

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF

ELDON ENERGY, INC.,
OUTBACK PETROLEUM, INC.,
CECIL J. "JIM" HARVEY, BARRY S. HARVEY,
RICH JACKSON, a/k/a RICK JACKSON,
STEPHEN P. FULLER and ALL PERSONS
EMPLOYED BY OR OTHERWISE
AFFILIATED WITH THOSE ENTITIES
OR THOSE PERSONS

No. 00-9-S

CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (the Staff) has received information and has in its possession certain evidence which indicates that ELDON ENERGY, INC., OUTBACK PETROLEUM, INC., CECIL J. "JIM" HARVEY, RICH JACKSON and STEPHEN P. FULLER have violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 1994).

FINDINGS OF FACT

1. Eldon Energy, Inc. (Eldon) purports to be a corporation whose last known address is 325 North I-35 Service Road, Suite 205, Moore, Oklahoma 73160.
2. Outback Petroleum, Inc. (Outback), is an Oklahoma corporation whose last known address is 325 North I-35 Service Road, Suite 200, Moore, Oklahoma 73160.
3. Cecil J. "Jim" Harvey (Harvey) was the president of Outback at all times relevant to the facts set out herein.

4. Barry S. Harvey was the vice president of Outback at all times relevant to the facts set out herein.
5. Rich Jackson, a/k/a Rick Jackson (Jackson) was a sales representative of Outback at all times relevant to the facts set out herein.
6. Stephen P. Fuller (Fuller) was an employee or officer of Outback and is currently the president of Eldon.
7. On 16 September 1994 the Kansas Securities Commissioner issued a cease and desist order against Outback, Harvey and others ordering them to immediately cease and desist offering for sale two securities, to wit, an interest in a gas pipeline limited partnership and a working interest in a four-well oil and gas program. It was found that these securities had been offered for sale in Kansas without being properly registered by persons who were not properly registered.
8. On 27 September 1994 the West Virginia Securities Commissioner issued a cease and desist order ordering Outback, Harvey and others to immediately cease and desist offering for sale fractional interests in oil and gas wells. It was found that these securities had been offered for sale in West Virginia without being properly registered there by persons who were not properly registered.
9. On 8 November 1994 the South Dakota Department of Commerce & Regulation, Division of Securities, issued a cease and desist order to Outback, Harvey and others not named to immediately cease and desist from offering for sale working interests in oil and gas wells. It

was found that these securities had been offered for sale in South Dakota without being properly registered.

10. On 9 March 1995 the Securities Division of the Maine Bureau of Banking entered a notice of intent to issue a cease and desist order against Outback, Harvey and Jackson (collectively, the Respondents), which informed the Respondents of their right to a hearing. An Oklahoma attorney representing the Respondents requested a hearing, and one was set for 25 July 1995. On that day the matter came on for a hearing and no one appeared on behalf of the Respondents. After the Maine Division of Securities presented its case, a cease and desist order was issued against the Respondents ordering them to immediately cease and desist from offering for sale in Maine oil and gas lease interests. It was found that these interests were securities that were being sold in Maine without being properly registered or exempted from registration there by persons who were not properly registered. It was also found that Outback's representations that the securities were exempt from registration because they were a "private offering" without compliance with Maine law concerning private offerings was an untrue statement, material omission and deceptive practice in violation of Maine law.
11. Subsequently, on 2 November 1995, the State of Maine and the Maine Securities Administrator brought suit against Outback, Harvey and others alleging the sale of unregistered securities in the form of working interests in oil wells by persons not licensed in Maine to sell securities and asking for injunctive relief, civil penalties and restitution to two Maine residents who had come forward after the issuance of the cease and desist order. Eventually, on 9 February 1996, Outback and Harvey settled this law suit by the entry of a

consent order in which it was ordered that restitution be made to both Maine residents in the amount of \$75,063.51.

12. In early September, 1995, Jackson contacted an Arkansas resident (Prospect) and offered him a working interest in an oil and gas well in Oklahoma. On 8 September 1995, Prospect purchased a working interest participation in a well in southern Oklahoma for \$16,641.42.¹ In describing the potential and the risks of this investment, Jackson described it as “shooting fish in a barrel,” and said that one “could almost see the oil in the ground.” These statements were false in that the well in question was never drilled, and Prospect’s investment was later purportedly transferred to another well. Prospect was not paid back his investment in the working interest in one or two years, as Jackson represented it would be. This working interest was not registered with the Arkansas Securities Department (the Department). Neither Outback, nor Jackson was registered with the Department as either a broker-dealer, or the agent of a broker dealer or issuer.
13. In October, 1995, Harvey contacted Prospect and offered for sale to him a promissory note from Outback carrying an annual percentage rate of 15% over five years. The collateral on the note was 1/12 of the proved producing and proved undeveloped oil and gas reserves owned by Outback. Harvey personally guaranteed the ability of Outback to repay the note with interest . Although it was not included in the note, Harvey assured Prospect that he

¹This investment was also made with Prospect’s wife. Because Prospect’s wife took no action other than joining in the investment and for ease of reading, she is not referred to in the body of the order, and reference is made only to Prospect, Prospect’s investment, etc.

would be given stock in Outback when it went public, which Harvey asserted was “just a matter of time.” On 12 October 1995 Harvey, Fuller and Barry S. Harvey, vice president of Outback, executed a promissory note on Outback’s behalf and sent the note to Prospect. Prospect signed the note and sent it back to Outback with a check for \$52,082.25.² Although Prospect has received some money in return for his investment, Outback has not made the payments of \$1,239.03 per month, as set forth in the promissory note. This promissory note was not registered with the Arkansas Securities Department (the Department). Neither Outback, Harvey, Fuller, nor Barry S. Harvey was registered with the Department as either a broker-dealer, or the agent of a broker dealer or issuer.

14. On 13 December 1995, the Administrator of the Oklahoma Department of Securities filed an action in the District Court of Oklahoma County, Oklahoma, asking for a permanent injunction and other relief against Outback, Outback Gas Limited Partnership, and Harvey. A temporary restraining order was entered on the same date, and a receiver was appointed to take possession and control of Outback for certain stated purposes. On 13 August 1996, the receiver submitted his report, and the parties entered into an agreed order permanently enjoining Outback and Harvey from all further violations of Oklahoma securities laws in connection with the issuing, offering or selling of securities in and/or from Oklahoma. In the receiver’s report, it was found that Outback “ran a classic ‘boiler room’ operation.” On the day the receiver was appointed, he found seven (7) persons soliciting investments from

²Prospect’s wife joined in this investment, also.

“persons the company did not know but whose names [Outback] had purchased from a company in Dallas.” It was also the receiver’s finding that the offering materials used by Outback did not adequately disclose the costs involved in drilling the wells it owned. Because these projects were the reentering of old wells, which involves great risks, the receiver opined, it would not be unreasonable, unusual or out of the ordinary in light of the risks involved to set the turnkey costs to investors at double what the operator estimates the actual costs to be. In many cases, however, Outback had tripled and quadrupled the costs. In no case, however, even where the turnkey cost to the investor was only double the actual costs, was this disclosed. As the receiver stated, Outback “omitted to tell the investors what it honestly estimated the costs were going to be, how much the turnkey markup would be, and the reasons for the heavy markup.” The receiver also found a commingling of investors’ funds and Outback’s funds, such that some \$579,423 of investors’ funds were “spent to keep [Outback] afloat rather than for wells.” The receiver found further that Outback “is not today able to reimburse this money to the investors.”

15. In late December, 1995, Prospect was told that the well in which he had invested would not be drilled in 1995. Unspecified problems would prevent its completion. Prospect asked for his money back, but was told it could not be refunded, but the Respondents would make it well worth his investment at a later time. Prospect was not informed about the actions taken by securities agencies of Maine, South Dakota, West Virginia, Kansas or Oklahoma.
16. By November, 1996, the well had still not been drilled, and Prospect asked for his money back again. On 18 November 1996, Harvey on behalf of Outback proposed to settle

Prospect's complaint by transferring his interest to another well. Prospect agreed. Again, Prospect was not informed about the actions taken by agencies of Maine, South Dakota, West Virginia, Kansas or Oklahoma.

17. Prospect received small checks from Outback in February, 1997, but Outback has never come close to repaying Prospect's investment or lived up to its obligations under the promissory note or the working interest. By letter of 21 January 1999 from Eldon and signed by Barry S. Harvey on Eldon's behalf, Prospect was made another settlement offer for Prospect's investment in Outback, this one for the promissory note, only:

Eldon Energy, Inc. proposes a settlement on [the promissory note], that [is] held by Outback Petroleum, by an offer to compromise the remaining balance on your Note with an offer of \$10,000 and 8,000 shares of stock in Kodiak Resources, Inc., (through Eldon Energy, Inc.) to be issued after closing of the stock offering. In addition, you will have the option to purchase an additional 4,000 shares of stock (at the opening price of \$5.00 per share, up to two years after the stock closing.)

Prospect was given a private placement memorandum concerning this offering by Kodiak Resources, Inc. (Kodiak). The offering was described as a private placement pursuant to Regulation D, promulgated by the Securities and Exchange Commission under the Securities Act of 1933. Because this was a regulation D offering, the memorandum claimed that these securities need not be registered with any securities regulatory authority. Because it was not stated which section of the 1933 Securities Act and which rule number under Regulation D the offering was placed, the statement that the securities were exempt from registration was incorrect at best.

It was disclosed in the private placement memorandum that Fuller, the president of Kodiak, had been the president and director of Eldon from 1996 to the present and had been the secretary and treasurer of Outback from 1992 to 1996. It was further disclosed that Barry S. Harvey was the executive vice president of Kodiak and had served as vice president, secretary, treasurer and director of Eldon from 1996 to the present and as vice president of Outback from 1992 to 1996. Again, Prospect was not informed about the actions taken by agencies of Maine, South Dakota, West Virginia, Kansas or Oklahoma.

It is clear from this offer seeking to clear up the debts and liabilities of Outback that Eldon is the successor company of Outback, and/or the alter ego of the principals involved, to wit, Harvey, Barry S. Harvey and Fuller. Neither Eldon, nor Fuller is registered with the Department as either a broker-dealer, or the agent of a broker dealer or issuer.

CONCLUSIONS OF LAW

18. Ark. Code Ann. § 23-42-102(15)(A)(xv) (Supp. 1999) in pertinent part defines a security as a “certificate of interest or participation in an oil, gas, or mining title or lease”.
19. Ark. Code Ann. § 23-42-102(15)(A)(i) and (vi) (Supp. 1999) in pertinent part define a security as a note or evidence of indebtedness, respectively.
20. Ark. Code Ann. § 23-42-501 (Repl. 1994) provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act.

21. Ark. Code Ann. § 23-42-301(a) (Repl. 1994) prohibits as unlawful the transaction of business as a broker-dealer or agent by any person who is not registered with the Department as such.
22. Ark. Code Ann. § 23-42-507(2) (Repl. 1994) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which they are made.

OPINION

23. This matter has been properly brought before the Arkansas Securities Commissioner in accordance with Ark. Code Ann. §§ 23-42-201 and 209 (Repl. 1994).
24. The respondents offered to sell securities in the form of working interests in an oil and gas wells and promissory notes without prior registration of those securities in violation of Ark. Code Ann. § 23-42-501 (Supp. 1999).
25. The respondents offered to sell working interests in an oil and gas wells and promissory notes without prior registration of the persons and entities offering to sell them in violation of Ark. Code Ann. § 23-42-5-301 (Supp. 1999).
26. In attempting to trade Kodiak stock for Prospect's promissory note, the respondents offered to sell shares of stock without prior registration of those securities or of the persons and entities offering to sell them in violation of Ark. Code Ann. § 23-42-501 (Supp. 1999) and Ark. Code Ann. § 23-42-301 (Supp. 1999), respectively.

27. The respondents failed to inform Prospect of Outback's extensive regulatory history with the state securities regulatory authorities in Maine, South Dakota, Kansas and West Virginia before offering him the initial working interest and the promissory note in September and October, 1995. The respondents failed to inform Prospect of the real risks and true drilling costs associated with the working interest sold to him. The failure to inform Prospect of these matters before Prospect made his initial investment in Outback was the omission of material facts that were necessary to make the statements made not misleading in violation of Ark. Code Ann. § 23-42-507 (Repl. 1994).
28. In proposing to trade shares of Kodiak stock for Prospect's promissory note in settlement of Prospect's complaints, the respondents failed to inform Prospect of not only Outback's regulatory history with the state securities regulatory authorities in Maine, South Dakota, Kansas and West Virginia, but also its recent litigation with the Oklahoma Securities Administrator, which resulted in a receivership and a permanent injunction. This proposal was the offer of securities, i.e., shares of stock in Kodiak, as defined at Ark. Code Ann. § 23-42-102(13)(A)(ii) (Supp. 1999). The failure to inform Prospect of these matters in the offering of these securities was the omission of material facts that were necessary to make the statements made not misleading in violation of Ark. Code Ann. § 23-42-507 (Repl. 1994).
29. In proposing to trade shares of Kodiak stock for Prospect's promissory note in settlement of Prospect's complaints, the respondents stated in the private placement memorandum that the stock in Kodiak was exempt from registration with any securities regulatory authority.

Because the shares were in fact not exempt from registration under the Act, this assertion was a misrepresentation of fact in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 1994).

ORDER

IT IS THEREFORE ORDERED that ELDON ENERGY, INC., OUTBACK PETROLEUM, INC., CECIL J. "JIM" HARVEY, BARRY S. HARVEY, RICH JACKSON, a/k/a RICK JACKSON, and STEPHEN P. FULLER, as well as others whose identities are not yet known who are in positions of control of ELDON ENERGY, INC. or OUTBACK PETROLEUM, INC. or enterprises associated with those business entities, CECIL J. "JIM" HARVEY, BARRY S. HARVEY, RICH JACKSON, a/k/a RICK JACKSON, or STEPHEN P. FULLER, directly or through other companies, **CEASE AND DESIST** from any further actions in the State of Arkansas in connection with the offer and sale of securities described above until such time as the securities are properly registered or exempted from registration pursuant to the Arkansas Securities Act and the persons offering them for sale are properly registered pursuant to the Arkansas Securities Act.

WITNESS MY HAND AND SEAL this 13th day of April, 2000.



Mac Dodson
ARKANSAS SECURITIES COMMISSIONER