IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**Case No.**
	§	
MATTHEW O. MADISON,	§	
DWIGHT MCGHEE, and	§	
INFINITY EXPLORATION, LLC,	§	
	§	
Defendants.	§	
	§	

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Defendants Matthew Madison ("Madison"), Dwight McGhee ("McGhee"), and Infinity Exploration, LLC ("Infinity"), (collectively, "Defendants"), alleges:

Summary

1. Between March and October of 2008, Infinity and its principals, Madison and McGhee, offered and sold securities in the form of joint ventures interests ("JV interests") involving oil-and-gas exploration programs, raising over $2 million from at least 40 investors. Madison prepared Infinity's fraudulent offering documents and drafted misleading investor updates, while McGhee in the offer and sale of the JV interests made verbal misrepresentations to investors. The offering documents stated that Infinity was raising funds for oil-and-gas exploration, but failed to disclose that Infinity's joint ventures would merely hold JV interests purchased from another company, Giant Operating, LLC ("Giant"). The offering documents falsely described Madison as experienced and successful in the oil-and-gas industry, and failed to

disclose McGhee's 2007 federal felony conviction. McGhee enticed investors by misrepresenting potential production and revenue, well management, the timing of drilling operations, and past successes. Finally, Madison and McGhee sent written updates to investors that created the false appearance that Infinity controlled the drilling operations when, in reality, Giant had full control.

2. Defendants each violated Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78o(a)(1)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder. In the interest of protecting the public from any further violations of the federal securities laws, the Commission brings this action against the Defendants, seeking permanent injunctive relief, disgorgement plus prejudgment interest, civil money penalties, and all other equitable and ancillary relief deemed necessary by the Court.

Jurisdiction and Venue

3. The Commission brings this action under Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking to restrain and enjoin permanently the Defendants from engaging in the acts, practices, and courses of business alleged herein.

4. This Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

5. The Defendants, directly and indirectly, made use of the mails or of the means or instrumentalities of interstate commerce in connection with the transactions, acts, practices, or courses of business described in this Complaint.

6. Venue is proper under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because transactions, acts, practices, and courses of business described below occurred within the jurisdiction of the Northern District of Texas.

Parties

7. Plaintiff Commission is an agency of the United States of America charged with enforcing the federal securities laws.

8. Defendant Madison resides in Lewisville, Texas.

9. Defendant McGhee resides in Irving, Texas.

10. Defendant Infinity Exploration, LLC, is a Texas limited liability company formed in 2008 with its principal place of business in Irving, Texas

Statement of Facts

The Infinity securities offerings

11. Madison and McGhee formed Infinity in 2008 to offer oil-and-gas investments after working as cold-calling salesmen for two other oil-and-gas promoters, including Giant Operating, LLC. Madison has always been the managing member of Infinity. He had ultimate control of Infinity during all relevant periods of time, and split revenues with McGhee. McGhee was substantially involved in the management and operations of Infinity, and was treated as an officer and director by Madison. Infinity, by and through Madison and McGhee, chose two of Giant's projects as their initial Infinity offerings: 1) the Giant Matagorda, and 2) the Giant New Mexico 10. Infinity agreed to purchase JV interests from Giant at 80 percent of Giant's asking price on a "pay-as-you-go" basis. Essentially, Infinity acted as Giant's sales agent for the two projects, and initially, Madison and McGhee were the only Infinity employees.

12. During all relevant periods, the Defendants were never registered as a broker or dealer, or associated with a registered broker or dealer.

The Matagorda offering

13. On March 1, 2008, Infinity and Giant entered into a contract in which Infinity would acquire JV interests in Giant Matagorda, a one-well project in Matagorda County, Texas. The Matagorda agreement specified that Infinity would purchase up to 39 units for $65,000 each. The Defendants created the Infinity Matagorda JV to hold the Matagorda units that it purchased from Giant. As it sold units of the Matagorda, Infinity remitted 80 percent of the sales price of each unit to Giant ($52,000) and kept the remaining 20 percent of each unit as commission ($13,000).

14. Between March and October of 2008, Infinity issued private-placement memoranda ("PPMs") to at least 10 investors, who purchased $276,250 of Infinity Matagorda JV interests (securities). At least one such investor purchased his JV interest directly from Infinity in October of 2008. Infinity pooled the investors' funds, retained $55,250 for itself, and forwarded $221,000 to Giant for the purchase of the Matagorda JV interests, which were held in the Infinity Matagorda JV. Giant never drilled the Matagorda.

The New Mexico 10 offering

15. Also in March of 2008, Infinity and Giant entered into a contract in which Infinity would purchase JV interests in Giant New Mexico 10, a supposed 10-well project in New Mexico. The New Mexico 10 agreement specified that Infinity would purchase up to 100 units for $75,000 each. Infinity created the Infinity New Mexico 10 to hold the units it purchased from Giant. As it sold units of the Infinity New Mexico 10, Infinity remitted 80 percent of the

sales price of each unit to Giant ($60,000) and kept the remaining 20 percent of each unit as commission ($15,000).

16. Between April and August of 2008, Infinity issued PPMs to 33 investors in the New Mexico 10 offering, who purchased $1,843,750 of Infinity New Mexico 10 interests. Approximately 15 of the 33 investors purchased their JV interests directly from Infinity in July and August of 2008. Infinity pooled the investors' funds, retained $368,750 for itself, and forwarded $1.475 million to Giant for the purchase of the Giant New Mexico 10 interests, which were held in the Infinity New Mexico 10 JV. The New Mexico 10 wells produced miniscule amounts and the paltry payments from Giant stopped in September of 2009 after a court appointed receiver took over for Giant as a result of a civil action by the Commission.[1] There have been no distributions since.

The private-placement memorandums (PPMs)

17. Infinity mailed written materials in the form of PPMs to prospective investors for both the Infinity Matagorda and New Mexico 10 offerings, and Madison was responsible for their content. The Infinity PPMs were identical to Giant's PPMs for these two projects, except for the substitution of "Infinity" for "Giant," changing the unit price and total offering price, and changing the management section to reflect Madison as the managing member of Infinity.

18. The PPMs for both offerings stated that the JV units were securities, referring to "these securities" in the cover legends. The PPMs further stated that the units were being offered pursuant to Regulation D under the Securities Act of 1933. The PPMs for both offerings stated that Infinity held broad powers over the management and business of each JV. The "Summary

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[1] *See S.E.C. v. George Wesley Harris, et al.*, No. 3:09-CV-1809-B (N.D.TX Sept 28, 2009).

of the Joint Venture Agreement" section of the PPMs stated that Infinity "has full control in the management of the affairs of the Joint Venture." The PPM also stated that investors who own an aggregate of 25 percent or more could request a meeting of the partners, but the PPM warned that at the meeting *"the Joint Venturers are not permitted to engage in any activity which would be deemed taking part in the control of the business of the Joint Venture."*

The PPMs failed to disclose Infinity's agreement with Giant

19. The PPMs for both offerings failed to disclose material information and included materially false and misleading statements. The PPMs did not disclose Infinity's agreement with Giant through which Infinity was acting as Giant's sales agent by placing Infinity investors in a JV that would simply hold interests in Giant's JV. Instead, the PPMs portrayed each Infinity JV as a typical oil-and-gas operation, and Infinity as the typical manager of such an operation. For instance, the PPMs stated that the "principal investment objective of the Joint Venture is to acquire, own, and deal with the Venture Prospect," without disclosing that the acquisition, ownership, and operation of each prospect would be accomplished through another JV over which the Infinity JV had no control. Further, the PPMs stated that Infinity will "perform various services for the Joint Venture, including supervising the drilling, testing, completing, equipping and operation of the Venture Well." In reality, Giant, not Infinity, owned the leases and controlled the drilling operations. The PPMs never disclosed that investors were purchasing an interest in an entity that would merely hold interests in another joint venture.

The PPMs misled investors on how their funds would be used

20. The PPMs' "Use of Proceeds" section was also misleading. Infinity represented that 80 percent of funds it raised would go to pay well-related costs, including leasehold, geological, equipment, drilling, testing, and completing. The PPMs falsely stated that the

balance would be used for administrative and overhead costs. In reality, the Defendants knew, or were reckless in not knowing, that the full 80 percent that Infinity paid Giant would not be allocated entirely for well-related costs. Giant's own New Mexico 10 PPM, which Madison was privy to, expressly stated that Giant intended to apply 20 percent of funds it raised to its own administrative and overhead costs. And Infinity did not pay any well-related costs because Infinity did not operate any wells. Infinity had no control over how Giant used the 80 percent that Infinity paid to them per JV unit, so any related promise Infinity made to investors was baseless. And in fact, Giant spent far less than 80 percent on well-related expenses, as Giant's principal largely misappropriated or misapplied investor funds. Neither the PPMs nor the Defendants informed investors that Infinity was keeping 20 percent of each JV unit's proceeds as commission without using those funds to pay for any well-related or administrative costs of Giant.

The PPMs misled investors on the backgrounds of Madison and McGhee

21. Both Infinity JV PPMs misrepresented Madison's background and experience, and both PPMs omitted any reference to McGhee and his federal felony conviction. The PPMs' management section identified Madison as the managing member of Infinity, and then falsely stated that Madison:

- managed capital funding and operations of JVs with capital of approximately $82 million and that these JVs participated in drilling or operation of nearly 90 wells;
- had over five years' experience in oil and gas operations and exploration;
- ran his own commercial real estate company after completing his studies at Arizona State University;
- started his career in oil and gas as an investor; and
- surrounded himself with an experienced team of experts and professionals, including "engineers, geologists, geo scientists, consultants, and an SEC Certified

> Petroleum Geologist and Certified Petroleum Geophysicist, with an additional certification as an SEC Recognized Oil and Gas Reserves Analyst. Other experience includes: Geological Data Administrator and Geological Analyst for Mobil Exploration, Geologist for Exxon Company, and president and Chief Geologist with Nova."

In reality, none of these descriptions of Madison are true.

22. The PPMs also failed to disclose McGhee's affiliation with Infinity and his criminal conviction. McGhee was in charge of sales and substantially involved with the management and operations of Infinity. Madison treated McGhee as a co-owner and paid him a share of Infinity's revenue, despite not having formal status as an officer or director. McGhee was not a named officer of Infinity because of his 2007 federal conviction for aiding and abetting the unauthorized use of a protected computer in the Northern District of Texas. The offense of conviction occurred while McGhee worked in sales at Giant in 2007, and involved the unauthorized sale of a competing oil company's client list to Giant.[2]

McGhee's oral misrepresentations to investors

23. McGhee played a key management role within Infinity and was head of sales. He used cold-calls to solicit many of his unsophisticated investors. McGhee was fully aware that Infinity was simply purchasing units of Giant JVs, and he knew that Infinity's PPMs did not disclose the agreements between Infinity and Giant. He also knew that Infinity's JVs would never acquire the underlying leases, contrary to representations contained in the PPMs.

24. McGhee told investors that Infinity had a history of successful projects with numerous satisfied investors. During the Spring of 2008, McGhee told Matagorda investors that

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[2] *See U.S. v. Dwight McGhee,* No. 3:07-CR-120-L (N.D.TX Sept. 18, 2007).

the well would be drilled by June 2008, that they would receive their first check by August 2008, and that the possibility of a dry hole was "little to none." Giant never drilled the Matagorda.

25. From March through at least August of 2008, McGhee told investors of New Mexico 10 that it was a "low risk" 10-well project with eight existing wells, and two new wells to be drilled by Infinity. He also told investors that Infinity had already acquired the New Mexico 10 lease, and he guaranteed immediate revenue from the eight active wells. Without conducting any independent analysis or verification, McGhee claimed the eight wells were producing 90-95 barrels a day despite needing some maintenance. He told investors that within 30-60 days the eight wells would be repaired and producing 200 barrels per day, and that the two new wells would produce an additional 200 barrels per day. McGhee also introduced New Mexico 10 investors to a man he claimed was Infinity's site manager, Craig DeArmond. In reality, Mr. DeArmond was an independent consultant employed by Giant to oversee Giant's New Mexico 10 project.

26. All of these assertions made by McGhee were false or misleading. Neither Madison nor McGhee had experience in oil-and-gas exploration and production. They were salesmen. And Infinity had only one previous project, the Matagorda, which had not been drilled. The New Mexico 10 production revenue was neither immediate nor substantial. New Mexico 10 investors did not receive their first paltry revenue checks until December of 2008, which was four months after some investors had transferred funds to Infinity. And investors saw miniscule returns, if any, between December 2008 and September 2009, when the Giant receiver took over. For instance, in August of 2008, McGhee enticed a New Mexico 10 investor to invest $37,500 with promises of immediate income and the return of 100 percent of principal

investment within one year. This investor received a total of $667 in revenue from December of 2008 through December of 2009, but nothing more since.

False and misleading written investor updates

27. Madison sustained the illusion of Infinity's direct control over the projects through misleading investor updates. Without any independent verification, Madison passed information that he received from Giant to investors without identifying Giant as the source of the information. In furtherance of the fraudulent scheme, Madison crafted the updates, including some excerpts below, to imply that Infinity was making the decisions regarding the operations of the wells:

- April 2008: "We have staked our drill site for Matagorda . . . . We should have our rig secured soon and are excited to start drilling."
- May 2008: "We will drill Matagorda but only with the most qualified team, regardless of price and time. That being said we are waiting on a team to finish up a couple projects in south Texas before they move on to our target location."
- May 2008: "Our wells in New Mexico are online. We had some oil in the tanks, which means revenue [is] on the way. Look for your first check sometime in July."
- June 2008: "Our crew in Matagorda is finishing up a few wells and it looks like we will have a spud date in August." In the interim we have pursued further consulting to ensure the success of this well. The results have exceeded our expectations. All the experts agree we should have a profitable well soon."
- June 2008: "In New Mexico, Craig DeArmond has been working diligently on our eight wells during the initial work-over phase. We have 2 wells pumping now with 2 more to start this week."
- July 2008: "In Matagorda [C]ounty we have chosen to use Patterson-UTI (www.paterson.com). Although they were the most expensive as well as the longest wait time they are also the most experienced."
- November 2008: "Plains Marketing notified us that our statements and checks will be issued on the 20th of each month."

- December 2008: "We released and sold 700 bbl's of oil in October, and issued an additional order to sell 2000 barrels in November. A few weeks ago I told Craig DeArmond to confirm our balance of oil in the tanks and to then schedule and sell the balance of oil in December.... In conclusion, we will sell all of our oil in inventory this month. The (2) new wells will be drilled soon, thus increasing our daily production."

These updates were materially misleading, and concealed that Infinity neither owned the leases nor controlled the drilling operations. Madison intended these misleading updates, which used language such as "our," "we," "us" and "I told" to entice existing investors into future Infinity offerings or to bring other investors into the current Infinity offerings.

Claims for Relief

First Claim
Fraudulent Actions
(In violation of Section 17(a) of the Securities Act)

28. Plaintiff Commission re-alleges and incorporates paragraphs 1-27 of this Complaint by reference as if set forth *verbatim*.

29. Defendants, directly or indirectly, singly or in concert with others, in the offer or sale of securities, by use of any means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) employed devices, schemes, or artifices to defraud; or (b) obtained money or property by means of untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchasers.

30. With respect to violations of Sections 17(a)(2) and (3) of the Securities Act, Defendants were negligent in their actions regarding the representations and omissions alleged

herein. With respect to violations of Section 17(a)(1) of the Securities Act, Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

31. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

Second Claim
Fraudulent Actions
(In violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder)

32. Plaintiff Commission re-alleges and incorporates paragraphs 1-27 of this Complaint by reference as if set forth *verbatim*.

33. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or with reckless disregard for the truth: (a) employed devices, schemes, or artifices to defraud; or (b) made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon purchasers of securities, or upon other persons.

34. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

Third Claim
Unregistered Broker or Dealer
(In violation of Section 15(a) of the Exchange Act)

35. Plaintiff Commission re-alleges and incorporates paragraphs 1-27 of this Complaint by reference as if set forth *verbatim*.

36. Defendants, by engaging in the conduct described above, directly or indirectly made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities, without being registered as a broker or dealer, or being associated with a registered broker or dealer.

37. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

Relief Requested

Plaintiff respectfully requests that this Court enter a judgment:

I.

Permanently enjoining Defendants Madison, McGhee, and Infinity from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Sections 10(b) and 15(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

II.

Ordering the Defendants to disgorge an amount equal to the funds and benefits obtained illegally, or to which they are otherwise not entitled, as a result of the violations alleged, plus prejudgment interest on that amount.

III.

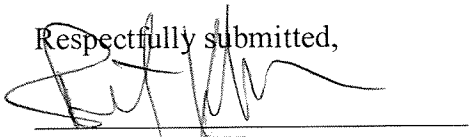
Ordering each Defendant to pay civil monetary penalties in an amount determined appropriate by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for the violations alleged herein.

IV.

Ordering such other relief as this Court may deem just and proper.

DATED: June 28, 2013

Respectfully submitted,



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