

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
February 15, 1966

In the Matter of	:	
	:	
ALLSTATE PETROLEUM, INC.	:	
125 East 50th Street	:	FINDINGS,
New York, N. Y.	:	OPINION
	:	AND ORDER
File No. 8-10775	:	REVOKING
	:	BROKER-DEALER
Securities Exchange Act of 1934 -	:	REGISTRATION
Sections 15(b) and 15A(b)(4)	:	
	:	
	:	

BROKER-DEALER PROCEEDINGS

Grounds for Revocation of Registration

Sale of Unregistered Securities

Misleading Statements in Sale of
Securities

Misstatements in and Failure to
Correct Application for Registration

Violation of Record-Keeping Requirements

Withdrawal of Registration

Where registered broker-dealer sold unregistered fractional undivided interests in oil leaseholds by means of misleading representations; falsely represented in its application for registration that none of its salesmen had been found to have violated any provision of securities acts or had been enjoined from engaging in any conduct in connection with purchase or sale of any security, and failed to file corrective amendment; and failed to maintain and preserve required books and records, held, in public interest to deny request for withdrawal of registration and to revoke such registration.

APPEARANCES:

Alan R. Sloate, Robert G. Willner and Sandra P. Schwartz,
of the New York Regional Office of the Commission, for the Division
of Trading and Markets.

Milton J. Helmke, president of Allstate Petroleum, Inc.,
for registrant.

Milton J. Helmke, George C. Feltz, Henry L. Hahn, Joseph
Messina, Alfred Shayne, Donald D. Dunklee and William Fisher, pro se.

These are proceedings pursuant to Sections 15(b) and 15A(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether to take remedial action with respect to the registration as a broker and dealer of Allstate Petroleum, Inc. ("registrant") or to permit the withdrawal of such registration, and whether Milton J. Helmke, George C. Foltz, Henry L. Hahn, Joseph Messina, Alfred Shayne, Donald D. Dunklee and William Fisher should each be found a cause of any remedial action ordered. Registrant, Helmke, Foltz, Hahn and Messina filed an answer asserting, among other things, that they never knowingly or willfully violated any laws, rules or regulations. Dunklee and Fisher waived a hearing and post-hearing procedures and, solely for the purpose of these and any other proceedings pursuant to Sections 15(b), 15A and 19(a)(3) of the Exchange Act and Section 203(d) of the Investment Advisers Act of 1940, and without admitting or denying the allegations in the order for proceedings, as amended, consented to findings of willful violations as alleged in that order and to the entry of an order finding that they are causes of any order revoking registrant's registration.

Following hearings at which Shayne alone of the respondents appeared, the hearing examiner submitted a recommended decision recommending that registrant's registration be revoked and that each of the individual respondents be found a cause. On the basis of the recommended decision, to which no exceptions have been filed, the consents of Dunklee and Fisher, and our own review of the record, we make the following findings.

Registrant, a Louisiana corporation, was incorporated in 1960, but remained dormant until March 1962. At about that time, Hahn came to New York for the purpose of selling participations in certain oil leaseholds owned by registrant. He employed Shayne to assist him in establishing an office and a sales organization and thereafter to be a salesman, and upon the latter's recommendation, hired Dunklee and Fisher as salesmen in or about June 1962. At all relevant times, Helmke was registrant's president, Foltz and Hahn were vice-presidents, and Messina was secretary-treasurer. Helmke, Hahn and Messina were also directors and Helmke, Foltz and Messina each owned 10% or more of registrant's common stock.

Violations of Securities Registration and Anti-Fraud Provisions

During the period from approximately May 30 to July 30, 1962, registrant, through the use of the mails and the facilities of interstate commerce, engaged in the offer and sale of non-producing working interests in three leaseholds, the El Dorado Plantation Lease, Buhler Lease No. 1 and Nicholson Lease No. 1. These interests, which were "securities" within the definition of that term in the Securities Act of 1933, ^{1/} were offered for sale through advertisements in national publications and through extensive mailings of sales literature to persons who responded to the advertisements and to others, including individuals whose names were obtained from a telephone directory and persons who were former customers of Shayne and Dunklee.

^{1/} Section 2(1) of the Securities Act defines the term "security" as including a fractional undivided interest in oil or gas rights. A working interest is one type of such interest. See 17 CFR 230.300(a) and (d).

No registration statement was filed as to any of these securities and no exemption from registration was available. While the answer filed by registrant and its principals refers to the Buhler and Nicholson offerings as "private," it is clear that the private offering exemption provided by Section 4(2) of the Securities Act 2/ is not available for an indiscriminate offering such as was made here. 3/ With respect to the interests in the Buhler and El Dorado leases, offering sheets were filed pursuant to Regulation B under the Securities Act for the purpose of obtaining an exemption from registration. 4/ However, by virtue of a suspension order entered by us, the offering sheet filed with respect to the Buhler lease never became effective, and although the offering sheet covering the interests in the El Dorado lease became effective, various other conditions of the exemption were not complied with. Among other things, offers to sell were made prior to the effective date, offering sheets were not delivered to offerees at the time of the initial offer, and required sales reports were not filed. Accordingly, no exemption was available under Regulation B.

Registrant's sales campaign was characterized by the widespread use of flagrant misrepresentations, both in sales literature used and in oral presentations made by the salesmen and Hahn. A brochure regarding the Buhler lease stated that the well to be drilled had been "carefully selected from a geological standpoint" and had an "excellent chance of making a commercial well . . ." The brochure contained a report by David A. Rowe, a petroleum consultant, stating that the drilling of a well on the Buhler site had an excellent chance of success and "could possibly be worth as much as \$25,200,000 gross income." In fact, three dry holes had been drilled in or about the proposed area bracketing the one producing well in the field in three different directions. Moreover, the producing well was itself an economic failure. A plat included in the brochure failed to show the dry holes, although they were shown on a plat filed with the offering sheet. There was no factual basis for Rowe's representations, and no disclosure was made that he was president of the company from which registrant had acquired its lease and that registrant was indebted to that company. In addition, the brochure falsely stated that a sufficient portion of the proceeds of each sale of a working interest to drill the well would be deposited in a New York bank. Actually, no escrow or special account was established and registrant used the funds received for various expenses, with the result that they were exhausted by September 1962. Similar misrepresentations were contained in a brochure regarding the Nicholson lease.

In addition to the brochures and offering sheet, various other items of sales literature were sent to prospective investors. Among these were telegrams, signed by Shayne or Dunklee or by both, which were sent from New Orleans to persons who had purchased interests in

2/ Section 4(2) of the Securities Act exempts from the provisions of Section 5 "transactions by an issuer not involving any public offering."

3/ See S.E.C. v. Ralston Purina Co., 346 U. S. 119 (1953); Idaho Acceptance Corp., Securities Exchange Act Release No. 7383, p. 5, n. 2 (August 7, 1964).

4/ Regulation B (17 CFR 230.300 et seq.) provides an exemption, subject to specified terms and conditions, for offerings of fractional undivided interests in oil or gas rights not exceeding \$100,000.

another oil venture from those salesmen and read as follows:

"We are in southern Louisiana investigating very unusual drilling situation Allstate Petroleum, a group of highly experienced oil men, is starting a ten well deep drill program in thoroughly geologized areas offsetting proven leases, have asked Allstate to send complete information will phone you upon my return to New York."

In fact, the telegrams were drafted in registrant's office in New York and sent out by Messina from Louisiana. Neither Shayne nor Dunklee had been in Louisiana. The telegrams were followed in a few days by letters representing that Shayne and Dunklee, cognizant of the fact that their "clients" depended on them for "advice and protection" with respect to oil investments, had carefully investigated the background of registrant. ^{5/} The letters stated that registrant was starting a "10 well deep drilling program in one of the 'choicest' oil and gas area in southern Louisiana on thoroughly geologized proven and offset field properties," "surrounded by several major oil and gas companies, having millions of barrels of oil and gas reserves" and that "70% of the wells drilled in this area are successful and Allstate owns some of the most valuable leases in these fields." In fact, according to the undisputed testimony of an oil and gas engineer on our staff, the proposed El Dorado and Nicholson wells were "rank wildcats," "not much better than random drilling," and were situated neither in a proven nor an offset area, and the proposed Buhler well, though of a somewhat less random nature, offered only slight prospects of commercial success.

Representations were also made to investors and prospective investors that if all three proposed drillings resulted in dry holes, registrant would return that part of the investment which was not tax-deductible, but no funds or special accounts were maintained to assure registrant's ability to carry out this representation. In addition, registrant mailed confirmations to persons who had not agreed to purchase any of the securities offered.

Registrant's salesmen reiterated and emphasized the misleading representations contained in the sales literature in their oral presentations to customers. Hahn was in direct charge of the sales campaign and himself represented to one prospective purchaser that the proposed El Dorado drilling had better than a 70% chance of success. Registrant's other principals made no effort to supervise or restrain the sales activities.

^{5/} No indication was given in the telegrams or letters that Shayne and Dunklee were employed as salesmen by registrant. Rather, the impression was conveyed that they were acting solely on behalf of the addressees.

Accordingly, we find, as did the hearing examiner, that registrant, together with or aided and abetted by the individual respondents, willfully violated the registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933 and the anti-fraud provisions of Section 17(a) of the Securities Act and Sections 10(b) and 15(c)(1) of the Exchange Act and Rules 17 CFR 240.10b-5 and 15c1-2 thereunder.

False Statements in Registration Application

Registrant's application for registration as a broker-dealer, which was filed in May 1962, represented that no salesman or other employee had been found by this Commission to have violated any provision of the Exchange Act or the Securities Act of 1933 or any rule or regulation thereunder, or was enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. However, in 1951 Shayne was found to have willfully violated the anti-fraud provisions of the securities acts; 6/ in 1959, Dunklee was found to have aided and abetted willful violations of Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-2 thereunder; 7/ and in 1957 Fisher was found to have aided and abetted willful violations of the net capital provisions of Section 15(c)(3) of the Exchange Act and Rule 17 CFR 240.15c3-1 thereunder. 8/ In addition, Fisher is permanently enjoined by a decree of the United States District Court for the Southern District of New York, entered on June 3, 1958, from violating the net capital provisions. 9/

Accordingly, the representations in registrant's application were false and we find, as did the hearing examiner, that in making such representations and in failing to file an amendment correcting the inaccuracies, registrant, aided and abetted by Hahn, who signed the application, Shayne, Dunklee and Fisher, willfully violated Section 15(b) of the Exchange Act and Rule 17 CFR 240.15b-2 thereunder. We also adopt, in view of the absence of exceptions, the examiner's conclusion that Helmke, Foltz and Messina, as principals of registrant, must also be held to have aided and abetted these violations. 10/

Violations of Record-Keeping Provisions

As found by the hearing examiner, the record shows that registrant failed to make and keep current certain required books and records and that Hahn destroyed records required to be preserved, including copies of confirmations and communications sent out, letters received from prospective customers, and paid and unpaid bills. We adopt the examiner's findings that in these respects, registrant, aided and abetted by Helmke,

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- 6/ Henry P. Rosenfeld, 32 S.E.C. 731. Shayne was found a cause of the revocation of Rosenfeld's registration and his own broker-dealer registration was revoked.
 - 7/ Jefferson Associates, Inc., 39 S.E.C. 271. The registrant in that case, which was controlled by Dunklee, failed to amend its registration application to disclose Dunklee's control and falsely listed another person as principal stockholder in an amendment which was filed. Dunklee was found a cause of the revocation of the firm's registration.
 - 8/ A. J. Gould & Co., Inc., 38 S.E.C. 141. Fisher was found a cause of the revocation of the firm's registration.
 - 9/ S.E.C. v. A. J. Gould & Co., Inc., Civ. Action File No. 113-87.
 - 10/ Under Rule 17 of our Rules of Practice (17 CFR 201.17) as applicable to these proceedings, any objections to a recommended decision not saved by exceptions will be deemed to have been abandoned and may be disregarded.

Foltz, Hahn and Messina, willfully violated Section 17(a) of the Exchange Act and Rules 17 CFR 240.17a-3 and 17a-4 thereunder.

The Public Interest

In view of the nature and extent of the willful violations found, we conclude, as did the hearing examiner, that it is in the public interest to revoke registrant's registration. We further conclude that Helmke, Foltz, Hahn, Messina, Shayne, Dunklee and Fisher are each a cause of such revocation.

Accordingly, IT IS ORDERED that withdrawal of the registration as a broker and dealer of Allstate Petroleum, Inc. be, and it hereby is, denied and that such registration be, and it hereby is, revoked; and it is found that Milton J. Helmke, George C. Foltz, Henry L. Hahn, Joseph Messina, Alfred Shayne, Donald D. Dunklee and William Fisher are each a cause of this order.

By the Commission (Chairman COHEN and Commissioners WOODSIDE, OWENS, BUDGE and WHEAT).

Orval L. DuBois
Secretary