

State of Missouri  
Office of Secretary of State

Case No. AP-07-26

IN THE MATTER OF:

John L. Berra, *and* Lonedell Investment Company, Inc.;

Respondents.

**CONSENT ORDER**

1. The Enforcement Section of the Missouri Securities Division ("Securities Division") alleges that the above named Respondents, Lonedell Investment Company, Inc. ("Lonedell") and its President, John L. Berra ("Berra"), offered and sold fraudulent, unregistered securities by means of a "Ponzi" [1] scheme in the state of Missouri in violation of The Missouri Securities Act of 2003 ("The Act").
2. Respondents and the Securities Division desire to settle the allegations and the matters raised by the Securities Division in relation to Lonedell and Berra's alleged violations of The Act.

**JURISDICTION**

3. Section 409.6-601(a), RSMo. (Cum. Supp. 2006), provides that the Securities Act of 2003 shall be administered by the Commissioner of Securities (the "Commissioner").
4. Section 409.6-604(h), RSMo. (Cum. Supp. 2006) provides that the Commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under the Act.
5. Respondents and the Securities Division stipulate and agree that the Commissioner has jurisdiction over these Respondents and these matters.
6. Respondents and the Securities Division stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2006), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

**WAIVER AND EXCEPTION**

7. Respondents waive their rights to a hearing with respect to this matter.
8. Respondents waive any rights that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of the Order. Respondents specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.
9. Respondents stipulate and agree with the Securities Division that, should the facts contained herein prove to be false or incomplete, the Missouri Securities Division reserves the right to pursue any and all legal or administrative remedies at its disposal.

**CONSENT TO COMMISSIONER'S ORDER**

10. Respondents and the Securities Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
11. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis.
12. Respondents agree that Respondents are not the prevailing parties in this action because the parties have reached a good faith settlement.

**STIPULATIONS OF FACT**

13. Berra was President of Lonedell with a last known address of 5052 Valley Crest Court, St. Louis, Missouri 63128.
14. Lonedell was initially established to conduct business in April 1971. Lonedell was administratively dissolved on December 15, 1988. At all times relevant, Lonedell was operating as an unregistered business entity with a mailing address of 5052 Valley Crest Court, St. Louis, Missouri 63128.

15. Beginning from at least December 1997 to November 2006, Berra transacted business in the State of Missouri by offering and selling unregistered securities under the name of "Lonedell Investment Company, Inc."
16. Berra offered and sold certificates of deposits and promissory notes to at least sixty (60) investors, most of whom are located in the state of Missouri.
17. The promissory notes sold by Berra listed an insurance company as securing the note and a local business as the promisor. The Division's investigation revealed that these companies were unaware that Berra was using the company's name and were not securing the note or the promisor.
18. The Division's investigation revealed that Berra's investors received verification of their investment by letter from John Berra.
19. In November 27, 2006, Berra notified the investors of Lonedell's inability to meet its obligations under the certificates of deposit and promissory notes.
20. An interview conducted with Missouri Resident ("MR1") on June 25, 2007 revealed that:
  - a. MR1 invested approximately two hundred twelve thousand (\$212,000) with Lonedell from approximately December 1997 until November 2006;
  - b. MR1 received a total of thirty-five (35) certificates of deposits and 16 promissory notes as a result of MR1's investment with Lonedell, of those only two (2) certificates of deposit were paid off by Lonedell;
  - c. On or about November 27, 2006, MR1 received the Letter from Berra informing MR1 that the company had no funds to fulfill its obligations to MR1.
21. An interview conducted with Missouri Resident ("MR2") on June 25, 2007 by a Securities Division Investigator revealed that:
  - a. MR2 met Berra through another investor;
  - b. MR2 invested a total of seventy thousand dollars (\$70,000) in certificates of deposit from Berra;
  - c. MR2 invested thirty thousand dollars (\$30,000) for one (1) certificate of deposit on November 24, 2003 and forty thousand dollars (\$40,000) for another certificate of deposit on September 1, 2004;
  - d. MR2 received monthly dividend checks from Lonedell;
  - e. On or about November 27, 2006, MR2 received the Letter from Berra informing MR2 that the company had no funds to fulfill its obligations to MR2.
22. An interview conducted by a Securities Division Investigator with Missouri Resident ("MR3") on June 25, 2007 revealed that:
  - a. MR3's grandfather invested \$20,000 with Berra for three (3) certificates of deposit from Lonedell in April and May 2005. Two certificates were for five thousand dollars (\$5,000) each and one for ten thousand dollars (\$10,000);
  - b. MR3 inherited the certificates of deposit after the death of MR3's grandfather;
  - c. MR3 has three (3) certificates of deposit for a total of twenty thousand dollars (\$20,000);
  - d. MR3 has not received any monthly dividend payments from Lonedell or a return of principal;
  - e. MR3 did not receive the letter from Berra informing investors that the company did not have the funds to fulfill its obligations.
23. An interview conducted by a Securities Division Investigator with Missouri Resident ("MR4") on June 25, 2007 revealed that:
  - a. MR4 met Berra through MR4's brother;
  - b. MR4 invested a total of thirty thousand eight hundred ten dollars and seventy five cents (\$30,810.75) with Lonedell;
  - c. MR4 purchased a total of ten (10) certificates of deposit and cashed in one (1) of the ten (10);
  - d. MR4 received only one (1) check from Lonedell in July 2006 in the amount of three thousand nine hundred twenty three dollars and ninety seven cents (\$3,923.97). MR4 has not received any additional dividend payments or return of principal;
  - e. On or about November 27, 2006, MR4 received the letter from Berra informing MR4 that the company had no funds to fulfill its obligations to MR4;
24. Lonedell and the United States Attorney's Office for the Eastern District of Missouri, has entered into a plea agreement with

Lonedell in exchange for a voluntary guilty plea to a charge of mail fraud with respect to the certificates of deposit and promissory notes.

25. In the plea agreement, Lonedell admits there is a factual basis for the plea and affirms that it devised a scheme and artifice to defraud others by means of a "Ponzi" scheme whereby clients' investments were not properly invested but instead used to service the interest obligations of the previous investors.
26. In the plea agreement, Lonedell has agreed to pay full restitution to all victims as determined and ordered by the Court in the criminal case.
27. An order is in the public interest and consistent with the purposes intended by this act. Section 409.6-605(b) RSMo (Cum. Supp. 2006).

### **CONCLUSIONS OF LAW**

28. Berra violated Section 409.3-301, RSMo. (Cum. Supp. 2006), when he offered and sold promissory notes and certificates of deposit to Missouri investors when those securities were unregistered and not exempt from registration;
29. Berra violated Section 409.4-402, RSMo. (Cum. Supp. 2006), when he transacted business in the State of Missouri as an agent by offering and selling securities while being unregistered; and
30. Berra violated Section 409.5-501, RSMo. (Cum. Supp. 2006), when:
  - a. he engaged in a practice and course of business that operated as a fraud by operating a "Ponzi" scheme;
  - b. he made untrue statements of material fact when he listed companies on the promissory note as providing collateral when in fact, the companies were not backing the notes.
  - c. he omitted to state the material fact that he was using the money to service the interest obligations of the previous investors rather than properly investing the money.

### **ORDER**

**WHEREAS**, the Commissioner, after consideration of the above and on the consent of Berra and the Securities Division, finds the following Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo. (Cum. Supp. 2006).

**NOW, THEREFORE**, it is hereby Ordered that:

1. Respondents are prohibited from offering or selling unregistered securities in violation of Section 409.3-301, RSMo. (Cum. Supp. 2006).
2. Berra is prohibited from offering or selling securities while unregistered in violation of Section 409.4-402, RSMo. (Cum. Supp. 2006).
3. Respondents are prohibited from engaging in an act, course or practice that operates as a fraud, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made in the light of the circumstances under which they were made not misleading, in violation of Section 409.5-501, RSMo. (Cum. Supp. 2006),
4. Respondents are ordered to make full restitution to all investors under the plea agreement with the United States Attorneys Office. Failure to comply with all aspects of the plea agreement shall be considered a violation of this Order and the Commissioner may refer this matter to the Missouri Attorney General's Office for prosecution.
5. Respondents shall pay their own costs and attorneys fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 24<sup>TH</sup> DAY OF AUGUST, 2007.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:

Missouri Securities Division

Lori Neidel  
Chief Enforcement Counsel

John Berra

[\[1\]](#) A Ponzi scheme is an operation that involves paying returns to investors out of the money paid in by subsequent investors rather than from revenues generated from any real business.