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COMMISSIONER

MARC SPITZER
COMMISSIONER

OPEN MEETING ITEM 1/23/03 ORIGINAL



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EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Chairman William A. Mundell Arizona Corporation Commission
Commissioner Jim Irvin
Commissioner Marc Spitzer
Commissioner Jeff Hatch-Miller
Commissioner Mike Gleason

DOCKETED

JAN 09 2003

FROM: Mark Sendrow *MS*
Director of Securities

DOCKETED BY *CAR*

AZ CORP COMMISSION
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DATE: January 8, 2003

RE: Proposed Order Re: Donald Ramey, Docket No. S-03418A-01-0000 (Ronald Lee Keel, et al.)

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order To Cease And Desist, Order Of Restitution, Order For Administrative Penalties And Consent To Same ("Order") for Respondent Donald Ramey ("Ramey"). Pursuant to this Order, Ramey shall permanently cease and desist from violating the Securities Act, pay \$5,000 initially towards restitution of \$136,439 with monthly restitution payments of \$1,500 thereafter. Should Ramey ever sell all or part of the pest control business he owns, or any asset(s) of his business, he will be required under the terms of this Order to pay at least part of the net proceeds from the sale towards restitution. If Ramey transfers, other than by sale, or gifts any business asset or ownership interest in his company he will be obligated by this Order to pay at least one-half of the restitution balance owing. Ramey shall also pay an administrative penalty of \$7,500 by monthly payments of \$1,500 beginning after restitution is paid in full.

Ramey was a vice-president, director and secretary of Meracana Mining Corporation ("Meracana") since its incorporation in Arizona in April 1989 until his resignation in May 2002. Meracana raised over \$589,000 from investors by issuing unregistered stock and promissory notes from about May 1992 to April 1999. With this money, Meracana was to mine for gold on exploitation concessions in Costa Rica that were either owned or leased by the company. To date, no gold has been mined by Meracana in Costa Rica. Although a project report was delivered to at least most of the investors, the project report contained material misstatements and omissions.

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During the investigation, the Division discovered that a substantial portion of the capital raised by Meracana came from close family members of Respondent Ronald Keel such as his now deceased father, and from former officers/directors of Meracana. These persons, along with their spouses, were not included in the restitution amount to be paid per the proposed Order.

The Division recommends approval of the attached proposed Order.

Originator: Tony Bingham

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 WILLIAM A. MUNDELL, Chairman
4 JIM IRVIN
5 MARC SPITZER
6 JEFF HATCH-MILLER
7 MIKE GLEASON

8 In the matter of

9 Ronald Lee Keel
10 1849 Viola Drive
11 Sierra Vista, Arizona 85635

12 Donald Ramey
13 211 N. 4th Street
14 Sierra Vista, Arizona 85636

15 Meracana Mining Corporation
16 1849 Viola Drive
17 Sierra Vista, Arizona 85635,

18 Respondents.

DOCKET NO. S-03418A-01-0000

DECISION NO. _____

**ORDER TO CEASE AND DESIST, ORDER
OF RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME
BY: DONALD RAMEY**

19 Respondent Donald Ramey ("RAMEY") elects to permanently waive any right to a hearing
20 and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*
21 ("Securities Act") with respect to this Order To Cease And Desist, Order Of Restitution, Order For
22 Administrative Penalties And Consent To Same ("Order"). RAMEY admits the jurisdiction of the
23 Arizona Corporation Commission ("Commission"); admits, only for purposes of this proceeding
24 and any other administrative proceeding before the Commission or any other agency of the state of
25 Arizona, the Findings of Fact and Conclusions of Law contained in this Order; and consents to the
26 entry of this Order by the Commission.

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I.

FINDINGS OF FACT

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3 1. RAMEY'S last known address is 211 N. 4th Street, Sierra Vista, Arizona 85636.

4 2. Respondent Meracana Mining Corporation ("MERACANA") was incorporated in
5 Arizona in April 1989.

6 3. Until his resignation on May 3, 2002, RAMEY was a vice-president, director and the
7 secretary of MERACANA since its incorporation. RAMEY attended all directors' meetings and
8 approved the minutes of the meetings. RAMEY signed as secretary of MERACANA all stock
9 certificates issued by the company.

10 4. RAMEY is the second largest shareholder in MERACANA. He currently owns
11 approximately twenty-four percent of the outstanding shares.

12 5. Respondent Ronald Lee Keel ("KEEL") has been the president, director and treasurer
13 of MERACANA since its incorporation. KEEL is the largest shareholder in MERACANA. He
14 currently owns approximately fifty-percent of the outstanding shares. As directors, KEEL and
15 RAMEY informally met one to two times per week to discuss operational, financial and other
16 business matters pertaining to MERACANA. RAMEY, KEEL and MERACANA may be
17 collectively referred to as "RESPONDENTS."

18 6. From approximately May 1992 to April 1999, RESPONDENTS, through KEEL,
19 offered for sale, sold, participated in and induced the sale of stock issued by MERACANA to about
20 twenty-two investors for a total of approximately \$397,948. Many of these investors were friends or
21 relatives of KEEL. Five of these investors are former or current officers/directors of MERACANA
22 or their spouses.

23 7. From approximately September 1993 to January 1998, RESPONDENTS, through
24 KEEL, offered for sale, sold, participated in and induced the sale of promissory notes issued by
25 MERACANA to about nine investors for a total of approximately \$191,157. Many of these investors

26 ...

1 were friends or relatives of KEEL. One of these investors was a former officer/director of
2 MERACANA.

3 8. In approximately October 1993, MERACANA'S wholly owned Costa Rican
4 subsidiary purchased three exploitation concessions and leased one other exploitation concession in
5 Costa Rica. These exploitation concessions gave MERACANA the right to mine for gold and other
6 minerals on the properties covered by the concessions. The total purchase price paid for the three
7 concessions was approximately \$414,000. It is not known what the cost of the leased concession
8 was.

9 9. Currently, MERACANA owns only one of the original three exploitation concessions
10 purchased and does not hold a lease on any exploitation concession in Costa Rica. The concession
11 that MERACANA still owns is referred to as the "Aguabuena." The Aguabuena was the most
12 expensive concession MERACANA purchased.

13 10. MERACANA has never started mining operations in Costa Rica on the Aguabuena,
14 or on any exploitation concession it has owned or leased in the past. Likewise, to date, no gold has
15 been mined by MERACANA in Costa Rica.

16 11. Beginning in approximately 1993, RESPONDENTS attempted to raise at least
17 \$600,000, by issuing stock and promissory notes, to mine for gold on the exploitation concessions it
18 owned and leased in Costa Rica. RESPONDENTS, through KEEL, drafted a project report that was
19 distributed to most if not all of the investors in MERACANA. According to the project report, once
20 funding was received, mining was to begin on the Aguabuena concession and then sampling,
21 development and finally production would start on the other concessions. The project report included
22 the projected expenses and profits for mining some of the concessions and showed how mining
23 would proceed in phases with each phase being more profitable. The last phase of mining on the
24 Aguabuena concession showed a projected net profit of over \$24,000,000.

25 12. The project plan distributed to investors included material misstatements and
26 omissions. These material misstatements and omissions were not rectified with investors before they

1 invested. The project report claimed that the Costa Rican Department of Geology and Mines had
 2 certified proven reserves of 7,500 kilograms of gold on the Aguabuena concession. The Costa Rican
 3 Department of Geology and Mines never certified proven reserves of gold on the Aguabuena. The
 4 Costa Rican Department of Geology and Mines only accepted the estimated reserves of gold on the
 5 Aguabuena concession reported to it by a geologist hired by RESPONDENTS. No financial
 6 statements, i.e., balance sheet and income statement, were disclosed in the project report or provided
 7 to investors. The cost to purchase the three exploitation mining concessions in Costa Rica and the
 8 cost of leasing a mining exploitation concession in Costa Rica were not disclosed in the project report
 9 or provided to investors. No disclosure of the risks of gold mining, particularly in Costa Rica, was
 10 ever made to investors.

11 13. In addition, no disclosure was made to investors that in October 1995, KEEL signed a
 12 loan agreement jointly with his spouse and on behalf of MERACANA by which he could take cash
 13 advances from MERACANA funds. The cash advances were treated as loans by the corporation to
 14 KEEL and his wife. The cash advances bore interest at the rate of 8.5% and were to be repaid from
 15 future dividends by MERACANA. MERACANA has never paid a dividend. From approximately
 16 October 1995 to the present, KEEL received cash advances of at least \$50,000 from MERACANA in
 17 accordance with this agreement. KEEL has not repaid any of these cash advances.

18 II.

19 CONCLUSIONS OF LAW

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

22 2. RAMEY offered or sold securities within or from Arizona, within the meaning of
 23 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

24 3. RAMEY violated A.R.S. § 44-1841 by offering or selling securities that were neither
 25 registered nor exempt from registration.

26 ...

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

3 5. RAMEY violated A.R.S. § 44-1991 by (a) making untrue statements or misleading
4 omissions of material facts, and (b) engaging in transactions, practices or courses of business
5 which operate or would operate as a fraud or deceit upon offerees and investors. This conduct
6 includes but is not limited to the following:

7 a. Misrepresented to investors that the Costa Rican Department of Geology and
8 Mines had certified proven reserves of 7,500 kilograms of gold on the Aguabuena concession
9 when the Costa Rican Department of Geology and Mines never certified proven reserves on this
10 concession but only accepted the reported reserves of gold on the concession.

11 b. Failed to disclose to investors financial statements, i.e., balance sheet and
12 income statement. Since financial statements were not disclosed, investors could not ascertain the
13 financial condition of MERACANA.

14 c. Failed to disclose to investors the cost to purchase the three exploitation mining
15 concessions in Costa Rica and the cost of leasing a mining exploitation in Costa Rica.

16 d. Failed to disclose to investors the risk of gold mining, particularly in Costa
17 Rica.

18 e. Failed to disclose to investors that KEEL was taking cash advances from
19 MERACANA'S funds, the sum of the cash advances which increased to at least \$50,000, that the
20 cash advances were to be repaid from future dividends by MERACANA and that none of the cash
21 advances had been repaid by KEEL.

22 6. RAMEY, as an officer, director and major shareholder of MERACANA, directly or
23 indirectly controlled MERACANA within the meaning of A.R.S. § 44-1999(B). Therefore,
24 RAMEY is jointly and severally liable with and to the same extent as MERACANA for its
25 violations of A.R.S. § 44-1991.

26 ...

1 7. RAMEY, as an officer, director and major shareholder of MERACANA, made,
2 participated in and induced the unlawful sale of securities within the meaning of A.R.S. § 44-
3 2003(A). Therefore, RAMEY is jointly and severally liable with KEEL and MERACANA for the
4 above violations of A.R.S. § 44-1841, A.R.S. § 44-1842 and A.R.S. § 44-1991.

5 8. RAMEY'S conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
6 2032.

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

8 10. RAMEY'S conduct is grounds for administrative penalties under A.R.S.
9 § 44-2036.

10 **III.**

11 **ORDER**

12 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and RAMEY'S
13 consent to the entry of this Order, the Commission finds that the following relief is appropriate, in
14 the public interest, and necessary for the protection of investors:

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

18 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RAMEY shall, jointly
19 and severally with any co-respondent so ordered pay restitution to investors shown on the records
20 of the Commission, excluding any present or former officers/directors of MERACANA and their
21 spouses along with any individuals related to RESPONDENTS, in the amount of \$136,439 plus
22 interest at the rate of 10% per annum from the date of this Order until paid in full. Payment shall
23 be made in installments as follows: \$5,000 on the date of this Order; \$1,500 per month on or
24 before the 25th day of each month beginning on February 25, 2003. Upon the sale of RAMEY'S
25 entire business, Cochise Termite & Pest Control Company ("CTPCC"), RAMEY shall pay within
26 ten (10) days after receipt of proceeds from the sale not less than one-half of the restitution balance

1 owing pursuant to this Order as of the date of the sale. Upon the sale of only part of CTPCC'S
2 business or upon the sale of any asset(s) of that business, then RAMEY shall pay within ten (10)
3 days after receipt of proceeds from each sale, not less than one-half of the net sales proceeds or not
4 less than one-half of the restitution balance owing pursuant to this Order as of the date of the sale,
5 whichever amount is less. If RAMEY conveys, transfers, assigns or gifts any asset(s) of CTPCC
6 or ownership interest in CTPCC, other than by sale, then he shall pay within ten (10) days after the
7 conveyance, transfer, assignment or gift, not less than one-half of the restitution balance owing
8 pursuant to this Order as of the date of the conveyance, transfer, assignment or gift. If the
9 conveyance, transfer, assignment or gift by RAMEY of any asset(s) of CTPCC or ownership
10 interest in CTPCC is by bequest, devise or intestate succession, then RAMEY'S estate shall be
11 liable for the restitution balance owing pursuant to this Order. RAMEY shall report in writing to
12 the Securities Division within ten days after the end of each calendar quarter, the next ending
13 March 31, 2003, whether or not all or part of CTPCC was sold and whether or not any asset(s) of
14 CTPCC was sold during the preceding quarter along with the sales price and the net proceeds
15 received from each sale. RAMEY shall also be under the same obligations as in the previous
16 sentence to report every conveyance, transfer, assignment or gift of any asset(s) of CTPCC or
17 ownership interest in CTPCC with the amount of any consideration he received and the name of
18 the person or entity to which every asset(s) or ownership interest was conveyed, transferred,
19 assigned or gifted. Payments shall be made by cashier's check or money order payable to the
20 "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the
21 Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata
22 basis to investors. Any funds that the Attorney General is unable to disburse shall revert to the
23 state of Arizona.

24 IT IS FURTHER ORDERED, that if RAMEY does not comply with this order of
25 restitution, any outstanding balance shall be in default and shall be immediately due and payable.

26 ...

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RAMEY shall pay an
2 administrative penalty in the amount of \$7,500. Payment shall be made by cashier's check or
3 money order payable to the "State of Arizona" in installments as follows: \$1,500 per month on or
4 before the 25th day of each month beginning the first month after restitution is paid in full. Any
5 amount outstanding shall accrue interest at the rate of 10% per annum from the date of this Order
6 until paid in full. The payment obligation for this administrative penalty shall be subordinate to
7 any restitution obligation ordered herein and shall become immediately due and payable only after
8 restitution has been paid in full, or if RAMEY has defaulted prior to fulfilling RAMEY'S
9 restitution obligation. For the purposes of this Order, a bankruptcy filing by RAMEY shall be an
10 act of default on RAMEY'S restitution obligation.

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

12 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

13
14 CHAIRMAN

COMMISSIONER

COMMISSIONER

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
16 Executive Secretary of the Arizona Corporation
17 Commission, have hereunto set my hand and caused the
18 official seal of the Commission to be affixed at the
19 Capitol, in the City of Phoenix, this _____ day of
_____, 2003.

20 _____
BRIAN C. McNEIL
Executive Secretary

21
22 _____
DISSENT

23
24 This document is available in alternative formats by contacting Shelly M. Hood, Executive
25 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
shood@cc.state.az.us.

26 (tbb)

CONSENT TO ENTRY OF ORDER

1
2 1. RAMEY, an individual, admits the jurisdiction of the Commission over the subject
3 matter of this proceeding. RAMEY acknowledges that he has been fully advised of his right to a
4 hearing to present evidence and call witnesses and RAMEY knowingly and voluntarily waives any
5 and all rights to a hearing before the Commission and all other rights otherwise available under
6 Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code. RAMEY
7 acknowledges that this Order To Cease and Desist, Order Of Restitution, Order For Administrative
8 Penalties And Consent To Same ("Order") constitutes a valid final order of the Commission.

9 2. RAMEY knowingly and voluntarily waives any right under Article 12 of the Securities
10 Act to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the
11 entry of this Order.

12 3. RAMEY acknowledges and agrees that this Order is entered into freely and voluntarily
13 and that no promise was made or coercion used to induce such entry.

14 4. RAMEY acknowledges that he has been represented by counsel in this matter, he has
15 reviewed this Order with his attorney and understands all terms it contains.

16 5. RAMEY admits, only for purposes of this proceeding and any other administrative
17 proceeding before the Commission or any other agency of the state of Arizona, the Findings of
18 Fact and Conclusions of Law contained in this Order.

19 6. By consenting to the entry of this Order, RAMEY agrees not to take any action or to
20 make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
21 Fact or Conclusion of Law in this Order or creating the impression that this Order is without
22 factual basis. RAMEY will undertake steps necessary to assure that all of his agents and
23 employees understand and comply with this agreement.

24 7. While this Order settles this administrative matter between RAMEY and the
25 Commission, RAMEY understands that this Order does not preclude the Commission from
26 ...

1 instituting other administrative proceedings based on violations that are not addressed by this
2 Order.

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

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

9 10. RAMEY agrees that he will not apply to the state of Arizona for registration as a
10 securities dealer or salesman or for licensure as an investment adviser or investment adviser
11 representative at any time in the future.

12 11. RAMEY agrees that he will not exercise any control over any entity that offers or sells
13 securities, within or from Arizona, unless the securities and the salespersons are registered.

14 12. RAMEY agrees that he will not exercise any control over any entity that provides
15 investment advisory services, within or from Arizona.

16 13. RAMEY agrees that until restitution and penalties are paid in full, RAMEY will notify
17 the Director of the Securities Division within 30 days of any change in home address or any
18 change in RAMEY'S ability to pay amounts due under this Order.

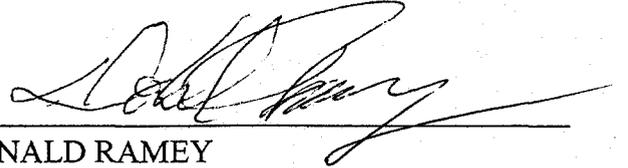
19 14. RAMEY understands that default shall render him liable to the Commission for its
20 costs of collection and interest at the maximum legal rate.

21 15. RAMEY agrees that he will continue to cooperate with the Securities Division
22 including, but not limited to, providing complete and accurate testimony at any hearing in this
23 matter and cooperating with the state of Arizona in any related investigation or any other matters
24 arising from the activities described in this Order.

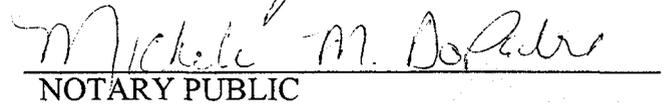
25 ...

26 ...

1 16. RAMEY consents to the entry of this Order and agrees to be fully bound by its terms
2 and conditions. If RAMEY breaches any provision of this Order, the Commission may vacate this
3 Order and restore this case to its active docket.

4 
5 _____
6 DONALD RAMEY

7 SUBSCRIBED AND SWORN TO BEFORE me this 17th day of January, 2003.

8 
9 _____
10 NOTARY PUBLIC

11 My Commission Expires:

