

**ORIGINAL NEW APPLICATION**



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**BEFORE THE ARIZONA CORPORATION COMMISSION**

2012 NOV -1 P 2:01

Arizona Corporation Commission

COMMISSIONERS

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

**DOCKETED**

GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

NOV - 7 2012

DOCKETED BY *nr*

In the matter of:

BRIAN PATRICK LANGENBACH and  
SHERI LYNN BARBARA LANGENBACH,  
husband and wife,  
EARTH EXPLORATIONS, LLC, an  
Arizona limited liability company,  
  
Respondents.

DOCKET NO. S-20758A-12-0458

**NOTICE OF OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER TO  
CEASE AND DESIST, FOR RESTITUTION,  
FOR ADMINISTRATIVE PENALTIES, AND  
FOR OTHER AFFIRMATIVE ACTION**

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING  
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents BRIAN PATRICK LANGENBACH and EARTH EXPLORATIONS, LLC, have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

**I.**

**JURISDICTION**

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



1 e) EEL would repay the principal on or before November 10, 2010.

2 11. LANGENBACH signed the PSA on behalf of EEL, as its manager, and Mr. G  
3 signed the PSA on behalf of MTE, as its manager.

4 12. On or about September 1, 2010, EEL and MTE entered into a second profit sharing  
5 agreement that contained the same general terms above but cited the Stanton Road Project placer  
6 mine as the new mining location and an amount of \$125,000 would be loaned from MTE to EEL.

7 13. Mr. G invested approximately \$25,000 with LANGENBACH.

8 14. Other than providing money to Respondents, Mr. G did not have any part in the  
9 day-to-day operations of EEL, had no prior gold mining experience, and was not a member or  
10 manager of EEL.

11 15. Though Mr. G invested approximately \$25,000 with LANGENBACH, he did not  
12 have the funds to invest the remaining agreed to amount.

13 **MTE Offerings**

14 16. On or about March 23, 2010, the Division served LANGENBACH with an  
15 administrative subpoena requesting certain documents regarding an offer and sale of an unrelated  
16 unregistered security. On September 21, 2010, the Division filed a Notice of Opportunity  
17 regarding a proposed order to cease and desist, order for restitution, order for administrative  
18 penalties, and order for other affirmative relief ("Notice") against LANGENBACH in that matter  
19 under Docket No. S-20758A-10-0384.<sup>1</sup>

20 17. After being served an administrative subpoena and the Notice in the above matter,  
21 Respondents used Mr. G and MTE to raise money to fund Respondents' Business operations for  
22 the Mines.

23 18. In order to raise additional funds, LANGENBACH recommended to Mr. G that he  
24 solicit investments in MTE from shareholders of another company that LANGENBACH had  
25 offered or sold prior investments to.

26 <sup>1</sup> On November 8, 2010, Brian Langenbach entered into a consent agreement in this matter in Decision No. 71962.

1           19. To aid Mr. G in raising money from investors, Respondents instructed Mr. G to  
2 create profit sharing agreements that were substantially similar to the PSA entered between EEL  
3 and MTE. As a result, MTE created a profit sharing agreement with provisions that were nearly  
4 identical to the PSA agreements entered into between EEL and MTE (hereafter "MTE PSA").

5           20. At all relevant times, Respondents, directly or through Mr. G and MTE, represented  
6 to offerees and investors within and from Arizona that Respondents were engaged in the gold  
7 mining and mineral processing business (the "Business").

8           21. At all relevant times, Respondents, directly or through Mr. G and MTE, represented  
9 to offerees and investors, both verbally and in writing, that Respondents had acquired interests in  
10 various gold mines including the: (a) "Stanton Road Placer mine" located "in one of the richest  
11 gold reserves in the US," and near the previously profitable "Rich Hill" and "Alvarado" gold mines  
12 outside of Congress, Arizona; and/or (b) the "Helena-Missouri River Montana Mine" near Helena,  
13 Montana (the "Mine(s)"). EEL would operate the Mines and share with MTE and investors the  
14 resulting gold mining profits (the "Gold Mine Investment").

15           22. LANGENBACH directly offered and sold the Gold Mine Investments to at least 4  
16 Arizona residents.

17           23. The Gold Mine Investments are documented, in part, by written prospectuses  
18 prepared and/or drafted by Respondents, titled "**MT Explorations, LLC – Stanton Road Placer**  
19 **Mine Project - Investment Opportunity**" (the "Prospectus(es)"). (emphasis in original).

20           24. The Prospectus stated that MTE had negotiated a profit sharing agreement with  
21 EEL.

22           25. The majority of the Prospectus is dated "2010," and stated that the "Phase I" Gold  
23 Mine Investment offering resulted in \$125,000 worth of investment capital used by Respondents to  
24 purchase "pre-production" gold mining equipment, and created a pool of "operating capital in  
25 reserves until the [gold extraction] process provides metal which can be sold."  
26

1           26.    The Prospectuses further stated that the proceeds of the “Phase II” Gold Mine  
2 Investment offering totaling \$125,000 would be used by Respondents to purchase additional  
3 equipment, to achieve full gold production, and “for testing and continued development of the  
4 Project.”

5           27.    Regarding potential Gold Mine Investment profits, the Prospectuses noted that the  
6 “Rich Hill” gold mine is located “in the same area” as one of Respondents’ Mines that had  
7 previously produced “potato sized” gold nuggets.

8           28.    The Prospectuses stated that when operating at full production, Respondents’  
9 Business would result in the production of one hundred ounces of gold per day, and assuming a  
10 spot price of gold of \$1,200 per ounce, approximately \$46,800 would be paid to MTE each month.

11          29.    The Prospectuses stated that MTE and investors would share in the profits generated  
12 by Respondents’ Business. Regarding estimated Gold Mine Investment profits, the Prospectuses  
13 include a section titled “**ROI Estimates**” (*i.e.*, return on investment) that explained that each  
14 investor could expect to receive approximately \$3,744.00 per month, for every \$10,000 amount  
15 invested when operated at full production (emphasis in original).

16          30.    The Prospectuses further estimated that an investor who purchased a Gold Mine  
17 Investment in the principal amount of \$25,000 could expect to receive profits \$4,680 per month if  
18 the Business was operating at fifty percent production, and up to \$9,360 per month if the Business  
19 was operating at one hundred percent production, in part as follows:

Amount Invested	Royalty at 50% Production	Royalty at 100% Production
\$10,000	\$1872.00	\$3744.00
\$25,000	\$4680.00	\$9360.00
\$50,000	\$9360.00	\$18720.00

20  
21  
22  
23          31.    The Prospectuses are not labeled as confidential, nor did they state that the Gold  
24 Mine Investments may only be purchased by, for instance, sophisticated or accredited investors.  
25 The Prospectuses further failed to include any stated restrictions preventing a recipient from  
26

1 distributing the Prospectuses to third parties who, for instance, have no preexisting relationship  
2 with Respondents or knowledge of Respondents' gold mining Business operations.

3 32. Respondents, directly or through Mr. G and MTE, further represented to offerees  
4 and investors that the Mines contained high quality minerals and ore from which gold can be  
5 extracted on a cost effective or economically viable basis.<sup>2</sup>

6 33. Respondents would pay MTE, who would then redistribute the principal and interest  
7 payments to each individual investor.

8 34. Certain MTE PSAs contained the following relevant terms:

- 9 a) MTE shall pay the investor a production profit up to 3% of the net proceeds;  
10 b) MTE would also pay interest of 20% on the loaned amount; and  
11 c) MTE would repay the principal on or before March 30, 2011.

12 35. The MTE PSAs included each investor's promised percentage of projected Business  
13 profits based, in part, on the amount of the investor's principal investment.

14 36. Some investors agreed to the 3% of production profit of net proceeds and 20%  
15 interest, while others agreed to only the 3% of production profit of net proceeds.

16 37. For instance, one Arizona resident purchased a Gold Mine Investment on or about  
17 October 5, 2010, in the principal amount of approximately \$25,000. This investor's MTE PSA  
18 states that the investor is entitled to receive up to 3% of the net profits generated by the Business.

19 38. Similarly, another Arizona resident purchased a Gold Mine Investment in the  
20 principal amount of \$20,000 on or about October 12, 2010. This investor's MTE PSA states that  
21 the investor is entitled to receive up to 3% of the net profits generated by the Business and 20%  
22 interest based on the actual funds loaned from MTE to EEL.

23 <sup>2</sup> Pursuant to mining industry customs and standards, "ore" possesses an economic meaning. "Ore" is a  
24 form of rock or other mineral matter that can be mined, processed for its valuable contents and sold *at a*  
25 *profit* under current technological and economic conditions, including overhead costs such as the  
26 construction and development of a physical plant, ore extraction and transportation, labor, investment  
sales commissions, procurement and development of technologies, testing and refining costs. Tens of  
thousands of samples of rocks and other mineral matter are submitted to assay laboratories annually; only  
a fraction of them turn out to be ore. Thus, "ore" is often incorrectly used to mean any rock associated  
with a mining claim.

1           39. Investors purchased their Gold Mine Investments by making their principal  
2 investment checks payable to MTE or EEL.

3           40. In certain instances, though LANGENBACH directly offered and sold the Gold  
4 Mine Investments to certain investors, he processed the investments through Mr. G and MTE so  
5 that the investors appeared to be MTE investors.

6           41. All investor funds received by MTE were ultimately forwarded to LANGENBACH  
7 or EEL to be used for the gold mining Business operations.

8           42. From on or about May 2010, to November 2010, Respondents issued, offered, and  
9 sold the Gold Mine Investments within and from Arizona.

10          43. Respondents, directly or through Mr. G and MTE, sold the Gold Mine Investments  
11 for at least \$322,000 to approximately twenty-five investors residing in Arizona, Ohio, and Utah  
12 for principal amounts ranging in price from \$2,000 to \$45,000.

13          44. To date, however, investors have received no returns and/or profits from  
14 Respondents on their investments.

15          45. At all relevant times, Respondents, directly or through Mr. G and MTE, represented  
16 to offerees and investors that Respondents would manage the essential aspects of the Business  
17 including the negotiation and execution of third-party mining agreements and management of Gold  
18 Mine Investment funds.

19          46. Unbeknownst to offerees and investors, Respondents' and their affiliates' so-called  
20 "Stanton Road Placer" Mine is not located in one of the largest gold reserves in the United States.

21          47. Unbeknownst to offerees and investors, neither Respondents or their affiliates or  
22 agents are able to extract gold from the rock material or aggregate material present at the Mines on  
23 a profitable, commercially, and economically viable basis by placer mining.

24          48. The EEL and MTE investments have not been registered with the Commission as  
25 securities.

26



1 offerees and investors. Respondent LANGENBACH's conduct includes, but is not limited to, the  
2 following:

- 3 a. Representing to offerees and investors, directly or through Mr. G and MTE, that they  
4 could earn substantial profits by purchasing the Gold Mine Investments, in part,  
5 because Respondents' possess an interest in an Arizona gold Mine located "in one of  
6 the richest gold reserves in the US," despite the fact that the Arizona Gold Mine is not  
7 located in one of the richest gold reserves in the U.S.;
- 8 b. Representing to offerees and investors, directly or through Mr. G and MTE, that  
9 they could earn substantial profits by purchasing the Gold Mine Investments, in  
10 part, because, the Mines contain high quality minerals and ore from which gold  
11 can be extracted on a cost effective or economically viable basis, despite the fact  
12 that neither Respondents nor their affiliates or agents are able to extract gold from  
13 the rock material or aggregate material present at the Mines on a profitable,  
14 commercially, and economically viable basis by placer mining.

15 56. This conduct violates A.R.S. § 44-1991.

16 **VII.**

17 **REQUESTED RELIEF**

18 The Division requests that the Commission grant the following relief:

- 19 1. Order Respondents to permanently cease and desist from violating the Securities Act,  
20 pursuant to A.R.S. § 44-2032;
- 21 2. Order Respondents to take affirmative action to correct the conditions resulting from  
22 Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to  
23 A.R.S. § 44-2032;
- 24 3. Order Respondents to pay the state of Arizona administrative penalties of up to five  
25 thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

26



IX.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

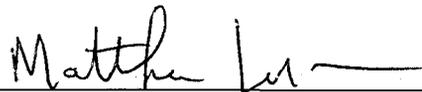
Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Phong (Paul) Huynh.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 7 day of November, 2012.

  
Matthew J. Neubert  
Director of Securities