ORIGINAL

NEW APPLICATION



BEFORE THE ARIZONA CORPORATION COMMISSION
RECEIVED 1 AZ CORP COMMISSION Arizona Corporation Commission DOCKET CONTROL 2 COMMISSIONERS DOCKETED 2016 DEC 29 P 1:53 3 DOUG LITTLE - Chairman DEC 29 2016 **BOB STUMP** 4 **BOB BURNS** TOM FORESE DOCKETED BY 5 ANDY TOBIN 6 In the matter of: DOCKET NO. S-20999A-16-0483 7 CLEAR ENERGY GROUP, LLC, an NOTICE OF OPPORTUNITY FOR HEARING Arizona limited liability company, and REGARDING PROPOSED ORDER TO CEASE 8 AND DESIST, ORDER FOR RESTITUTION, PAUL W. RAMIREZ, a single man, ORDER FOR ADMINISTRATIVE 9 PENALTIES, AND ORDER FOR OTHER Respondents. AFFIRMATIVE ACTION 10 11 NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER 12 13 The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") 14 alleges that respondents Clear Energy Group, LLC and Paul W. Ramirez have engaged in acts, practices, 15 and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 et seq. 16 ("Securities Act"). 17 The Division also alleges that Paul W. Ramirez is a controlling person of Clear Energy Group, LLC within the meaning of A.R.S. § 44-1999(B) to the same extent as the entity for its violations of the 18 19 antifraud provisions of the Securities Act. 20 I. 21 JURISDICTION The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona 22 1. 23 Constitution, and the Securities Act. 24 25 26

II.

RESPONDENTS

- 2. Paul W. Ramirez is a single man who resided in Scottsdale during the times relevant to this Notice, i.e. April 2014 through 2015.
- 3. Clear Energy Group, LLC ("Clear Energy") is a manager-managed Arizona limited liability company formed on April 22, 2014. Paul Ramirez is listed as Clear Energy's manager in its Articles of Organization. He is also listed as the sole member, the organizer, and the statutory agent. Ramirez's address and Clear Energy's domestic address is a residence in Scottsdale, Arizona.
 - 4. Ramirez and Clear Energy may be referred to collectively as "Respondents."

III.

FACTS

- In April 2015, a mutual business associate told M.H., a California resident, about
 Ramirez and Clear Energy.
- 6. In phone conversations between Ramirez and M.H., Ramirez described an investment opportunity in an oil well in Olean, New York. According to Ramirez, oil had already been discovered and \$1,000,000 had already been invested in the well. Ramirez told M.H. that additional investor money was needed to complete the well through fracking. Ramirez further represented that the investment was 100% guaranteed.
- 7. Based on these representations, M.H. invested \$45,000 in Clear Energy through his company, S.S. He invested \$22,500 on April 9, 2015, and another \$22,500 on April 22, 2015.
- M.H. expected his investment to be used only on fracking an oil well in Olean, New York.
- 9. For each investment, S.S., received a note from Clear Energy. The two notes were largely identical. Each paid 24% interest per annum, with six monthly payments of \$450 and a balloon payment at the end of the six-month period.

- 10. Each note states that it is "to be secured by a UCC Security Agreement on certain oil well interests located in Olean, New York[.]"
- 11. Each note also grants S.S. a working interest in the well, described as a "horizontal well" on the "Stephens-Williams lease." For each note, S.S. was to initially receive a 5% working interest upon fracking of the well. After the principal and interest on the notes are repaid, S.S. would retain a 3% working interest per note for the life of the well.
 - 12. Each note stated that it was made in Scottsdale, Arizona.
 - 13. Ramirez signed each note as the "managing member" of Clear Energy.
- 14. S.S. received one, \$900 payment from Clear Energy in the form of a Cashier's Check from a Scottsdale branch of Wells Fargo, dated May 11, 2015. S.S. and M.H. received no other payments.
- 15. Respondents also provided M.H. with a document titled "Wellbore Assignment, Conveyance, Bill of Sale and Release" which lists Ramirez as the "Assignor" and M.H. as the "Assignee."
- 16. This document assigns M.H. a 6% working interest in the well, now described as being in the Town of Allegany (which is a few miles from Olean), County of Cattaraugus, New York, in exchange for M.H. funding \$45,000 to complete the fracking of the well.
- 17. New York had, however, placed a moratorium on all fracking in 2008. On December 17, 2014, New York's governor announced that the moratorium would become a permanent ban on fracking. Thus at all relevant times, fracking was prohibited in New York state.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

18. From on or about April 2015, Respondents offered or sold securities in the form notes and/or fractional undivided interests in oil and mineral rights, within or from Arizona.

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1	19. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
2	Securities Act.
3	20. This conduct violates A.R.S. § 44-1841.
4	v.
5	VIOLATION OF A.R.S. § 44-1842
6	(Transactions by Unregistered Dealers or Salesmen)
7	21. Respondents offered or sold securities within or from Arizona while not registered as
8	dealers or salesmen pursuant to Article 9 of the Securities Act.
9	22. This conduct violates A.R.S. § 44-1842.
10	VI.
11	VIOLATION OF A.R.S. § 44-1991
12	(Fraud in Connection with the Offer or Sale of Securities)
13	23. In connection with the offer or sale of securities within or from Arizona, Respondents
14	directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements
15	of material fact or omitted to state material facts that were necessary in order to make the statements
16	made not misleading in light of the circumstances under which they were made; or (iii) engaged in
17	transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
18	offerees and investors. Respondents' conduct includes, but is not limited to, the following:
19	a) Representing that the underlying oil well was a horizontal well being developed
20	with fracking procedures that was very near completion. In fact, fracking had been subject to a
21	moratorium in New York since 2008 and New York's governor announced a permanent ban on
22	December 17, 2014, four months before Respondents sold the securities.
23	b) Representing that the investment was 100% guaranteed without disclosing the
24	risks inherent to oil and gas mining investment and specific to investing in the described well.
25	24. This conduct violates A.R.S. § 44-1991.

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VII.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

25. From at least April 2014 through at least December 2016, Ramirez directly or indirectly controlled Clear Energy within the meaning of A.R.S. § 44-1999. Therefore, Ramirez is jointly and severally liable to the same extent as Clear Energy for its violations of A.R.S. § 44-1991.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

- 1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
- Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
- 3. Order Respondents to pay the state of Arizona administrative penalties of up to \$5,000 for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
- Order Respondents to pay the state of Arizona administrative penalties, pursuant to A.R.S. § 44-3201;
 - Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. If a Respondent requests a hearing, the requesting respondent must also answer this Notice. A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington St., Phoenix,

Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at http://www.azcc.gov/divisions/hearings/docket.asp.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp

X.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent 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 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, 3rd Floor, Phoenix, Arizona, 85007, addressed to Ryan Millecam.

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 29 day of December, 2016.

Matthew J. Neubert
Director of Securities