

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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 SECURITIES AND EXCHANGE COMMISSION,  
  
 Plaintiff,  
  
 v.  
  
 BRAINTREE ENERGY, INC.  
 and HOWARD GRAHAM,  
  
 Defendants.  
 \_\_\_\_\_

**JURY TRIAL DEMANDED**

Case No. \_\_\_\_\_

**07 CA 10307**

**COMPLAINT**

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Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Defendants Braintree Energy, Inc. ("Braintree") and Howard Graham ("Graham") (collectively, "Defendants"), alleges the following and, pursuant to Federal Rule of Civil Procedure 38(b), hereby demands a trial by jury of any issue triable of right by a jury:

**SUMMARY**

1. This Commission enforcement action involves a fraudulent offering and sale of unregistered securities by Defendants in the form of investment contracts and/or fractional interests in oil and gas leases. Graham, a Canadian, orchestrated the scheme through Braintree, a Cheshire, Massachusetts-based company which he controlled throughout the relevant period. Defendants made numerous oral and written misrepresentations between at least 2000 through 2006 to more than 200 investors nationwide and in foreign countries regarding the investors' expected rate of return and their associated investment risks. Defendants routinely communicated to investors that they could expect to earn between 500-900% on their

investments, with little or no risk. Moreover, Defendants failed to disclose many material facts to the investors, including that Graham intended to and was routinely diverting up to 30% of investor funds for his personal use. As a result of the scheme detailed herein, Defendants obtained at least \$9 million in investor funds and Graham diverted approximately \$3 million towards his personal use.

### **JURISDICTION**

2. The Commission is an agency of the United States of America established by Section 4(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78d(a)].

3. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. Venue is proper in the District of Massachusetts because Braintree is a Massachusetts corporation and, during the relevant period, had its principal place of business within the District. In addition, a significant amount of the communications with the victims of the fraud detailed herein occurred from within this District.

4. In connection with the conduct described herein, Defendants directly or indirectly made use of the mails or the means or instruments of transportation and communication in interstate commerce.

### **DEFENDANTS**

5. **Braintree** was incorporated in Massachusetts in or about May 2000. During the relevant period, Braintree had its principal place of business in Cheshire, Massachusetts and was in the business of selling investment contracts and/or fractional interests in oil and gas leases for drilling projects operated by Premier Minerals, Inc.

6. **Graham**, 46, is a Canadian citizen and a resident of Kingston, Ontario, Canada.

At all relevant times, he was the principal of Braintree.

#### **OTHER RELEVANT ENTITY**

7. **Premier Minerals, Inc.**, is a Texas corporation with a principal place of business in San Antonio, Texas. Premier purportedly operates oil and gas wells, and, during the relevant period, issued leasehold interests in those wells to Braintree. Braintree, in turn, offered and sold fractional interests in the wells to individual investors.

#### **STATEMENT OF FACTS**

##### **The Offerings**

8. From at least 2000 through 2006, Graham, operating through Braintree, solicited investors to purchase fractional interests in oil and gas leases for wells operated by Premier in Texas. In at least 25 instances, Premier sold a percentage of its interest in an oil or gas lease to Braintree. Braintree, in turn, offered and sold fractional interests in the wells to individual investors. Defendants raised at least \$9 million from at least 200 investors nationwide, and in foreign countries, through the unregistered offerings.

9. Defendants solicited potential investors through, among other means, Braintree's website and cold calls. In addition, Graham or others acting at his direction usually sent a prospectus and related documents to potential investors. After sending these materials, Graham or others acting at his direction contacted the potential investors and employed various aggressive sales tactics to encourage them to purchase the fractional interests in the oil and gas leases.

**Material Misrepresentations and/or Omissions**

10. Braintree, both through its offering documents and oral representations by Graham and others, told potential investors that they could expect the return of their principal within months to a year. These representations were nothing more than Graham's optimistic guesses and, therefore, lacked any basis in fact.

11. Braintree's offering documents also contained exaggerated profit projections. For example, the documents routinely projected that investors could earn between 500-900% on their investments. These projections were also nothing more than Graham's optimistic guesses and, therefore, lacked any basis in fact.

12. Graham and others at his direction also made numerous other oral misrepresentations to investors. Some of the investors were falsely told that the wells would provide them with profits for years to come. Graham also falsely told one investor that a project was guaranteed to hit oil and that he could expect to double his investment within six months of the well being drilled. In fact, most investors have received no profits and most have not even recovered their initial investments. Instead, most suffered significant losses.

13. Graham and others at his direction also led investors to believe, through various false oral communications, that investing with Braintree was not risky. For example, Graham falsely told some of the investors that Braintree had never sold any fractional interests in wells that had not produced and that their monies would be more safely invested with Braintree than if they were invested in certificates of deposit. Defendants omitted to tell investors that certain past drilling projects had in fact yielded nothing more than dry holes and that some of the earlier investors had lost their entire investments.

14. Contracts signed between Braintree and the investors outlined the purported costs of drilling and completing specific wells. However, Defendants' representations concerning the costs of completing the wells were materially misleading because they failed to disclose other material facts about the planned use of investor funds. For example, defendants failed to disclose that Graham intended to divert and/or routinely diverted approximately 30% of investor funds for his own personal use. As a result, Graham misappropriated approximately \$3 million towards his personal use.

15. Throughout the relevant period, Graham de facto used Braintree's bank account as his own personal checking account. Graham routinely directed that checks be written on the account for his own personal expenses such as for the purchase or lease of cars and other personal expenditures, and for other non-business payments to friends and family members. None of these material facts were disclosed by Defendants to either potential or eventual investors.

16. Throughout the relevant period, Defendants acted intentionally, knowingly, recklessly and/or negligently.

**FIRST CLAIM**  
**AGAINST DEFENDANTS BRAINTREE AND GRAHAM**  
**Fraud in Connection with the Purchase and Sale of Securities**  
**[Violation of Section 10(b) of the Exchange Act and Rule 10b-5]**

17. The Commission repeats and incorporates by reference the allegations in paragraphs 1-16 of the Complaint as if set forth fully herein.

18. Defendants, directly or indirectly, acting intentionally, knowingly or recklessly, by use of the means or instrumentalities of interstate commerce or of the mails, in connection with the purchase or sale of securities: (a) employed devices, schemes or artifices to defraud; (b)

made untrue statements of material fact or omitted 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; or (c) engaged in acts, practices or courses of business which operated as a fraud or deceit upon certain persons.

19. As a result, 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].

**SECOND CLAIM**  
**AGAINST DEFENDANTS BRAINTREE AND GRAHAM**

**Fraud in the Offer and Sale of Securities**  
**[Violation of Section 17(a) of the Securities Act]**

20. The Commission repeats and incorporates by reference the allegations in paragraphs 1-16 of the Complaint as if set forth fully herein.

21. Defendants, directly or indirectly, acting intentionally, knowingly recklessly or negligently in the offer or sale of securities by use of the means or instruments of transportation or communication in interstate commerce or by use of the mails: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions 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; or (c) engaged in transactions, practices or courses of business which operated as a fraud or deceit upon the purchasers of the securities.

22. As a result, Defendants violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**THIRD CLAIM**  
**AGAINST DEFENDANTS BRAINTREE AND GRAHAM**  
**Unregistered Offer and Sale of Securities**  
**[Violations of Sections 5(a) and 5(c) of the Securities Act]**

23. The Commission repeats and incorporates by reference the allegations in paragraphs 1-16 of the Complaint as if set forth fully herein.

24. Defendants, by engaging in the conduct described above, directly or indirectly:

- a. made use of means or instruments of transportation or communication in interstate commerce or of the mails to sell securities in the form of investment contracts and/or fractional working interests in oil and gas leases through the use or medium of a prospectus or otherwise;
- b. carried or caused to be carried through the mails or in interstate commerce, by means or instruments of transportation, such securities for the purpose of sale or for delivery after sale; and
- c. made use of means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise, such securities.

25. No registration statement has been filed with the Commission or has been in effect with respect to the above offerings.

26. By reason of the foregoing, Defendants violated and, unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. § 77e].

**FOURTH CLAIM**  
**AGAINST DEFENDANTS BRAINTREE AND GRAHAM**  
**Failure to Register as a Broker-Dealer**  
**[Violations of Section 15(a)(1) of the Exchange Act]**

27. The Commission repeats and incorporates by reference the allegations in paragraphs 1-16 of the Complaint as if set forth fully herein.

28. Defendants, by engaging in the conduct described above, acted and conducted business as broker-dealers in securities and as such made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or induce or attempt to induce the purchase or sale of securities in the nature of investment contracts and/or fractional working interests in oil and gas leases.

29. Defendants have neither been registered with the Commission as broker-dealers in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), nor associated with a registered broker-dealer in connection with the sale of securities in the nature of investment contracts and/or fractional working interests in oil and gas leases.

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

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that this Court:

A. Enter a permanent injunction restraining the defendants and each of their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of the order or injunction by personal service or otherwise, from directly or indirectly engaging in the conduct described above, or in conduct of similar purport and effect, in violation of:



1. Sections 10(b) [15 U.S.C. 78j(b)] and 15(a) [15 U.S.C. § 78o(a)] of the Exchange Act and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and
  2. Sections 5(a), 5(c) [15 U.S.C. §§ 77e(a) and 77e(c)] and 17(a) of the Securities Act [15 U.S.C. § 77q(a)].
- B. Require the defendants to disgorge their ill-gotten gains, including prejudgment interest thereon;
- C. Order the defendants to pay appropriate civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)];
- D. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and
- E. Award such other and further relief as the Court deems just and proper.

Respectfully submitted,



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