working interests in the Walters Field Priddy Sand Unit
23 Development Program (Units) to drill oil and gas wells in West Cotton County,
24 Oklahoma," that were neither registered, nor exempt from registration, and while
25 not being registered as securities dealers or salesman in violation of the
26 Pennsylvania Securities Act (*See, In re Iron Horse Petroleum, Thomas Labry, et al.,*

1 Administrative Docket No. 0009-11) (the "Pennsylvania Enforcement Order"). The
2 Pennsylvania Enforcement Order further finds that LABRY and IRON HORSE
3 PETROLEUM violated the Pennsylvania Securities Act by filing a statement with
4 the PSC that falsely represented that they would employ only registered securities
5 sales agents to offer and sell the WFP Unit Investments.

6 C. On January 9, 2001, the Division of Securities of the Wisconsin Department of
7 Financial Institutions ("WSD") issued a "Petition for Order" against both LABRY
8 and IRON HORSE PETROLEUM for offering a Wisconsin resident securities in
9 the form of "certificates of interest or participation in oil, gas or mineral
10 lease...units in 'The Walter Field-Priddy Sand Unit Development Program,'" that
11 were neither registered, nor exempt from registration, and while not being registered
12 as securities salesman or dealers in violation of the Wisconsin Uniform Securities
13 Law. (*See, In re Iron Horse Petroleum, Inc., Thomas A. Labry, et al.*, File No. S-
14 00073(EX)). On January 9, 2001, the WSD issued Summary Orders of Prohibition
15 against both LABRY and IRON HORSE PETROLEUM preventing them from
16 further offering or selling the unregistered WFP Unit Investments while not
17 registered as securities salesman or dealers or exempt from registration (the
18 "Wisconsin Enforcement Orders").

19 D. On April 17, 2003, the Alabama Securities Commission issued a "Cease and Desist
20 Order" against LABRY and IRON HORSE PETROLEUM for their conduct in
21 offering and/or selling to Alabama residents securities in the form of "investment
22 contracts involving interests in the Walters Field Priddy Sand Unit Development
23 Program [sic] a gas and oil drilling program of IRON HORSE," that were neither
24 registered, nor exempt from registration, in violation of the Alabama Securities Act.
25 (*See, In re Labry, Iron Horse Petroleum, Inc., et al.*, Administrative Docket No.
26 CD-2003-0009) (the "Alabama Enforcement Order").

1 20. The WFP Unit Investment Brochure discloses that the investments “may involve a
2 high degree of risk.” However, the WFP Unit Investment solicitation materials discussed above do
3 not further disclose that LABRY and IRON HORSE PETROLEUM were defendants in a federal
4 civil fraud lawsuit filed by Colorado investors who purchased WFP Unit Investments from
5 LABRY and IRON HORSE PETROLEUM. (*See, Burba v. Thomas A. Labry and Iron Horse*
6 *Petroleum, Inc.*, 8:04-CV-01098-JVS-VBK (U.S. District Court, Central District of California).

7 21. The Colorado WFP Unit Investment investors asserted claims against LABRY and
8 IRON HORSE PETROLEUM for, among other things, intentional fraud, conversion and a claim
9 under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1961, et seq.) for: (a)
10 misrepresenting that IRON HORSE PETROLEUM was an active Oklahoma corporation in good
11 standing and actively engaged and conducting oil business in California and Oklahoma; (b) failing
12 to disclose the existence of the securities enforcement orders discussed above; (c) misrepresenting
13 that IRON HORSE PETROLEUM was financially sound and adequately capitalized and
14 maintained adequate levels corporate control and due diligence; and (d) misrepresenting that IRON
15 HORSE PETROLEUM would use investor money solely for oil exploration and production
16 operations.

17 22. Although both LABRY and IRON HORSE PETROLEUM defended the federal
18 civil fraud lawsuit, on April 5, 2006, the Colorado investors obtained a final Order and Judgment
19 against both LABRY and IRON HORSE PETROLEUM on all of their claims totaling \$647,776.30
20 (the “Civil Fraud Judgment”). To date, no money has been collected by the Colorado WFP Unit
21 Investment investors on their Civil Fraud Judgment.

22 23. On October 4, 2000, LABRY and IRON HORSE PETROLEUM sold four WFP
23 Unit Investments to an Arizona resident totaling \$100,000 (the “Arizona Investments”). The
24 money to purchase the Arizona Investments derived from a personal injury settlement received by
25 the Arizona investor after becoming permanently disabled in an auto accident caused by a drunk
26 driver. The Arizona Investments were purchased by the Arizona investor after reviewing and

1 responding to the solicitation materials described above. The Arizona Investments are documented
2 in numerous letters and documents signed by LABRY. LABRY also acknowledged the Arizona
3 Investments during numerous telephone conversations with the Arizona investor's representative.
4 To date, the Arizona investor has received a return of only \$518.46 from the Arizona Investments.

5 24. Prior to their sale of the Arizona Investments, LABRY and IRON HORSE
6 PETROLEUM failed to disclose to the Arizona investor the existence of the Illinois and
7 Pennsylvania Enforcement Orders discussed above.

8 II.

9 CONCLUSIONS OF LAW

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

12 2. RESPONDENTS were served with the First Amended Notice pursuant to R14-4-
13 303(D) and A.R.S. § 44-1972.

14 3. RESPONDENTS failed to request a hearing, or file an answer within the required
15 time limits pursuant to A.R.S. § 44-1972, R14-4-306 R14-4-305.

16 4. RESPONDENTS offered or sold securities within or from Arizona, within the
17 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

18 5. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that
19 were neither registered nor exempt from registration.

20 6. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while
21 neither registered as dealers or salesmen nor exempt from registration.

22 7. RESPONDENTS violated A.R.S. § 44-1991 by (a) employing a device, scheme, or
23 artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and (c)
24 engaging in transactions, practices, or courses of business that operate or would operate as a fraud
25 or deceit. RESPONDENTS' conduct included:
26

1 A. Disclosing to the potential and actual Arizona investors that the WFP Unit
2 Investments are not registered with, or approved by the S.E.C., but failing to further
3 disclose the fact that both LABRY and IRON HORSE PETROLEUM are subject to
4 the Illinois, Pennsylvania, Wisconsin and Alabama Enforcement Orders discussed
5 above for their improper conduct in selling the unregistered WFP Unit Investments
6 while not being registered as securities salesman or dealers or exempt from
7 registration; and

8 B. Disclosing to the potential Arizona investor that the WFP Unit Investments involve
9 risk, while further failing to disclose that both LABRY and IRON HORSE
10 PETROLEUM were defendants in a federal civil fraud case filed against them for
11 selling the WFP Unit Investments that resulted in an the unsatisfied Civil Fraud
12 Judgment against them totaling \$647,776.30.

13 ~~8. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to~~
14 A.R.S. § 44-2032.

15 9. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S.
16 § 44-2032.

17 10. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. §
18 44-2036.

19 **III.**

20 **ORDER**

21 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the
22 Commission finds that the following relief is appropriate, in the public interest, and necessary for
23 the protection of investors:

24 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS and any of their
25 agents, employees, successors and assigns, permanently cease and desist from violating the
26 Securities Act.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall
2 pay restitution to the Commission in the amount of \$99,481.54. Payment shall be made in full on
3 the date of this Order. Any amount outstanding shall accrue interest at the rate of 10 percent per
4 annum from the date of this Order until paid in full. Payment shall be made to the "State of
5 Arizona" to be placed in an interest-bearing account controlled by the Commission.

6 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
7 records of the Commission. Any restitution funds that the Commission cannot disburse because an
8 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
9 investor because the investor is deceased and the Commission cannot reasonably identify and
10 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
11 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
12 Commission. Any funds that the Commission determines it is unable to or cannot feasibly
13 disburse shall be transferred to the general fund of the state of Arizona.

14 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall
15 pay an administrative penalty in the amount of \$50,000. Payment shall be made to the "State of
16 Arizona." Any amount outstanding shall accrue interest at the rate of 10 percent per annum from
17 the date of this Order until paid in full. The payment obligations for these administrative penalties
18 shall be subordinate to any restitution obligations ordered herein and shall become immediately
19 due and payable only after restitution payments have been paid in full or upon the default of
20 RESPONDENTS with respect to the restitution obligations of RESPONDENTS.

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

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

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

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

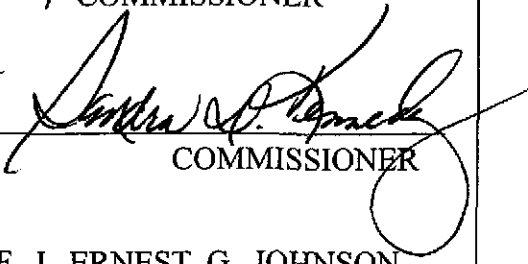
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6
7 
8 CHAIRMAN


9 COMMISSIONER

10 
11 COMMISSIONER


12 COMMISSIONER


13 COMMISSIONER

14 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
15 Executive Director of the Arizona Corporation
16 Commission, have hereunto set my hand and caused the
17 official seal of the Commission to be affixed at the
18 Capitol, in the City of Phoenix, this 13th day of
19 November, 2009.

20 
21 ERNEST G. JOHNSON
22 EXECUTIVE DIRECTOR

23 DISSENT

24 DISSENT

25 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
26 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

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SERVICE LIST FOR: In re THOMAS ANTHONY LABRY, doing business as IRON HORSE
PETROLEUM, INC., a suspended Oklahoma corporation,
Docket No. S-20691A-09-0365

Thomas Anthony Labry
1048 Irvine Ave., Suite 193
Newport Beach, California 92660