

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

Arizona Corporation Commission

DOCKETED

MAR 25 2016

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AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:
MERCHANT INTERNATIONAL
RESOURCES, INC., a Texas corporation,
and
KENNETH WHITE, a/k/a Kenneth Whyte,
an unmarried individual,
Respondents.

DOCKET NO. S-20959A-16-0109

NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO CEASE
AND DESIST, ORDER FOR RESTITUTION,
ORDER FOR ADMINISTRATIVE
PENALTIES, AND ORDER FOR OTHER
AFFIRMATIVE ACTION

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING
EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

1. The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Marchant International Resources, Inc. ("Marchant") and Kenneth White have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act"). (White and Marchant may be referred to collectively as "Respondents").

2. As described below, Respondents made false representations to twelve investors in connection with the unregistered sale of unregistered securities. Among other things, Respondents stated that they would use the investors' capital contributions to fund oil and gas well development by Marchant's supposed drilling partners, that Marchant owned mineral lease interests, and that White was qualified to conduct oil and gas drilling operations. In fact, Marchant had no such drilling partners, owned no mineral rights, and White has a history of fraud that he failed to disclose to investors.

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I.

JURISDICTION

3. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

FACTS

4. From at least fall 2012, through June 2015, White, an unmarried man, resided in Maricopa County.

5. On April 14, 2011, White formed Marchant, a Texas corporation residing and doing business in Arizona. White was Marchant’s President/CEO, Secretary, Treasurer and Director.

6. Marchant describes itself on the “welcome” page of its website, www.marchantcorp.com, as “an Oil and Natural Gas Investment Management Company.”

7. When speaking with investors, White described Marchant similarly, as an oil and gas investment company that provided capital to drilling partners.

8. Respondents represented to Marchant investors that Marchant’s drilling partners would produce oil and natural gas from wells in Montana and Texas. Marchant would receive a portion of the profits from production. Marchant would then pay returns to the investors. Several of the investors expected to receive payments within a year of investing.

9. To raise capital for these ventures, from fall 2013 through June 2015, Respondents offered and sold “units of participation” in two oil well projects to at least 12 investors. The oil well projects were the Horseshoe Project (sometimes called the Horseshoe Prospect) in Fallon County and Wibaux County, Montana, and the Eastwood Project in Frio County, Texas.

10. Two of the investors were friends of White’s. These two investors introduced friends, family and co-workers to White who then informed the investors about participating in the two oil well projects.

1 11. White personally offered and sold the investments to investors. White's
2 communication consisted of phone conversations, email, in-person meetings and presentations, and
3 through documents that White and Marchant sent to investors.

4 12. The offers and sales occurred within and from Arizona.

5 13. All 12 investors purchased units of participation in the Horseshoe Project; at least four
6 of the investors also purchased units of participation in the Eastwood Project.

7 14. White and Marchant's sales of the units of participation totaled \$1,400,000.

8 15. Three investors received partial returns of their investments totaling \$47,856.

9 16. The investors paid for their units of participation by cashier's check, personal check,
10 and wire transfers to White and Marchant.

11 17. Money from each investor was to be part of an "aggregate" fund that would be used
12 for oil well drilling and development.

13 18. After each investor paid for their respective units of participation, Respondents
14 provided each investor with documents titled "Participation Agreement" issued by Marchant and
15 signed by White on behalf of Marchant. Each "Participation Agreement" shows the investor's units
16 of participation and corresponding revenue interest in the specified project.

17 19. The Marchant investors did not participate in the operations of the business. They
18 depended on the efforts of White and Marchant to realize a return on their investments.

19 20. Prior to investing in the Horseshoe Project, Respondents provided several investors
20 with a document titled "Memorandum – Horseshoe Project – Middlle [sic] Baken [sic] Formation"
21 offering to sell 280 "Units" at \$50,000 per unit to develop wells in Montana.

22 21. This memorandum states that Marchant is offering oil and gas investment
23 opportunities "which enable investors to participate in acquiring direct participation working interest,
24 resulting in potential cash flow and unique tax benefits associated with oil and natural gas
25 investments."
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1 22. The Horseshoe Project memorandum describes obtaining “aggregate” investor funds
2 to transfer to a “Drilling Partner” who will develop wells. According to the memorandum, only
3 \$30,000 of the money raised will go to Marchant’s administrative expenses; the rest will go to “the
4 actual drilling, testing, [sic] of the Proposed Well and for related lease costs.”

5 23. The memorandum further states that Marchant’s “Drilling Partner”—defined as
6 Slawson Exploration Company Incorporated—will develop the wells. There are also several pages
7 describing Slawson and why Marchant chose to partner with them.

8 24. The memorandum states that “Kenneth Whyte” has “extensive onshore and offshore
9 drilling experience throughout the United States, Canada, North Sea, and the Middle East” and has
10 worked for Amoco and B.P. Alaska. As President of Marchant, White’s responsibilities include
11 supervision on the drill sites to represent Marchant and the investors’ interests.

12 25. Prior to investing in the Horseshoe Project, Respondents gave several investors a
13 document was titled “Horseshoe Project 150 Middle Baken [sic] Dual Lateral Wells – Participant
14 Offering Letter.” This letter describes participating in Marchant’s operations by purchasing a “Unit”
15 as an “investment.” In this document, Respondents explain that independent operators have been
16 very successful developing oil and gas production, have spent their cash reserves doing so, are
17 coming up on time constraints to develop wells on the land they lease, are willing to partner with
18 financing companies and grant a working interest in the wells. Marchant partners with such
19 companies by providing capital to the independent operators in exchange for a working interest that
20 entitles Marchant to a share of the royalties from oil and gas production.

21 26. In the offering letter, Respondents represented that as the wells are developed, the
22 investor would receive estimated royalty income per unit of participation annually, \$78,796 in year
23 one, then \$157,592, \$350,240, \$525,360 and \$636,700 respectively in each subsequent year.

24 27. Prior to their investing, Respondents also gave several Horseshoe Project investors a
25 document titled “Drilling Agreement” where Respondents represent that Marchant has a right to
26

1 acquire a working interest in specified wells, that it is entitled to receive revenues from the well, and
2 that the prospect wells are subject to a valid and existing mineral lease.

3 28. In the Horseshoe Project drilling agreement, Respondents further represent that
4 Marchant will begin drilling within 45 days after the 280 units of participation are sold; Marchant
5 will return the investment if drilling does not begin as represented.

6 29. Prior to their investing, Respondents gave some Horseshoe Project investors a
7 document titled "Operating Agreement" in which Respondents represent that Marchant is the owner
8 of oil and gas leases and mineral interests in a specified, Horseshoe Project land parcel in Fallon
9 County and Wibaux County, Montana. (This representation is in contradiction to other
10 representations that Marchant's drilling partner owns the land and mineral rights.)

11 30. Prior to their investing in the Eastwood Project, Respondents provided several
12 investors with a document titled "Memorandum – Eastwood #1 – Budda Formation" offering to sell
13 60 "Units" at \$50,000 per unit to develop wells in Frio County, Texas. This memorandum is
14 substantially similar to the Horseshoe Project memorandum; it contains the same representations
15 from the Horseshoe Memorandum described above.

16 31. Respondents also gave several investors in the Eastwood project a document titled
17 "Drilling Agreement" where Respondents represent that Marchant has a right to acquire a working
18 interest in specified wells in Frio County, Texas, that it is entitled to receive revenues from the wells,
19 and that the prospect wells are subject to valid and existing mineral leases.

20 32. In the drilling agreement for the Eastwood Project, Respondents represent that
21 Marchant will begin drilling within 45 days after the 60 units of participation are sold; Marchant will
22 return the investment if drilling does not begin as represented.

23 33. Respondents gave some Eastwood Project investors a document titled "Operating
24 Agreement" in which Respondents represent that Marchant is the owner of oil and gas leases and
25 interest in a specified parcel of land in Frio County, Texas. (This representation is in contradiction to
26 other representations that Marchant's drilling partner owns the land and mineral rights.)

1 IV.

2 VIOLATION OF A.R.S. § 44-1842

3 (Transactions by Unregistered Dealers or Salesmen)

4 41. Respondents offered or sold securities within or from Arizona while not registered as
5 dealers or salesmen pursuant to Article 9 of the Securities Act.

6 42. This conduct violates A.R.S. § 44-1842.

7 V.

8 VIOLATION OF A.R.S. § 44-1991

9 Fraud in Connection with the Offer or Sale of Securities

10 43. In connection with the offer or sale of securities within or from Arizona, Respondents
11 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements
12 of material fact or omitted to state material facts that were necessary in order to make the statements
13 made not misleading in light of the circumstances under which they were made; or (iii) engaged in
14 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
15 offerees and investors. Respondents' conduct includes, but is not limited to, the following:

16 a) Representing to offerees and investors that Marchant had contracts with drilling
17 partners and was producing oil, when no such contracts existed and there was no oil production.

18 b) Representing to offerees and investors that investor funds would be used to fund
19 oil well development and production when Marchant did not have any ownership or contractual
20 interest in oil wells, thus at least a portion of investor funds was misused.

21 c) Representing to offerees and investors that Marchant owned leases and mineral
22 rights in Montana and Texas counties, when in fact Marchant had no such interest.

23 d) Failing to disclose to several offerees and purchasers that White had been
24 convicted of fraud and theft.

25 44. This conduct violates A.R.S. § 44-1991.

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VI.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order Respondents to pay the state of Arizona administrative penalties of up to \$5,000 for each violation of the Securities Act, pursuant to A.R.S. § 44-2036; and
4. Order any other relief that the Commission deems appropriate.

VII.

HEARING OPPORTUNITY

Each respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling 602-542-3477 or at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal,

1 ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov. Requests should
2 be made as early as possible to allow time to arrange the accommodation. Additional information
3 about the administrative action procedure may be found at
4 <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>.

5 **VIII.**

6 **ANSWER REQUIREMENT**

7 Pursuant to A.A.C. R14-4-305, if a respondent requests a hearing, the requesting respondent
8 must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona
9 Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days
10 after the date of service of this Notice. Filing instructions may be obtained from Docket Control by
11 calling 602-542-3477 or at <http://www.azcc.gov/divisions/hearings/docket.asp>.

12 Additionally, the answering respondent must serve the Answer upon the Division. Pursuant
13 to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a
14 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
15 addressed to Ryan Millecam.

16 The Answer shall contain an admission or denial of each allegation in this Notice and the
17 original signature of the answering respondent or respondent's attorney. A statement of a lack of
18 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
19 denied shall be considered admitted.

20 When the answering respondent intends in good faith to deny only a part or a qualification of
21 an allegation, the respondent shall specify that part or qualification of the allegation and shall admit
22 the remainder.

23 The respondent waives any affirmative defense not raised in the Answer.

24 The officer presiding over the hearing may grant relief from the requirement to file an Answer
25 for good cause shown.

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Dated this 25 day of March, 2016.



Matthew J. Neubert
Director of Securities

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