UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	
Plaintiff,	
v.	Case No.
SCOTT STACY PHELPS and JAMES MICHAEL HARPER,	**JURY DEMANDED**
Defendants.	

COMPLAINT

The United States Securities and Exchange Commission (the "Commission") files this complaint against Defendants Scott Stacy Phelps and James Michael Harper (together the "Defendants"):

1. This matter involves a fraudulent oil-and-gas investment scheme. From February 2015 through March 2016, Harper and Phelps raised approximately $611,000 by selling securities to nine investors.

2. Defendants told prospective investors that investment proceeds would be used to drill for oil in "proven" fields in Kentucky. These representations were false. Harper and Phelps spent the vast majority of the investor funds on themselves and their families. They paid themselves generous six-figure "salaries." Defendants

used the investors' money to pay their rent; to take vacations; to buy consumer goods, a firearm and ammunition, and auto parts. They also spent the money on dating and adult websites, entertainment, golf, and hotels.

3. Although they spent a small amount to drill two wells on two different properties, neither of them was a "proven" field, and neither well was commercially viable. Despite that, Defendants continued soliciting additional funds from investors, purportedly to drill for oil in both wells.

4. The Commission seeks to permanently enjoin Defendants from engaging in such misconduct, to disgorge their ill-gotten gains, and to pay penalties, among other relief.

JURISDICTION AND VENUE

5. The Commission seeks permanent injunctions, disgorgement, and other equitable relief pursuant to 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)]. The Commission seeks the imposition of civil penalties 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)].

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)]. Venue is proper in this district because a substantial part of the acts and transactions giving rise to the claims alleged herein occurred in this district, and because Defendants reside in this district.

7. In connection with the conduct alleged in this Complaint, Defendants directly or indirectly made use of the means or instrumentalities of transportation or communication in interstate commerce, the facilities of a national securities exchange, or the mails.

8. Defendants' conduct involved fraud, deceit, or deliberate or reckless disregard of regulatory requirements, and resulted in substantial loss, or significant risk of substantial loss, to other persons.

9. Unless enjoined, Defendants are likely to continue to engage in the violations of securities laws alleged herein, or in similar conduct that would violate the federal securities laws.

DEFENDANTS

10. **James Michael Harper**, age 35, is a resident of Russellville or Glasgow, Kentucky, in Logan County or Barren County, respectively. During the relevant time period he was the registered owner and a controlling officer of Phoenix Development Drilling Corporation, a private Kentucky corporation, and Regal Development Group, LLC, a Kentucky limited liability company. Both entities had principal places of business in Summer Shade and Brownsville, Kentucky, located in Metcalfe County and Edmonson County, respectively. The Kentucky Secretary of State administratively dissolved both entities on October 1, 2016. Both entities are hereinafter collectively referred to as "Phoenix."

11. **Scott Stacy Phelps**, age 46, is a resident of Cub Run, Hart County, Kentucky. During the relevant period, he served as Harper's partner in Phoenix, with effective and equal control over Phoenix's expenditures, business decisions, and dealings with third parties.

FACTS

The Offerings

12. From at least February 9, 2015 through March 2016, Harper and Phelps cold-called potential investors, most of whom resided outside of Kentucky, using "lead lists" obtained from third parties.

13. Defendants told prospective investors that their investment would be used to drill for oil on the "proven" Lee Miles lease in Hart Count, Kentucky. They touted Phoenix as a low-overhead operation.

14. Once a prospective investor expressed interest, the investor received offering materials – documents that Harper and Phelps revised, reviewed, approved, and caused to be disseminated. In these offering materials, Defendants reiterated that Phoenix would use the invested funds to drill for oil.

15. Defendants offered different investment opportunities. The "Phoenix 3 Select" investment concerned the sale of seven "units" in three new wells to be drilled by Phoenix on Phoenix-selected oil and gas leases in Hart County, Barren County or Monroe County. In the offering documentation, Defendants represented

that the main purpose of the enterprise was to develop the "proven Lee Miles lease" in Hart County, Kentucky.

16. The "Phoenix 3 Preferred" investment concerned the sale of seven "units" in three new wells to be drilled by Phoenix on the Miles lease.

17. Both offering documents contained a joint venture and a joint operating agreement. Under the terms of those agreements, each investor – referred to as a "Working Interest Partner" and a "Non-Operator" – received a 14% per unit working interest in, and a 10% per unit net revenue interest in and to, the oil and gas produced from the Miles lease. Phoenix received a specified net revenue interest in the oil and gas produced, in return for which it would oversee the drilling operations "with diligence" and "us[ing] its best efforts."

18. Still another Phoenix investment opportunity, an Overriding Royalty Interest ("ORI") in all of Phoenix drilling operations, offered investors "a guarantee of at least 6%" return on investment for the first year. Investors were told that their money would be "used to further the growth of Phoenix."

Defendants' Spending of Investor Proceeds on Themselves

19. Defendants told investors their money would be used for the oil drilling operations. Phoenix promised to work with diligence, and to use its best efforts, drilling for oil. But Defendants' primary focus was self-enrichment. Of the $611,000 Defendants raised from investors, they spent no more than ten percent to drill for oil or for other legitimate business expenses.

20. Harper and Phelps spent the vast majority of the investor funds on themselves and their families. Harper and Phelps paid themselves purported "salaries" totaling $112,661 and $118,002, respectively. They also used more than $100,000 of the investors' money on resorts, amusement parks, golf, jewelry, dating and adult websites, auto parts, gas, groceries, clothing, and online gambling, among other things. Defendants also used investment proceeds to pay their agents to solicit new investors.

21. Defendants and their agents offered investors little in return, spending most of their time golfing, engaging in other recreational activities, and soliciting fresh investment proceeds to finance their lifestyle.

22. Defendants also used new investment proceeds to make Ponzi-like payments to existing investors. Such payments perpetuated Defendants' fraudulent operation, encouraging additional investments while discouraging redemptions. Defendants represented that these payments were "ORI" payments, leading investors to believe that these payments were oil production revenue from Phoenix's wells. In fact, Phoenix never made a penny of oil revenue.

Defendants' Other False Statements to Investors

23. Defendants described the Miles lease to investors as "proven" or a "proven field." But no wells had been drilled on that lease before Phoenix drilled a single, non-producing well.

24. Defendants also raised additional funds from two investors for payments for "completion" and "acid treatment" for one well before that well was actually drilled, falsely representing that the well was already "[blowing] nice quality oil." Defendants did not use the investment proceeds for such purposes.

25. Although Defendants spent a small amount to drill two wells on two different properties, neither well was commercially viable. Defendants knew, or were reckless in not knowing, that neither well was commercially viable. Despite that, they continued soliciting additional funds from investors, purportedly to drill for oil in both wells.

26. Phelps lied to investors in other ways as well. During golf games he would text investors that he was "in the field" or "staking [out] well locations." He told one investor that he was traveling to Canada for a conference with "our" Canadian investors. But Phoenix had no investors in Canada.

COUNT I

Violations of Exchange Act Section 10(b) and Rule 10b-5

27. Paragraphs 1 through 26 are realleged and incorporated by reference.

28. By engaging in the conduct described above, Defendants, directly or indirectly, acting knowingly or recklessly, in connection with the purchase or sale of securities, by the use of means and instrumentalities of interstate commerce, or of the mails, have: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the

statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices or courses of business which operate as a fraud or deceit upon certain persons.

29. Defendants knew, or were reckless in not knowing, of the facts and circumstances described in paragraphs 1 through 26 above.

30. 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].

COUNT II

Violations of Section 17(a) of the Securities Act

31. Paragraphs 1 through 26 are realleged and incorporated by reference.

32. By engaging in the conduct described above, Defendants, directly or indirectly, acting knowingly or recklessly, in the offer and sale of securities, by the use of means and instrumentalities of interstate commerce, or of the mails, have: (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 material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit.

33. Defendants knew, or were reckless in not knowing, of the facts and circumstances described in paragraphs 1 through 25 above.

34. 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)].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently enjoin Defendants, their agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the Order, by personal service or otherwise, and each of them from, directly or indirectly, engaging in the transactions, acts, practices or courses of business described above, or in conduct of similar purport and object, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

II.

Permanently enjoin Defendants from directly or indirectly, including, but not limited to, through any entity owned or controlled by them, participating in the issuance, purchase, offer, or sale of any oil-and-gas related securities; provided, however, that such injunction shall not prevent them from purchasing or selling oil-and-gas related securities for their own personal accounts.

III.

Order Defendants to, jointly and severally, disgorge the amounts equal to the funds and benefits they obtained, directly or indirectly, as a result of the wrongful conduct set forth in the Complaint, including prejudgment interest.

IV.

Impose upon each of Defendants an appropriate civil penalty 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)].

V.

Retain jurisdiction of this action in accordance with the principals of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VI.

Grant such Orders for further relief the Court deems appropriate.

JURY DEMAND

Pursuant to Rule 39 of the Federal Rules of Civil Procedure, the Commission hereby requests a trial by jury.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
By its attorneys

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