

ORIGINAL

OPEN MEETING ITEM

10/27-28/16



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



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JODI JERICH
EXECUTIVE DIRECTOR

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Doug Little - Chairman
Bob Stump
Bob Burns
Tom Forese
Andy Tobin

Arizona Corporation Commission

DOCKETED

OCT 11 2016

FROM: Matthew J. Neubert *MJN*
Director of Securities

DOCKETED BY *R.A.*

2016 OCT 11 PM 1 10
AZ CORP COMMISSION
DOCKET CONTROL

DATE: October 11, 2016

RE: In re Marchant International Resources, Inc., Docket No. S-20959A-16-0109

CC: Jodi Jerich, Executive Director

Attached for your consideration is a proposed Order to Cease and Desist, Order for Restitution, and Order for Administrative Penalties ("Order") against respondents Kenneth White and Marchant International Resources, Inc., a Texas Corporation of which White is the President/CEO and director.

The Order is a default order. On March 29, 2016, the Division served Marchant with a copy of the Notice of Opportunity for Hearing filed against the respondents. On August 29, 2016, the Division served White with a copy of the Notice. The times for requesting a hearing and answering the Notice passed without either respondent requesting a hearing or filing an answer.

The Order finds that beginning in 2012 and continuing through December 2015, respondents sold Marchant stock to 14 investors in 22 separate transactions. Respondents represented to the buyers that their funds would be used to purchase and develop oil wells and mineral rights. Respondents claimed that they were working with an established drilling company and that oil-well production was either already occurring or about to occur. In fact, the claimed drilling company had no affiliation with respondents and respondents owned no mineral interests as claimed. Additionally, respondents failed to disclose White's criminal background to these buyers. In October 1993, White was found guilty of eighteen felony counts including theft, fraudulent schemes and artifices, and illegal control of an enterprise. In November 1993, White was sentenced to 7 1/2 to 15 3/4 years in prison and to pay \$4,385,000; he was released from prison on October 26, 2009.

The Order requires the respondents to permanently cease and desist from violating the Securities Act, to pay restitution of \$1,352,144 to the stock-purchasers, and to pay a \$150,000 administrative penalty. The Division recommends the Order as appropriate, in the public interest and necessary for the protection of investors.

Originator: Ryan J. Millecam

I.

FINDINGS OF FACT

1
2
3 1. From at least fall 2012, through June 2015, White, an unmarried man, resided in
4 Maricopa County.

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

7 3. White and Marchant may be referred to collectively as "Respondents."

8 4. Marchant describes itself on the "welcome" page of its website,
9 www.marchantcorp.com, as "an Oil and Natural Gas Investment Management Company."

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

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

16 7. To raise capital for these ventures, from fall 2013 through June 2015, Respondents
17 offered and sold "units of participation" in two oil well projects to 12 investors in 22 separate
18 transactions. The oil well projects were the Horseshoe Project (sometimes called the Horseshoe
19 Prospect) in Fallon County and Wibaux County, Montana, and the Eastwood Project in Frio County,
20 Texas.

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

24 9. White personally offered and sold the investments to investors. White's
25 communication consisted of phone conversations, email, in-person meetings and presentations, and
26 through documents that White and Marchant sent to investors.

1 10. The offers and sales occurred within and from Arizona.

2 11. All 12 investors purchased units of participation in the Horseshoe Project; at least four
3 of the investors also purchased units of participation in the Eastwood Project.

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

5 13. Three investors received partial returns of their investments totaling \$47,856.

6 14. The investors paid for their units of participation by cashier's check, personal check,
7 and wire transfers to White and Marchant.

8 15. Money from each investor was to be part of an "aggregate" fund that would be used
9 for oil well drilling and development.

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

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

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

19 19. This memorandum states that Marchant is offering oil and gas investment
20 opportunities "which enable investors to participate in acquiring direct participation working interest,
21 resulting in potential cash flow and unique tax benefits associated with oil and natural gas
22 investments."

23 20. The Horseshoe Project memorandum describes obtaining "aggregate" investor funds
24 to transfer to a "Drilling Partner" who will develop wells. According to the memorandum, only
25 \$30,000 of the money raised will go to Marchant's administrative expenses; the rest will go to "the
26 actual drilling, testing, [sic] of the Proposed Well and for related lease costs."

1 21. The memorandum further states that Marchant's "Drilling Partner"—defined as
2 Slawson Exploration Company Incorporated—will develop the wells. There are also several pages
3 describing Slawson and why Marchant chose to partner with them.

4 22. The memorandum states that "Kenneth Whyte" has "extensive onshore and offshore
5 drilling experience throughout the United States, Canada, North Sea, and the Middle East" and has
6 worked for Amoco and B.P. Alaska. As President of Marchant, White's responsibilities include
7 supervision on the drill sites to represent Marchant and the investors' interests.

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

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

20 25. Prior to their investing, Respondents also gave several Horseshoe Project investors a
21 document titled "Drilling Agreement" where Respondents represent that Marchant has a right to
22 acquire a working interest in specified wells, that it is entitled to receive revenues from the well, and
23 that the prospect wells are subject to a valid and existing mineral lease.

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

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

6 28. Prior to their investing in the Eastwood Project, Respondents provided several
7 investors with a document titled "Memorandum – Eastwood #1 – Budda Formation" offering to sell
8 60 "Units" at \$50,000 per unit to develop wells in Frio County, Texas. This memorandum is
9 substantially similar to the Horseshoe Project memorandum; it contains the same representations
10 from the Horseshoe Memorandum described above.

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

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

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

22 32. Respondents made several misrepresentations about Marchant's business, drilling
23 operations and partnerships.

24 33. The "Drilling Partner" in the documents, Slawson, in fact has no affiliation with
25 Marchant or White. Moreover, although Slawson owns an interest in the Horseshoe project, it had
26

1 not conducted any drilling or operations on that land, much less drilling or operations that in any way
2 involved Marchant and White or Marchant investor capital.

3 34. Respondents represented to some investors that Marchant owned leasing and mineral
4 rights in Fallon County and Wibaux County, Montana and in Frio County, Texas. The records in
5 those counties, however, do not contain any recorded documents for Marchant or White/Whyte.

6 35. Respondents touted White's business acumen but failed to disclose to investors
7 White's criminal past. In March 1998, White was convicted of felony theft in Maricopa County
8 Superior Court and sentenced to five years in prison as a result of that conviction. In a separate matter,
9 in November 1993, White was convicted of a series of felonies, including theft and fraud, and was
10 ordered to pay over \$4.3 million in restitution and sentenced to seven and one half to fifteen and three
11 quarter years in prison as a result of those convictions.

12 II.

13 CONCLUSIONS OF LAW

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

16 2. Respondents offered or sold securities within or from Arizona, within the meaning of
17 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

18 3. Respondents violated A.R.S. § 44-1841 by offering or selling securities that were
19 neither registered nor exempt from registration.

20 4. Respondents violated A.R.S. § 44-1842 by offering or selling securities while neither
21 registered as a dealer or salesman nor exempt from registration.

22 5. Respondents violated A.R.S. § 44-1991 by (a) employing a device, scheme, or artifice
23 to defraud, (b) making untrue statements or misleading omissions of material facts, and (c) engaging
24 in transactions, practices, or courses of business that operate or would operate as a fraud or deceit.

25 6. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-
26 2032.

1 governors of the federal reserve system in statistical release H. 15 or any publication that may
2 supersede it on the date that the judgment is entered.

3 The Commission shall disburse the funds on a pro-rata basis to investors shown on the records
4 of the Commission. Any restitution funds that the Commission cannot disburse because an investor
5 refuses to accept such payment, or any restitution funds that cannot be disbursed to an investor
6 because the investor is deceased and the Commission cannot reasonably identify and locate the
7 deceased investor's spouse or natural children surviving at the time of the distribution, shall be
8 disbursed on a pro-rata basis to the remaining investors shown on the records of the Commission.
9 Any funds that the Commission determines it is unable to or cannot feasibly disburse shall be
10 transferred to the general fund of the state of Arizona.

11 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondents shall, jointly
12 and severally pay an administrative penalty in the amount of \$150,000 as a result of the conduct set
13 forth in the Findings of Fact and Conclusions of Law. Payment is due in full on the date of this Order.
14 Payment shall be made to the "State of Arizona." Any amount outstanding shall accrue interest as
15 allowed by law.

16 IT IS FURTHER ORDERED that the administrative penalty ordered in the preceding
17 paragraph will accrue interest at the rate of the lesser of (i) ten percent per annum or (ii) at a rate per
18 annum that is equal to one per cent plus the prime rate as published by the board of governors of the
19 federal reserve system in statistical release H. 15 or any publication that may supersede it on the date
20 that the judgment is entered.

21 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
22 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
23 shall be applied to the penalty obligation.

24 IT IS FURTHER ORDERED, that if Respondents fail to comply with this order, the
25 Commission may bring further legal proceedings against Respondents, including application to the
26 superior court for an order of contempt.

1 IT IS FURTHER ORDERED that this Order shall become effective immediately.

2 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

3
4 CHAIRMAN LITTLE

COMMISSIONER STUMP

5
6
7 COMMISSIONER FORESE

COMMISSIONER TOBIN

COMMISSIONER BURNS

8 IN WITNESS WHEREOF, I, JODI A. JERICH, Executive
9 Director of the Arizona Corporation Commission, have
10 hereunto set my hand and caused the official seal of the
11 Commission to be affixed at the Capitol, in the City of Phoenix,
12 this _____ day of _____, 2016.

13 _____
14 JODI A. JERICH
15 EXECUTIVE DIRECTOR

16 _____
17 DISSENT

18 _____
19 DISSENT

20 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
21 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

22 (RJM)

1 Service List for: *Marchant International Resources, Inc. et al.*

2 Elba Nunez

3 3843 West Calavar Road

4 Phoenix, AZ 85053

5 Statutory Agent for Marchant International Resources, Inc.

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2
3 COMMISSIONERS

4 DOUG LITTLE – Chairman
5 BOB STUMP
6 BOB BURNS
7 TOM FORESE
8 ANDY TOBIN

9 In the matter of:
10 MERCHANT INTERNATIONAL
11 RESOURCES, INC., a Texas corporation,
12 and
13 KENNETH WHITE, a/k/a Kenneth Whyte, an
14 unmarried individual,
15 Respondent.

DOCKET NO. S-20959A-16-0109

**NOTICE OF FILING OF PROPOSED
OPEN MEETING AGENDA ITEM**

16 On this 11th day of October, 2016, the foregoing document was filed with Docket Control as
17 a Securities Division Memorandum & Proposed Order, and copies of the foregoing were mailed on
18 behalf of the Securities Division to the following who have not consented to email service. On this
19 date or as soon as possible thereafter, the Commission's eDocket program will automatically email
20 a link to the foregoing to the following who have consented to email service.

21 Elba Nunez
22 3843 West Calavar Road
23 Phoenix, AZ 85053
24 Statutory Agent for Marchant International Resources, Inc.

25 By: *Gene R. Dudge*

26
Decision No. _____