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BEFORE THE ARKANSAS SECURITIES COMMISSIONER

CASE NO. S-10-0060

ORDER NO. S-10-0060-15-OR05

ARKANSAS SECURITIES DEPT.

IN THE MATTER OF

ERNEST ANCIN BARTLETT, III,
AND HOWARD MILLER APPEL

RESPONDENTS

CONSENT ORDER

This Consent Order (“Order”) is entered pursuant to the Arkansas Securities Act, codified at Ark. Code Ann. §§ 23-42-101 through 23-42-509 (“Act”), the Rules of the Arkansas Securities Commissioner (“Rules”) promulgated under the Act, and the Arkansas Administrative Procedure Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219, in accordance with an agreement between the staff of the Arkansas Securities Department (“Staff”), Ernest Ancin Bartlett, III (CRD# 1581684) (“Bartlett”), and Howard Miller Appel (CRD# 1293152) (“Appel”) (collectively “Respondents”), in full and final settlement of all claims that could be brought against the Respondents by the Staff on the basis of the facts set forth herein.

The Respondents admit the jurisdiction of the Act and the Arkansas Securities Commissioner (“Commissioner”), waive their right to a formal hearing, and without admitting or denying the findings of fact or conclusions of law made herein, consent to the entry of this Order and agree to abide by its terms in the settlement of any possible violations committed by the Respondents concerning the matters detailed in this Order.

On July 9, 2013, the Commissioner issued Cease and Desist Order No. S-10-0060-13-OR04 (“Cease and Desist”) directing Bamco, Bartlett, and Appel to cease and desist from violating Ark. Code Ann. § 23-43-507(2). On August 6, 2013, an attorney for the Respondents requested a hearing on the Cease and Desist, pursuant to Ark. Code Ann. § 23-42-209(a)(2)(A). Bamco was properly served with a copy of the Cease and Desist and did not request a hearing in the matter.

The findings of fact and conclusions of law as to the Respondents set forth in the Cease and Desist are replaced by the condensed findings of fact and conclusions of law in this Order.

FINDINGS OF FACT

1. Bamco, a Delaware LLC, was formed in 2004 and involved in various areas of the oil and gas industry, including acquiring, exploring, drilling, and developing oil and gas properties, and acquiring ownership interests in oil and gas properties, projects, or entities. Its main office was located at 111 Presidential Boulevard, Suite 158, Bala Cynwyd, Pennsylvania 19004.

2. Bartlett is a resident of Little Rock, Arkansas, who had authority to manage Bamco on a daily basis through his control of FEQ Gas, LLC (“FEQ Gas”), which was the managing member of Bamco. Bartlett was registered with the Arkansas Securities Department (“Department”) as a broker-dealer agent from December 5, 1986, through June 1, 1988, and on June 14, 1989, was permanently barred from association with any broker-dealer in any capacity by the National Association of Securities Dealers (“NASD”).¹ He served as the president and principal of FEQ Investments, Inc. (“FEQ Investments”), which served as the manager of FEQ Gas (collectively with FEQ Gas, “FEQ Entities”). Through his control of the FEQ Entities, Bartlett was a “principal interest holder” with control of Bamco (“Principal Member”) owning approximately 8.32% of Bamco.

3. Appel is a resident of Pennsylvania who once served as Bamco’s secretary and authorized company representative. Through various entities that he owned or controlled, Appel was the Principal Member owning the largest percentage of Bamco at approximately 27.29%. Appel has never been registered with the Department, although he was registered with the NASD as a broker-dealer agent from August 21, 1984, through December 22, 1990, and on June 14, 1991,

¹ In 2007, the NASD consolidated its member regulation operations with the NYSE Group, Inc., to form a single self-regulatory organization for broker-dealer firms in the United States, now known as the Financial Industry Regulatory Authority (“FINRA”).

permanently barred from associating with any broker-dealer by the NASD. On September 21, 2004, in the U.S. District Court for the Eastern District of New York, Appel pleaded guilty to the felonies of conspiracy to commit securities fraud and conspiracy to commit money laundering. On February 26, 2008, he was sentenced to one year and one day in prison and three years of supervised release, and served his prison sentence from June 12, 2008, through April 24, 2009. Appel was also ordered to pay over \$2 million in restitution to approximately sixty-eight individuals.

4. The Cease and Desist focused on circumstances surrounding two series of debentures offered and sold by Bamco. On August 9, 2005, Bamco closed a private placement offering of Series 2005, \$10,000,000 8.25% Debentures (“Senior Debentures”). On March 28, 2008, Bamco closed a subsequent private placement offering of Series 2008, \$7,000,000 10.00% Subordinate Debentures (“Subordinate Debentures”) (collectively “Bamco Debentures”). The Bamco Debenture offerings raised \$17 million from investors in Arkansas and fifteen other states and were collateralized by the assets and revenue of Bamco, including its oil and gas properties.

5. Bamco sold the Bamco Debentures exclusively through the broker-dealer firm Crews & Associates, Inc. (“Crews”) (CRD# 8052), which served as the private placement agent for the Bamco Debentures. Crews and Bamco sold the Bamco Debentures using offering documents, or private placement memoranda (“PPMs”), that were prepared by Bamco, Crews, and Crews’ outside counsel. First Security Bank served as the trustee (“Trustee”) for the Bamco Debentures. Bamco sold the Bamco Debentures pursuant to trust indentures between Bamco and the Trustee authorizing the issuance of and securing the Bamco Debentures by granting the Trustee a pledge and assignment of interests and other rights. The Trustee made the last semiannual distribution payments to Subordinate Debenture investors on December 1, 2008, less than nine months after the Subordinate Debenture offering, and to the Senior Debenture investors on June 1, 2009.

6. As stated in the Senior Debenture PPM, Bamco primarily sold the Senior Debentures to raise funds to pay off prior debts or loans totaling over \$4 million from Texas Capital Bank and the following Bamco related parties: RMS Advisors, Inc., controlled by Appel; FEQ Gas, controlled by Bartlett; DDH Resources, II, Ltd., controlled by Appel; and Westwood AR, Inc. As indicated in the Subordinate Debenture PPM, Bamco predominantly issued the Subordinate Debentures to provide approximately \$6,079,350 in working capital to acquire a 45% interest in Freedom Pipeline, LLC (“Freedom Pipeline”), from its owner Striker Petroleum, LLC (“Striker”), similarly engaged in the oil and natural gas industry.

7. On December 3, 2009, the U.S. Securities and Exchange Commission (“SEC”) filed a complaint against Striker for violations of federal securities fraud provisions in the offer and sale of debentures by Striker collateralized by oil and gas properties. The SEC’s action resulted, in part, in the appointment of a receiver (“Striker Receiver”). The Striker Receiver notified the Staff of Bamco’s potentially-overlapping interests in Striker’s oil wells and connections to Arkansas, which initiated the Staff’s investigation into Bamco and the circumstances surrounding the offer and sale of the Bamco Debentures.

8. Bamco offered and sold the Senior Debentures and the Subordinate Debentures using PPMs provided to investors that contained certain misstatements and omissions of material facts and information, in pertinent part, as follows:

a. Appel’s involvement in, ownership of, and control of Bamco were not disclosed in the Bamco Debenture PPMs.

b. Certain Principal Members, including Appel, and their ownership levels in Bamco were not disclosed in a manner similar to the remainder of the Principal Members listed in the Bamco Debenture PPMs.

c. The Subordinate Debenture offering was primarily undertaken to fund Bamco's procurement of 45% of Freedom Pipeline, and a total of \$6,079,350 of the proceeds from the Subordinate Debenture offering was deposited into a Freedom Pipeline fund account with the Trustee to be used to acquire 45% of Freedom Pipeline. While Bamco ultimately acquired the Freedom Pipeline assets from Striker with the proceeds of the Subordinate Debenture offering, Bamco never fully described Striker or Striker's role in Bamco's obtaining 45% of Freedom Pipeline, although it did provide incomplete information about Striker. Furthermore, Bamco provided no additional information in the Subordinate Debenture PPM regarding Striker's and Bamco's prior business transactions or their future business plans in existence at the time of the Subordinate Debenture offering.

d. Bamco failed to disclose a preexisting \$7.8 million lien on the Freedom Pipeline assets, which included the 45% of Freedom Pipeline that was to be acquired from Striker with the majority of the proceeds from the Subordinate Debenture offering. Despite the fact that this lien on Freedom Pipeline was known to Bamco, the investors in the Subordinate Debenture offering were not informed of the encumbrance on Freedom Pipeline.

e. Prior to the Subordinate Debenture offering, Crews and the Trustee discovered that Bamco had not complied with the "Sale of Assets" provision of the trust indenture for the Senior Debenture offering, which Bamco did not disclose to the Subordinate Debenture investors. Bamco was in default due to its failure to make required deposits of proceeds from the sale, lease, or other dispensation of its assets into an account with the Trustee ("Revenue Fund"). The Subordinate Debenture PPM included language regarding the requirements for the dispensation of assets by Bamco and a brief statement that Bamco had previously "not always been able to comply" with the Trustee's revenue-

deposit requirements. However, Bamco failed to disclose its inappropriate dispensation of over \$6 million in assets, which was \$5,900,000 over the \$100,000 threshold requiring deposit directly into the Revenue Fund. The proceeds deposited into the Revenue Fund directly affected the redemption of the Bamco Debentures. While the Trustee waived Bamco's noncompliance, that waiver had no bearing on Bamco's requirement to disclose this material information.

9. The Commissioner entered a related consent order with Crews ("Crews Order") on July 9, 2013, Order No. S-10-0060-13-OR03. As stated in the Crews Order, Crews made a tender offer to the Bamco Debenture investors ("Tender Offer") in an attempt to make the Bamco Debenture investors whole. The Senior Debenture investors who accepted the Tender Offer received, on average, approximately 114.01% of their original investment total. When added to the previous payments by Bamco prior to default, the Subordinate Debenture investors who accepted the Tender Offer received, on average, approximately 100.01% of their original investment total.

10. Bartlett and Appel have provided documentation to the Staff evidencing their joint repayment to Crews of over \$6 million to reimburse Crews for its payments to the Bamco Debenture investors, interest, and expenses. Prior to the entry of the Crews Order, the Staff reviewed documentation provided by Crews showing Bartlett's agreement to make repayments to Crews pursuant to detailed terms and a breakdown of the payments made by Bartlett. In the interim, Appel has provided the Staff with documentation showing that Appel also made reimbursement payments to Crews.

CONCLUSIONS OF LAW

11. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under

which they are made, not misleading. Ark. Code Ann. § 23-42-507(2). The Respondents violated Ark. Code Ann. § 23-42-507(2) by misstating or omitting to state material facts and information in the Bamco Debenture PPMs provided to the Bamco Debenture investors.

12. The Cease and Desist was entered against the Respondents pursuant to Ark. Code Ann. § 23-42-209(a)(1)(A). Nothing in Ark. Code Ann. § 23-42-209 shall prohibit or restrict the informal disposition of a proceeding or allegations which might give rise to a proceeding by settlement or consent. Ark. Code Ann. § 23-42-209(c). This Order constitutes a settlement of the Cease and Desist as to Bartlett and Appel, as permitted by Ark. Code Ann. § 23-42-209(c).

OPINION

13. This Order is in the public interest. The facts set out in paragraphs 1-10 support the violations of the Act set out in paragraphs 11-12.

ORDER

By agreement and with consent of the Staff, Bartlett, Appel, and attorneys for the Respondents, IT IS HEREBY ORDERED:

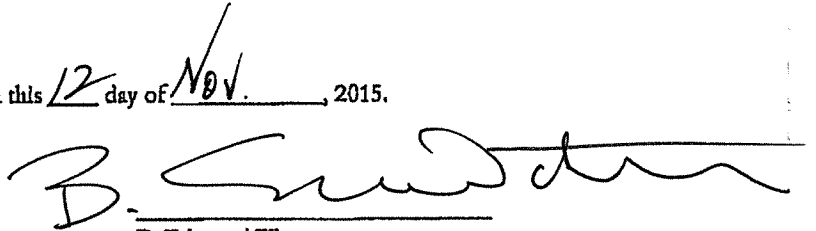
1. This Order constitutes a final settlement of the outstanding Cease and Desist as entered against Bartlett and Appel on July 9, 2013. The findings of fact and conclusions of law concerning Bartlett and Appel set forth in the Cease and Desist are replaced by the condensed findings of fact and conclusions of law in this Order.

2. Without admitting or denying the findings of fact or conclusions of law in this Order, the Respondents agree not to violate any provisions of the Act or Rules in the future, including Ark. Code Ann. § 23-42-507(2);

3. In recognition of the Respondents' joint reimbursement to Crews in order to facilitate the repurchase of the Bamco Debentures from investors, the Respondents will not pay a fine;

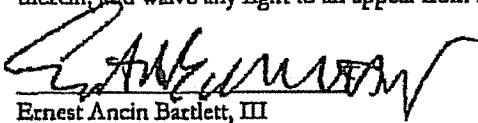
4. In accordance with Rule 506(d)(2)(iii) of Regulation D under the Securities Act of 1933, codified at 17 CFR § 230.506, this Order is not intended to subject Bartlett or Appel to the bad actor disqualification provisions of Rule 506(d)(1)(iii), and such disqualification should not arise as a consequence of this Order.

WITNESS MY HAND AND SEAL on this 12 day of Nov., 2015.



B. Edmond Waters
Arkansas Securities Commissioner

Ernest Ancin Bartlett, III, and Howard Miller Appel, without admitting or denying the findings of fact or conclusions of law made in this Order and in Cease and Desist Order No. S-10-0060-13-OR04, agree to the entry of this Order; consent to all terms, conditions, and orders contained therein; and waive any right to an appeal from this Order.



Ernest Ancin Bartlett, III

11-9-15
Date



Howard Miller Appel

11-9-15
Date

APPROVED AS TO FORM:

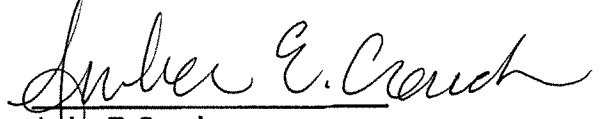


Richard C. Downing
Attorney for Respondents

11-10-15

Date

APPROVED AS TO FORM
AND CONTENT:



Amber E. Crouch
Staff Attorney
Arkansas Securities Department

November 12, 2015

Date



Kenneth R. Shemin
Attorney for Respondents

11/10/15

Date



Jeremy Y. Hutchinson
Attorney for Respondent Ernest Bartlett

11/10/15

Date