

CARL J. KUNASEK
CHAIRMAN

Arizona Corporation Commission
JIM IRVIN
COMMISSIONER

WILLIAM A. MUNDELL
COMMISSIONER

SEP 22 2000



0000117473

FAX: (602) 594-7470
E-MAIL: accsec@ccsd.cc.state.az.us

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ARIZONA CORPORATION COM

MEMORANDUM

TO: Chairman Carl J. Kunasek
Commissioner Jim Irvin
Commissioner William A. Mundell

FROM: Mark Sendrow [Signature]
Director of Securities

DATE: September 18, 2000

RE: Calumet Slag, Inc. et al. (S-03361A-00-0000); Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same re: Matthew E. Hunzinger

CC: Brian C. McNeil, Executive Secretary

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Attached is a proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and Consent to Same ("Order") against respondent Matthew E. Hunzinger ("Hunzinger") in the matter of Calumet Slag, Inc., et al. The Order requires Hunzinger to cease and desist from further violations of the Arizona Securities Act, pay restitution in the amount of \$37,500, and pay a subordinated administrative penalty of \$10,000.

Commencing in approximately 1994, Hunzinger participated with other named respondents in raising investment funds for the Arizona company Calumet Slag, Inc. ("Calumet"). Calumet was ostensibly formed to extract precious metals from a slag pile located in the Black Hills of South Dakota, and its principals soon began raising funds through the sale of Calumet stock to a number of investors. Neither Hunzinger nor the Calumet securities were ever registered with the Securities Division.

The sale of Calumet stock by the officers and directors of Calumet was fueled by references to a number of assay reports allegedly taken from the South Dakota slag pile. Other than the assay reports that forecast huge returns, little other information was provided to potential investors. For instance, written disclosures about the company, financial information, and evaluations as to risk were routinely withheld from investors. By 1999, at least \$580,000 in investments had been raised for Calumet from approximately 180 investors. Despite this influx of capital, the slag pile remains unprocessed and Calumet has no other material assets.

Hunzinger resigned from his secretary/treasurer position with Calumet in 1996. By the time of his resignation, Hunzinger had participated in several Calumet sales presentations, but had generally maintained a passive role in any promotional efforts. Hunzinger received only a minor amount of the total investor funds raised through the sale of Calumet stock. Records and subsequent disclosures show Hunzinger personally gained approximately \$37,500 through these sales.

The Order finds that Hunzinger offered or sold unregistered securities, offered or sold securities without the requisite registration, and failed to correct or otherwise dispute material misrepresentations made to investors by other named respondents in this action. Additionally, the Order finds that Hunzinger was responsible for material omissions by failing to disclose pertinent information to investors concerning the status of Calumet Slag and the use of investment funds for the project.

The Order requires Hunzinger to cease and desist from any further violations of the Securities Act, reimburse investors on account of his involvement with Calumet by paying restitution in the amount of \$37,500, and to pay administrative penalties in the amount of \$10,000 for his violations of the Arizona Securities Act. The administrative penalty is subject to a reduction to \$5,000 once full restitution has been made.

The Division recommends this Order on the grounds that it requires Hunzinger to reimburse investors for all funds Hunzinger retained for his involvement in the Calumet operation, and it assesses an additional administrative penalty to deter such future conduct. This Order also takes into consideration the passive nature of Hunzinger's role in this activity and the limited involvement of Hunzinger in the offer and sale of Calumet stock.

Originator: Jamie Palfai

AG Assigned: Jennifer Boucek

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 **CARL J. KUNASEK**
Chairman
4 **JIM IRVIN**
Commissioner
5 **WILLIAM A. MUNDELL**
Commissioner
6

7 In the matter of)

8 **CALUMET SLAG, INC.,**)
an Arizona corporation)
13433 N. 16th Avenue)
9 Phoenix, Arizona 85029)

10 **GARETH N. PATTON**)
23769 Blue Lead Mountain Road)
11 Hill City, South Dakota 57745)

12 **JEFFERY G. CRAWFORD**)
1822 N. Barkley)
13 Mesa, Arizona 85203)

14 **MATTHEW E. HUNZINGER**)
13031 N. 59th Drive)
15 Glendale, Arizona 85304,)

16 Respondents.)
17)
18)

DOCKET NO. S-03361A-00-0000

DECISION NO. _____

**ORDER TO CEASE AND DESIST,
ORDER FOR RESTITUTION,
ORDER FOR ADMINISTRATIVE
PENALTIES AND CONSENT TO
SAME BY RESPONDENT
HUNZINGER**

19 **I.**

20 **INTRODUCTION**

21 Respondent **MATTHEW E. HUNZINGER** ("HUNZINGER") elects to permanently waive
22 his right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona,
23 A.R.S. §44-1801, *et seq.* (the "Securities Act") with respect to this Order to Cease and Desist,
24 Order for Restitution, Order for Administrative Penalties and Consent to Same (the "Order").
25 **HUNZINGER** admits the jurisdiction of the Arizona Corporation Commission (the
26 "Commission"); neither admits nor denies the Findings of Fact and Conclusions of Law
contained in the Order; and consents to the entry of this Order by the Commission.

II.

FINDINGS OF FACT

1
2
3 1. HUNZINGER, whose last known address is 13031 N. 59th Drive, Glendale,
4 Arizona, was an agent, officer and director of Calumet Slag, Inc. ("Calumet") at different
5 periods from 1993 until November of 1996. During this same time period, Gareth N. Patton
6 ("Patton") served as Calumet's president and Jeffery G. Crawford ("Crawford") served as a
7 Calumet director. Following HUNZINGER'S resignation from Calumet, Crawford also served
8 in an officer capacity.

9 2. Patton and Crawford, the two above-referenced Calumet representatives outside of
10 HUNZINGER, will collectively be referred to as "Calumet Representatives."

11 3. Calumet was first incorporated in Arizona in 1992. The following year, Patton
12 entered into an agreement with two individuals from J & D Asphalt of South Dakota to process
13 Calumet's slag pile. A dispute ensued, and the processing agreement broke down. In response,
14 the two individuals sued Calumet for breach of contract, seeking hundreds of thousands of dollars
15 in damages. In conjunction with the filing of this suit, these individuals placed a mechanic's lien
16 on Calumet's slag pile.

17 4. Beginning in 1994, HUNZINGER and the Calumet Representatives collectively
18 began to offer and sell Calumet securities to a range of investors.

19 5. To attract investors, the Calumet Representatives alleged that the company's principal
20 asset, an abandoned slag pile located in the Black Hills of South Dakota, contained high
21 concentrations of valuable ores. In support of this claim, the Calumet Representatives referred to
22 a series of "highly encouraging" assay results purportedly obtained from the slag pile. As a
23 Calumet officer present during these representations, HUNZINGER indirectly affirmed these
24 assertions. By the close of 1999, HUNZINGER and the Calumet Representatives had
25 individually and/or collectively sold over 960,000 shares of Calumet stock to approximately 180
26 investors, and in doing so had raised at least five hundred and eighty thousand dollars (\$580,000).

1 6. During Calumet sales presentations attended by HUNZINGER, HUNZINGER did not
2 disclose to investors that a lawsuit against Calumet was pending, that the officers and directors of
3 Calumet had little or no expertise in the mining/reclamation industry, that Calumet was being
4 assessed rental fees for having its asset situated on Patton's property, or that the officers and
5 directors of Calumet were accruing deferred salaries from the company. HUNZINGER has since
6 agreed to forfeit any claims for deferred salaries from Calumet Slag.

7 7. During these same presentations, HUNZINGER failed to inform investors about the
8 risks to their investments or to provide investors with written information about their Calumet
9 investments.

10 8. In their continuing efforts to promote Calumet to investors, the Calumet
11 Representatives claimed that trial assays had been conducted on samples of the slag pile, and that
12 the assay results had indicated that the slag pile would be worth tens of millions of dollars when
13 finally processed. HUNZINGER indirectly supported these representations through his presence.

14 9. Beginning in 1994, the price of Calumet shares to investors fluctuated from a low of
15 25¢ per share to a high of \$5 per share. In conjunction with these sales, investors were told that
16 their investment funds were being used for, and were essential to, the advancement of the Calumet
17 operation. In spite of these claims, investment funds were used for the personal expenses of
18 HUNZINGER and the Calumet Representatives. Approximately \$37,500 in Calumet investment
19 funds were deposited into HUNZINGER'S personal bank account, which funds were used by
20 HUNZINGER for personal expenses.

21 10. During a shareholder meeting in late 1994, shareholders were told that an Arizona
22 mining company, Cyprus Amax Minerals ("Cyprus"), had expressed an interest in processing
23 Calumet's slag pile, and that the reclamation operation would likely be completed in
24 approximately three months.

25 11. A Cyprus field geologist did evaluate the Calumet slag pile and surrounding areas in
26 November of 1994. Following his examination, the geologist issued a report claiming that the

1 size, value and mineral potential of the slag pile and adjacent tailings dumps did not exist as
2 represented. The geologist specifically noted that the slag pile and dumps did not appear to have
3 any value with respect to their mineral contents. The report added that, according to Patton,
4 Cyprus was only invited to consider processing the three tailing dumps on the property (owned by
5 Patton, HUNZINGER and Patton's aunt), and was not asked to explore or test other areas
6 including Calumet's slag pile.

7 12. On December 4, 1994, Cyprus' Exploration Manager sent Patton a letter concerning
8 the results of his company's evaluation of the three tailings dumps as well as Calumet's slag pile.
9 The Exploration Manager informed Patton that there were no significant values in gold or silver in
10 the dumps or the slag pile, and that the tonnage of the pile only contained approximately 500 tons
11 of material. The Exploration Manager continued that Cyprus had no interest in processing either
12 the dumps or the slag pile.

13 13. HUNZINGER and the Calumet Representatives did not disclose to future investors the
14 evaluations and conclusions made by Cyprus with respect to the slag pile's precious metal content
15 or size, or to Cyprus' lack of interest in pursuing the project.

16 14. During a 1996 sales presentation attended by HUNZINGER, the Calumet
17 Representatives told a prospective investor that recent assay reports on Calumet's slag translated
18 into a return of fifteen million dollars (\$15,000,000) for the gold alone, and that significant
19 additional amounts were recoverable for other precious metal extractions. In response to a
20 prospective investor's inquiries about Calumet's operations and liabilities, the Calumet
21 Representatives continued that, other than one nearly resolved lawsuit, there were no other debts,
22 deferred salaries or expenses that might affect the value of the Calumet investment.
23 HUNZINGER did not refute these statements.

24 15. To date, HUNZINGER and the Calumet Representatives have offered and sold more
25 than 960,000 shares of Calumet stock to approximately 180 investors. Based on bank records,
26 company investor lists, and investor questionnaires, HUNZINGER has individually raised or

1 otherwise deposited into his personal account approximately \$37,500 from such sales. Despite
2 the many Calumet investments, Calumet has received little, if any, of these funds. The only
3 known asset currently in the possession of Calumet remains the unprocessed slag pile located on
4 Patton's property.

5 16. The project remains at a standstill, the exploration permit to move or process the slag
6 has expired, and none of the investors in the Calumet project have received any return on their
7 investments.

8 17. During the entire period referenced above, neither HUNZINGER nor the Calumet
9 securities were registered with the Securities Division.

10 18. HUNZINGER has not been involved with Calumet since 1996, and he has not been
11 involved with any business dealing in the sale of securities since that time. Hunzinger has also
12 cooperated with the Securities Division in the resolution of this matter.

13 III.

14 CONCLUSIONS OF LAW

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

17 2. HUNZINGER, as an agent, officer and director of Calumet, offered or sold securities
18 within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-
19 1801(26).

20 3. HUNZINGER, as an agent, officer and director of Calumet, violated A.R.S. §44-1841
21 by offering and selling securities that were not registered, not the subject of a notice filing, and
22 not exempt from registration.

23 4. HUNZINGER violated A.R.S. §44-1842 by offering or selling securities while not
24 registered as a dealer or salesman and while not having any applicable exemption from such
25 registration.
26

1 for these additional sums. The restitution sum above shall accrue interest at the rate of 10% per
2 annum starting on the entry date of this Order until the restitution amount is paid in full.
3 Payment of the restitution amount shall be made in the form of money orders or cashier's checks
4 and shall be made in accordance with the following schedule:

- 5 a) \$5,000 immediately upon the signing of this Order;
- 6 b) Monthly payments of \$500 beginning on or before the 1st day of the month
7 following the entry of this Order;
- 8 c) A final payment of any unpaid balance will be due and payable on the 1st day of
9 the month following the payments outlined above.

10 Payment is to be made to the State of Arizona to be placed in an interest-bearing account
11 maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall
12 disburse the funds to investors as deemed appropriate. If any disbursement check is not
13 deliverable or does not clear the account within 90 days from the date of issuance, the funds shall
14 be redistributed to the known investors. Hunzinger may reclaim any legitimately owned
15 Calumet shares once the above ordered restitution and accompanying administrative penalties are
16 paid in full.

17 IT IS FURTHER ORDERED, pursuant to A.R.S. §44-2036, that HUNZINGER shall pay
18 administrative penalties in the amount of \$10,000, payable to the State of Arizona. The payment
19 of these administrative penalties shall be subordinated to the payment of restitution as set forth
20 above. Should HUNZINGER default on the above-referenced restitution obligations, the entire
21 administrative penalty shall immediately become due and payable. Once the administrative
22 penalties become due and payable, any outstanding amounts will accrue interest at the rate of
23 10% per annum until paid in full. The administrative penalties shall be reduced to an amount of
24 \$5,000 if the above-referenced restitution obligations are paid in full.

25 ...
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1 IT IS FURTHER ORDERED that should HUNZINGER violate any of the orders
2 prescribed above, the Securities Division may vacate this consent order and reinstate legal
3 proceedings against HUNZINGER.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately
5
6

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION
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9

10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11 IN WITNESS WHEREOF, I, Brian C. McNeil, Executive
12 Secretary of the Arizona Corporation Commission, have
13 hereunto set my hand and caused the official seal of the
14 Commission to be affixed at the Capitol, in the City of
Phoenix, this ___ day of _____, 2000.

15 _____
16 BRIAN C. McNEIL
Executive Secretary

17
18 _____
DISSENT

19
20 (JBP)
21
22

23 This document is available in alternative formats by contacting Cynthia Mercurio-Sandoval,
24 ADA Coordinator, voice phone number 602/542-0838, E-mail csandoval@cc.state.az.us.
25

CONSENT TO ENTRY OF COMMISSION ORDER AND WAIVER OF HEARING

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

12 2. HUNZINGER knowingly and voluntarily waives any right he may have under Article
13 12 of the Securities Act to judicial review by any court by way of suit, appeal or extraordinary
14 relief resulting from the entry of this Order.
15

16 3. HUNZINGER acknowledges and agrees that this Order is entered into freely and
17 voluntarily and that no promise was made or coercion used to induce HUNZINGER into
18 entering into this Consent.

19 4. HUNZINGER acknowledges that he has been represented by counsel in this matter,
20 that HUNZINGER has reviewed this Order with his attorney, and that HUNZINGER
21 understands the terms and conditions contained in the Order.
22

23 5. HUNZINGER neither admits nor denies the Findings of Fact and Conclusions of Law
24 contained in this Order. HUNZINGER nevertheless agrees that he will not challenge the
25 validity of these Findings and Conclusions in any future administrative proceeding before the
26 Commission.

1 6. HUNZINGER acknowledges that it is the Commission's policy not to permit a
2 respondent to settle an action by consenting to an order that imposes a sanction while denying
3 the allegations in the Notice. HUNZINGER further understands that the Commission's
4 acceptance of a settlement in this matter is based upon HUNZINGER'S recognition and
5 compliance with this policy. If HUNZINGER breaches this agreement, the Commission may
6 move to vacate this Order and restore this case to its active docket. However, nothing in this
7 provision affects HUNZINGER'S testimonial obligations or HUNZINGER'S right to take legal
8 positions in other litigation or legal proceedings in which HUNZINGER is not a party.
9

10 7. HUNZINGER consents to the entry of this Order and agrees to be fully bound by its
11 terms and conditions.

12 8. HUNZINGER acknowledges that interest will continue to accrue on the unpaid balance
13 of the funds ordered to be paid, at the current legal rate of interest pursuant to A.R.S. §44-
14 1201(A), until the amount is paid in full.
15

16 9. HUNZINGER acknowledges that any default under the payment terms of this Order
17 will render him liable to the Commission for the balance of the monies owed, for costs of
18 collection, and for interest at the maximum legal rate.

19 10. HUNZINGER acknowledges that this Order resolves only alleged administrative
20 violations of the Securities Act and that nothing contained in this Order purports to resolve
21 any other issues which may exist between HUNZINGER and the state of Arizona. Nothing in
22 this Order shall be construed to restrict or preclude any other agency or officer of the State or
23 its subdivisions from initiating other civil or criminal proceedings against HUNZINGER, now
24 or in the future, that may be related to the matters addressed by this Order. Nothing in this
25
26

1 Order shall be construed to restrict the State's right in a future proceeding to bring an action
2 against HUNZINGER from or related to facts not set forth in this Order.

3 11. HUNZINGER acknowledges that he has been informed and understands that the
4 Commission or its designee, at the Commission's sole and exclusive discretion, may refer this
5 matter, or any information or evidence gathered or derived in connection with this matter, to any
6 person or entity having appropriate administrative, civil or criminal jurisdiction. In connection
7 with the above, HUNZINGER acknowledges that no representations regarding the above have
8 been made to induce him to enter into this Order, and no promise or representation has been
9 made by the Commission or its designee or staff with regard to any potential criminal liability or
10 immunity from any potential criminal liability.
11

12 12. HUNZINGER states that as a part of the settlement reached herein, he will continue
13 to cooperate with the Securities Division ("Division") in connection with this matter
14 including, but not limited to, providing complete and accurate testimony at any hearing in this
15 matter as may be requested by the Division, and cooperating with the Division regarding the
16 allegations in the present matter and any other matters touching thereon.
17

18 13. HUNZINGER agrees to forfeit any right, either in law or in equity, to any deferred
19 salaries purportedly owed to him by Calumet Slag for any work or other services provided to the
20 company.
21

22 14. HUNZINGER acknowledges and agrees that he will abstain from applying for
23 registration as a dealer or securities salesman or from applying for licensure as an investment
24 advisor or investment advisor representative in this state until such time that all restitution and
25 administrative penalties have been paid in full.
26

1 15. HUNZINGER consents to promptly adhere to any Division request for shareholder
2 listings, investor records and/or other company financial documents in his possession pertaining
3 to Calumet Slag.

4
5 Signed: Matthew E. Hunzinger
6 MATTHEW E. HUNZINGER

7
8
9 SUBSCRIBED AND SWORN TO before me, by Matthew E. Hunzinger, this 7th day of
10 September, 2000.

11
12 Catherine G. Gould
13 NOTARY PUBLIC

14 My Commission Expires:



15
16
17 Aug. 12, 2002