

ORIGINAL



0000139844

1 Jeffrey D. Gardner, AZ #021783
2 Gardner@SacksTierney.com
3 SACKS TIERNEY P.A.
4 4250 N. Drinkwater Blvd., 4th Floor
5 Scottsdale, AZ 85251-3693
6 Telephone: 480.425.2600
7 Fax: 480.425.4916

RECEIVED
AZ CORP COMMISSION
DOCKET CONTROL

2012 OCT 5 PM 4:50

BEFORE THE ARIZONA CORPORATION COMMISSION

8 In the matter of:

DOCKET No.: S-03479A-12-0360

9 CHRISTOPHER DEAN DEDMON
10 CRD #3015575 and KIMBERLY
11 DEDMON,
12 husband and wife,

**ANSWER OF RESPONDENTS ROBERT R.
COTTRELL AND RSC ADVENTURES,
LLC**

13 ROBERT R. COTTRELL (a.k.a. "ROB
14 COTTRELL"),

15 SDC MONTANA CONSULTING,
16 LLC (a.k.a., d.b.a, a.b.n. "SDC
17 MONTANA" and "SDC MONTANA
18 OIL & GAS EXPLORATION"), an
19 Arizona limited liability company,

20 RSC ADVENTURES LLC, an Arizona
21 limited liability company,

22 Respondents.

23 Pursuant to Arizona Administrative Code R14-4-305, Respondents Robert R. Cottrell
24 ("Cottrell") and RSC Adventures, LLC ("RSCA")(collectively "Respondents"), for and on behalf
25 of themselves only, do hereby file their Answer to the Notice of Opportunity For Hearing
26 Regarding Proposed Order To Cease and Desist, Order for Restitution, Order For Administrative
27 Penalties and Order For Other Affirmative Action, and hereby admit, deny and allege as follows:
28

Arizona Corporation Commission

DOCKETED

OCT 05 2012

DOCKETED BY

SACKS TIERNEY P.A., ATTORNEYS
4250 NORTH DRINKWATER BOULEVARD
FOURTH FLOOR
SCOTTSDALE, ARIZONA 85251-3693

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

JURISDICTION

1. Respondents admit the allegations of paragraph 1.

II.

RESPONDENTS.

2. Respondents do not have information or knowledge sufficient to form a belief as to the truth of the allegations of paragraph 2, and on that basis deny same.
3. Respondents admit the allegations of paragraphs 3-5 inclusive.
4. Respondents deny the allegations of paragraph 6.
5. Respondents admit the allegations of paragraphs 7-11.
6. Respondents affirmatively state that paragraph 12 does not require a response.
7. Respondents do not have information or knowledge sufficient to form a belief as to the truth of the allegations of paragraphs 13-14, and on that basis deny same.
8. Respondents deny the allegations of paragraph 15.
9. Respondents affirmatively state that the content of the subject website speaks for itself, and deny any remaining allegations of paragraphs 16-19.
10. Respondents deny the allegations of paragraph 20.
11. Respondents admit the allegations of paragraphs 21-22.
12. Answering paragraph 23, Respondents admit that SDC issued "Membership Interests" totaling 100 points. Respondents are without information sufficient to form a belief as to the remaining allegations and on that basis deny same.
13. Answering paragraphs 24-28 inclusive, Respondents do not have information or knowledge sufficient to form a belief as to the truth of the allegations therein and on that basis deny same.
14. Answering paragraphs 29-40 inclusive, Respondents state that the "Operating Agreement" speaks for itself. Respondents are without information sufficient to form a belief as to the truth of any remaining allegations and on that basis deny same.

1 15. Answering paragraphs 41-49, Respondents state that referenced text messages
2 and/or emails speak for themselves. Respondents further state that the referenced SDC Executive
3 Summary speaks for itself. Respondents object to any characterization of such text messages
4 and/or emails and deny all remaining allegations contained therein.

5 16. Answering paragraphs 50-51, Respondents state that the referenced documents
6 speak for themselves. Respondents object to any characterization of such documents and deny
7 all remaining allegations contained therein.

8 17. Respondents deny the allegations in 52.

9 18. Answering paragraphs 53-55, Respondents are without information sufficient to
10 form a belief as to the truth of the allegations and on that basis deny same.

11 19. Answering paragraphs 56-57, Respondents state that the content of SDC's website
12 speaks for itself. Respondents further state that the "Operating Agreement" speaks for itself.
13 Respondents are without information sufficient to form a belief as to the truth of any remaining
14 allegations and on that basis deny same.

15 20. Respondents deny the allegations of paragraph 58.

16 21. Answering paragraphs 59-70, Respondents state that the referenced Division
17 filings and Orders, as well as any bankruptcy filings, speak for themselves. Respondents are
18 without information sufficient to form a belief as to the truth of any remaining allegations and on
19 that basis deny same.

20 22. Answering paragraph 71, Respondents deny that risks were never discussed.
21 Respondents are without information sufficient to form a belief as to the truth of any remaining
22 allegations and on that basis deny same.

23 23. Answering paragraph 72, Respondents state that the referenced email speaks for
24 itself. Respondents object to any characterization of such email. Respondents affirmatively state
25 that allegations are taken out of context and are incomplete. Respondents are without
26 information sufficient to form a belief as to the truth of any remaining allegations and on that
27 basis deny same.

1 24. Answering paragraphs 73-78, Respondents admit Membership Interests were
2 offered or sold within or from the State of Arizona, and that neither the Membership Interests nor
3 Respondents were registered under the Securities Act. Respondents further state that the
4 provisions of A.R.S. §§ 44-1841 and 44-1842 speak for themselves. Respondents are without
5 sufficient information to form a belief as to the truth of the remaining allegations and on that basis
6 deny same.¹

7 25. Answering paragraphs 79-80, Respondents state that the provisions of A.R.S. § 44-
8 1991 speak for themselves, and deny all remaining allegations.

9 26. Respondents admit the allegations of paragraph 81.

10 27. Respondents deny all allegations as to which no response has been given.

11 **AFFIRMATIVE DEFENSES**

12 As and for their Affirmative Defenses, Respondents allege as follows:

13 **First Affirmative Defense**

14 Pursuant to A.A.C.R. 14-4-308(c)(1) Respondents are entitled to a set-off for all
15 restitution paid to SDC investors.

16 **Second Affirmative Defense**

17 The ACC cannot meet the applicable standards for any of the relief it is seeking in the
18 Notice.

19 **Third Affirmative Defense**

20 The Notice fails to state a claim upon which relief can be granted.

21 **Fourth Affirmative Defense**

22 Respondents did not offer or sell securities within the meaning of the Arizona Securities
23 Act.

24 **Fifth Affirmative Defense**

25 Respondents did not engage in any activity that required registration with the Arizona

26 ¹ There is no paragraph 77 and, therefore, no response is required.

1 Corporation Commission's Securities Division.

2 Sixth Affirmative Defense

3 If the program at issue is determined to be a security, it was exempt from registration
4 and/or sold in an exempt transaction.

5 Seventh Affirmative Defense

6 Respondents did not act with the requisite scienter.

7 Eighth Affirmative Defense

8 The Division has failed to plead fraud with reasonable particularity as required by Rule
9 9(b) of the Arizona Rules of Civil Procedure.

10 Ninth Affirmative Defense

11 The alleged investors suffered no injuries or damages as a result of Respondents' alleged
12 acts.

13 Tenth Affirmative Defense

14 The alleged investors all alleged injuries or damages are the result of acts or omissions
15 committed by non-parties.

16 Eleventh Affirmative Defense

17 Respondents did not employ a device, scheme or artifice to defraud the alleged investors.

18 Twelfth Affirmative Defense

19 Respondents did not make or intentionally make any untrue statements of material fact
20 that were misleading.

21 Thirteenth Affirmative Defense

22 The alleged investors could not have reasonably relied upon any statement or action by
23 Respondents.

24 Fourteenth Affirmative Defense

25 Respondents did not engage in any transaction, practice or course of business that
26 operated or would operate as a fraud or deceit upon the alleged investors.

1 Fifteenth Affirmative Defense

2 Restitution is not an appropriate remedy.

3 Sixteenth Affirmative Defense

4 Respondents did not violate A.R.S. §§ 44-1841, 44-1842, or 44-1991.

5 Seventeenth Affirmative Defense

6 Respondents allege such other affirmative defenses set forth in the Arizona Rules of Civil
7 Procedure 8(c) as may be determined to be applicable during discovery.

8 Eighteenth Affirmative Defense

9 Respondents further request that a finding be made by the Commission that Respondents
10 have not violated A.R.S. § 44-1991 in that:

11 (i) the representations made to induce investors to purchase SDC Membership
12 Interests were made in good faith by Respondents;

13 (ii) said representations were essentially true and correct;

14 (iii) Membership Interests purchased in SDC have not resulted in any losses to
15 any of the investors; and

16 (iv) further profits will accrue to SDC and its investors indefinitely from
17 anticipated royalties from currently producing wells as well as from future wells that go online
18 and become producing wells.

19 Nineteenth Affirmative Defense

20 If investors retrieve the entire "consideration paid," plus interest in the form of
21 distributions made by the insurer, there is no further "restitution" that is due and payable pursuant
22 to A.R.S. § 44-1201.

23 Respondents reserve the right to supplement this Answer and to add any additional and
24 applicable affirmative defenses, if any, which may be discovered during the discovery period or
25 during the pendency of this action

26
27 WHEREFORE, Respondents reiterate their request for a Hearing under A.R.S. § 44-1972,
28

1 respectfully request that the Securities Division's Requested Relief be denied, and pray that the
2 Commission issue Orders consistent with Respondents' asserted Affirmative Defenses set forth
3 above.

4 DATED this 5th day of October, 2012.

5
6 SACKS TIERNEY P.A.

7
8 
9 Jeffrey D. Gardner
10 Attorneys for Respondents Robert R. Cottrell and
RSC Adventures, LLC

11 Original and thirteen (13) copies
12 hand-delivered this 5th day of
October, 2012, to:

13 Docket Control
14 Arizona Corporation Commission
15 1200 West Washington
Phoenix, Arizona 85007

16 COPY of the foregoing hand-delivered
this 5th day of October, 2012 to:

17 Matthew J. Neubert
18 Director of Securities
19 Securities Division
20 Arizona Corporation Commission
1300 W. Washington Street, 3rd Floor
Phoenix, Arizona 85007

21 Ryan J. Millecam
22 Staff Attorney
23 Arizona Corporation Commission
Securities Division
24 1300 W. Washington Street, 3rd Floor
Phoenix, Arizona 85007

25
26 
27
28