

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.:

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**HIDALGO MINING CORP.,
JOHN W. BOYER, and
JOSHUA F. McALEES,**

Defendants.

COMPLAINT

Plaintiff Securities and Exchange Commission alleges and states as follows:

I. INTRODUCTION

1. The Commission brings this action to enjoin Hidalgo Mining Corp. (“Hidalgo”), John W. Boyer, president of Hidalgo, and Joshua F. McAlees, vice president of Hidalgo (collectively, “Defendants”) from further violations of the anti-fraud and registration provisions of the federal securities laws.

2. From at least 2009 through March 2013, Hidalgo and its principals, Boyer and McAlees, raised about \$10.35 million from approximately 85 investors nationwide by engaging in offering and selling unregistered securities in the form of investment contracts.

3. Hidalgo investor monies were pooled together to purchase mining equipment and to pay for mining operations for a silver mine located near Mexico City, Mexico. In exchange for their investment, Hidalgo gave investors the right to the future production of silver from the mine at a certain price per ounce, which investors could choose to receive in cash instead.

Hidalgo's securities were marketed and sold by McAlees, and by Boyer and a team of sales agents who worked for a company owned by Boyer at the time.

4. Hidalgo, Boyer and McAlees made material misrepresentations and omissions orally and in offering materials distributed to investors. Specifically, they represented to investors that their monies would be used to fund the mining operations, but omitted to inform investors that 10% of their money would be used to pay sales commissions to Boyer, McAlees, and the other sales agents. In addition, Boyer and McAlees personally guaranteed the principal amounts of some of the investor funds totaling about \$3.5 million. Boyer and McAlees have made refunds to several investors. However, the Defendants omitted to disclose to investors that Boyer and McAlees did not have the financial ability to make good on all of the guarantees had they been called upon to honor all the guarantees simultaneously. In March 2013, the Defendants ceased raising capital from investors. During the relevant time period, Boyer, McAlees, and the sales agents were not registered as broker-dealers with the Commission.

5. By engaging in this conduct, Defendants violated Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a) and 77e(c)]; Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)]; and Section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78o(a)(1)]. Unless restrained and enjoined, Defendants are reasonably likely to continue to violate the federal securities laws.

6. The Commission also seeks disgorgement of all ill-gotten gains, including prejudgment interest thereon; an order directing the Defendants to pay civil money penalties; and any other relief that may be necessary and appropriate.

II. DEFENDANTS

7. Hidalgo is a Florida corporation established in February 2009 with its principal place of business in Palm Beach Gardens, Florida. Hidalgo and its securities have never been registered with the Commission in any capacity.

8. Boyer, age 56, resides in North Palm Beach, Florida. During the relevant time period, Boyer was the president and 50% owner of Hidalgo.

9. McAlees, age 42, resides in Jupiter, Florida. During the relevant time period, McAlees was the vice-president and 50% owner of Hidalgo.

III. JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

11. This Court has personal jurisdiction over the Defendants, and venue is proper in the Southern District of Florida, because, among other things, Hidalgo is a Florida corporation with its office located in the Southern District of Florida, and both Boyer and McAlees reside in the Southern District of Florida.

IV. FACTUAL BACKGROUND

A. The Unregistered Securities Offering

12. From at least August 2009 until March 2013, Hidalgo raised approximately \$10.35 million from approximately 85 investors nationwide through the unregistered offering of securities. The securities were in the form of investment contracts called “Agreements for the Purchase and Sale of Future Production of Silver” (“purchase agreements”). Hidalgo investors’ monies were pooled together to purchase mining equipment and to pay for the mining operations

of a silver mine called “Dorosa,” which is located in the Sultepec mining district outside of Mexico City, Mexico. Hidalgo later refunded to investors about \$2.68 million of the \$10.35 million raised.

13. Hidalgo typically sold the purchase agreements to investors at a steep discount (usually about 50%) to the spot price of silver. Although Hidalgo’s purchase agreements gave investors the right to the future production of silver from the Dorosa mine at a certain price per ounce, investors had the choice of receiving cash from Hidalgo in an amount equal to the spot price of the precious metal at the time of the contract payout.

14. Hidalgo solicited investors primarily through Boyer, McAlees, and a team of sales agents who worked for a company Boyer owned at the time. In most instances, Boyer and McAlees paid themselves or the sales agents a 10% commission on each sale, which came out of the investor’s principal investment.

15. During the sales calls, investors were told varying time frames on when they could expect a return on their investment, ranging from six months to three years. In these calls, many investors were offered personal guarantees on their principal investments by Boyer and McAlees to entice them to invest with Hidalgo. Either by invitation or at their request, some investors visited the Dorosa mine in Mexico prior to or after investing with Hidalgo. During the relevant time period, Boyer, McAlees, and the sales agents were never registered as broker-dealers with the Commissions.

16. If a potential investor expressed interest in the investment opportunity, Boyer, McAlees, or the sales agent would send the investor an Investment Memorandum, which briefly explained the investment and the silver market in general, and included information about and pictures of the Dorosa mine. In addition, potential investors would receive a copy of the

purchase agreement, which investors were required to sign if they decided to invest. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities offered and sold by the Defendants.

B. Hidalgo's Arrangement with the Mine Owners

17. Hidalgo contracted with Comprosuoro SA de CV ("Mexican company"), a Mexican company that owned the concession rights to the Dorosa mine, in order to secure a portion of the future production rights of the Dorosa mine in exchange for funding some of the mining operations through monies raised from Hidalgo's investors. As part of this agreement, the Mexican company received a net total of approximately \$6.7 million in Hidalgo investor funds for the mining operations.

18. In addition, Boyer and McAlees had an oral "gentleman's" agreement with the Mexican company's part owner and the individual who oversaw the mining operations, that Hidalgo would also have an ownership interest in Dorosa once the capital investments were completed and the mine was operating. Hidalgo's ownership interest in the mine was to be determined based on a totality of factors, including the amount of money invested by the owners of the Mexican company as compared to that by Hidalgo's investors.

19. To date, Hidalgo's mining venture has been unsuccessful. In late 2014, the Mexican company shut down the Dorosa silver mine. The company suspended all mining development and operations because of a lack of capital and its claim that the current market price of silver rendered cost ineffective continued attempts to extract the silver from the mine.

C. Material Misrepresentations and Omissions

20. Boyer and McAlees made misleading personal guarantees on the principal investments of many of the Hidalgo's investors which could not be fulfilled if refund demands

were made simultaneously. The written guarantees, entitled “Purchase Agreement Guaranty” and signed by both Boyer and McAlees, stated that they would “assume full responsibility” for the repayment of the investment if Hidalgo defaulted on the purchase agreement with the investor. Boyer and McAlees issued these personal guarantees to investors in order to entice them to invest, and for some investors the guarantees were the reason they made the final decision to invest with Hidalgo. In total, Boyer and McAlees guaranteed nearly half of Hidalgo’s purchase agreements for a total of approximately \$3.5 million.

21. Hidalgo, Boyer, and McAlees omitted to disclose to investors that Boyer and McAlees had guaranteed other investors’ principal and that they did not have the immediate financial ability to even come close to simultaneously repaying all of the Hidalgo investments they guaranteed. Because the Dorosa’s mining operations are currently suspended, Hidalgo is now in default on all of the purchase agreements with the investors. To date, Boyer and McAlees have only been able to pay back a small fraction of the investment amounts they guaranteed.

22. In addition, Hidalgo, Boyer, and McAlees failed to disclose to investors and prospective investors that 10% of their money would be used to pay commissions to Boyer, McAlees, or the sales agents. Records show that a total of about \$885,000 in investor funds were paid out to them as commissions shortly after Hidalgo received the money. In particular, Boyer and McAlees received about \$336,000 and \$84,000, respectively, in commissions for selling the investment.

23. The offering documents distributed to investors, including the purchase agreements, make no mention of commissions. In fact, the materials specifically stated that investor funds would only be used to purchase mining equipment and fund Dorosa’s mining

operations. Similarly, Boyer, McAlees, and sales agents told investors during sales calls that their funds would be used to develop the mine and pay for mining operations, and they never mentioned anything to investors about commissions. With less money going to the mining operation, the likelihood diminished that this venture would be successful.

V. CLAIMS FOR RELIEF

COUNT I

Violations of Sections 5(a) and 5(c) of the Securities Act

24. The Commission repeats and realleges paragraphs 1 through 23 of its Complaint.

25. No registration statement was filed or in effect with the Commission pursuant to the Securities Act with respect to the securities issued by Hidalgo described in this Complaint and no exemption from registration existed with respect to these securities.

26. From August 2009 until March 2013, Hidalgo, Boyer and McAlees, directly and indirectly:

- (a) made use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell securities, through the use or medium of a prospectus or otherwise;
- (b) carried or caused to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or delivery after sale; or
- (c) made use of any 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 any security,

without a registration statement having been filed or being in effect with the Commission as to such securities.

27. By reason of the foregoing Hidalgo, Boyer and McAlees violated and, unless enjoined, are reasonably likely to continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)].

COUNT II

Fraud in Violation of Section 17(a)(2) of the Securities Act

28. The Commission repeats and realleges paragraphs 1 through 23 of its Complaint.

29. From approximately August 2009 until March 2013, Hidalgo, Boyer and McAlees, 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, directly or indirectly negligently obtained money or property by means of untrue statements of material facts and omissions to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading.

30. By reason of the foregoing, Hidalgo, Boyer and McAlees violated and, unless enjoined, are reasonably likely to continue to violate, Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)].

COUNT III

Violation of Section 15(a)(1) of the Exchange Act
By Boyer and McAlees

31. The Commission repeats and realleges paragraphs 1 through 23 of its Complaint.

32. From approximately August 2009 until March 2013, Boyer and McAlees made use of the mails or any means or instrumentality of interstate commerce to effect transactions in securities, or to induce or attempt to induce the purchase or sale of securities, without being associated with a broker or dealer that was registered with the Commission in accordance with Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b).

33. By reason of the foregoing, Boyer and McAlees directly and indirectly violated, and unless enjoined, are reasonably likely to continue to violate, Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a).

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests the Court find the Defendants committed the violations alleged and:

A.

Permanent Injunction

Issue a Permanent Injunction, restraining and enjoining Hidalgo, Boyer and McAlees, their agents, servants, employees, attorneys, and representatives, and all persons in active concert or participation with them, and each of them, from violating Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)]; Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)]; and Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

B.

Disgorgement

Issue an Order directing Hidalgo, Boyer and McAlees to disgorge all ill-gotten gains, including prejudgment interest, resulting from the acts and/or courses of conduct alleged in this Complaint.

C.

Civil Penalty

Issue an Order directing Hidalgo, Boyer and McAlees to pay a civil money penalty 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)].

D.
Further Relief

Grant such other and further relief as may be necessary and appropriate.

E.
Retention of Jurisdiction

Further, the Commission respectfully requests the Court retain jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that it may enter, or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

Respectfully submitted,

August 4, 2017

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