

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

CIVIL DIVISION

CASE NO. CV2011-~~12TH~~ DIVISION

**A. HEATH ABSHURE,
ARKANSAS SECURITIES COMMISSIONER**

Plaintiff

v.

60CV2011 0889

**P-R-E, LLC d/b/a PHOENIX RENEWABLE ENERGY,
STEPHEN R. WALKER, and SAMUEL L. ANDERSON, JR.**

Defendants

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Larry Crane Pulaski Circuit Clerk
FG

COMPLAINT

COMES NOW the Plaintiff, A. Heath Abshure, Arkansas Securities Commissioner ("Commissioner"), and for his claims against the above-named Defendants, states and alleges as follows:

JURISDICTION AND VENUE

1. The Commissioner brings this action pursuant to Ark. Code Ann. § 23-42-209, which permits the Commissioner to seek injunctive relief and relief ancillary to injunctive relief as may be appropriate in the public interest, including but not limited to obtaining an accounting, receivership, disgorgement, and the assessment of a fine. The Commissioner is the proper party to bring this action.
2. The Defendants, in connection with their activities in the offer and sale of unregistered securities in and from Arkansas, by means of securities fraud, are subject to the provisions of the Arkansas Securities Act ("Act"), Ark. Code Ann. §§ 23-42-101 – 509. They are therefore subject to the jurisdiction of this Court and to service of summons within or outside the state of Arkansas.

DEFENDANTS

3. P-R-E, LLC d/b/a Phoenix Renewable Energy (“PRE”) is an Arkansas limited liability company with its principal place of business located at 1801 Central Avenue, Suite H, Hot Springs, Arkansas. PRE, through its registered agent, Samuel L. Anderson, Jr. (“Anderson”), filed Articles of Organization with the office of the Secretary of State in Arkansas on August 14, 2008.
4. Stephen R. Walker (“Walker”) is a resident of Hot Springs, Arkansas. Walker purports to serve PRE as a board member, director of development, and chief operating officer.
5. Anderson is a resident of Hot Springs, Arkansas, and purports to serve PRE as a board member, chief executive officer, registered agent, and authorized manager, member or person forming the company.

FACTS

6. On a website PRE stated that it was established in response to a demand for alternative energy sources. PRE claims that it has the ability to produce wood pellets and power at competitive prices over long terms to its customers. PRE also stated that it is developing several biomass-fired power generation facilities.
7. The Staff of the Arkansas Securities Department (“Department”) began an investigation into actions of PRE, Walker, and Anderson after obtaining a copy of a promissory note and other information from an Arkansas resident that invested in PRE.
8. On May 11, 2010, an order was entered by the Commissioner directing PRE and Walker to cease and desist from activities violating the Act. In Order No. S-09-068-10-CD01 (“Order”), the Commissioner found that PRE and Walker violated the Act by offering and selling securities that were not registered or exempt from registration in violation of the Act. The Commissioner

also found that Walker effected sales of securities without being registered as an agent or broker-dealer.

9. The Order made specific findings concerning securities sales to Arkansas residents that invested in PRE and received promissory notes from PRE and Walker. The investors referenced in the Order relied on representations made by Walker that included the following:

- a. PRE would use investor funds to start construction of a \$180 million or \$160 million wood pellet plant in Camden, Arkansas, with additional such plants to be built and operated elsewhere in south Arkansas;
- b. Money invested in PRE through the promissory notes would be repaid within one to four months;
- c. Investors would retain ownership interests in PRE even after the promissory notes were repaid; and
- d. Ownership interests of investors would soon convert to shares of common stock that would be listed on the Frankfurt Stock Exchange in Germany.

10. By May 2010, at the time the Commissioner issued the cease and desist Order, PRE, Walker, and Anderson had collected approximately \$1.4 million from as many as fifty investors in PRE. By May 2010, Anderson and Walker had spent the entire \$1.4 million, with over \$250,000 of the funds going directly to Walker and at least \$80,000 going to Anderson, his companies, and his family. As of May 2010, no money had been returned to investors as promised.

11. Additional investor money has been received by PRE, Walker, and Anderson, despite the existence of the Order. Records indicate as much as \$300,000 of additional investor money

has been received and spent by PRE, Walker and Anderson since May 2010. In September 2010 Anderson testified in the Circuit Court of Garland County that PRE had investors that had invested somewhere between \$1.6 million and \$1.8 million, indicating an increase in investor money from the total amount in May 2010. As was the case in May 2010, the Department has no record of any filing for registration or exemption from registration for securities to be offered or sold to PRE investors.

12. Additional information indicates Anderson has also made offers and sales of unregistered, non-exempt securities, including promissory notes in PRE.

Fraudulent use of Funds received from Investors – Violations of Ark. Code Ann. §23-42-507

13. Although Walker, Anderson, and PRE solicited and received money from investors in PRE by telling them their money was needed to help start the construction of a wood pellet plant in Camden, Arkansas, a portion of PRE investor money was used to repay old debts owed by Walker and an entity known as America's Past Time Park of North Little Rock, L.L.C. ("APPNLR").

14. Walker, Anderson, and PRE fraudulently caused \$120,000 of funds received from investors in PRE to be given or directed to three individuals that had earlier invested with Walker in APPNLR, an entity unrelated to PRE. The three APPNLR investors that received PRE investor funds were not investors in PRE.

15. APPNLR was created by Walker in 2007 for the stated purpose of developing a baseball park complex in North Little Rock, Arkansas. Although Walker obtained over \$500,000 from investors to build a baseball park complex, no land was ever purchased, no baseball fields were built, and a large amount of the investors' money was given or directed by Walker to another company controlled by Walker, Renaissance Holding Group, L.L.C. ("Renaissance").

16. Beginning in October 2008, funds received from investors in PRE were deposited into a bank account opened by Anderson for PRE. Anderson is the only name listed on the signature card for the PRE account, making him the only person with authority to withdraw funds, wire funds, or write checks against the PRE bank account funds.

17. Records reflect the only funds in the PRE account at the end of January 2009, were funds PRE received from PRE investors. Those investors were told their money was needed to develop the PRE wood pellet plant in Camden, Arkansas.

PRE Funds Given to Ball Park Investor – BP1

18. On January 30, 2009, after \$100,000 of PRE investor money was deposited into the PRE account, \$50,000 was transferred by wire from the PRE account to a bank account of an Arkansas resident (“BP1”) that had made a \$50,000 investment with Walker in APPNLR in 2008.

19. BP1 had received a promissory note from Walker in January 2008, stating that Walker individually, as well as APPNLR, promised to repay \$50,000, together with 6% interest, on March 24, 2008. Walker had represented to BP1 that the money would be used to develop a baseball park complex in North Little Rock, Arkansas. In soliciting BP1 to invest in the baseball park venture, Walker provided BP1 with detailed written data describing the plans and feasibility of the ball park project. In the months following his investment with Walker in APPNLR, BP1 saw no evidence of progress. The time for repayment of his investment from Walker and APPNLR came and went. His inquiries of Walker about his money went unanswered. It was only after BP1 repeatedly questioned Walker about returning the \$50,000, that Walker told BP1 his baseball park investment money would be returned and the \$50,000 was wired to BP1’s account on January 30, 2009 from the PRE account.

PRE Funds Given to Ball Park Investor – BP2

20. A few days later, on February 4, 2009, another investor in APPNLR, BP2, a resident of Arkansas, received \$20,000 of his money back from Walker and APPNLR through a wire transfer from the PRE account. The \$20,000 repayment made to BP2 also came from PRE investor funds in the PRE account. The repayment by Walker to BP2 occurred after months of inquiries by BP2 of Walker about the lack of progress with the baseball park complex project and Walker's failure and delay to return his investment money. BP2 had invested \$40,000 in APPNLR with Walker in November 2007.

PRE Funds Given to Ball Park Investor – BP3

21. A third Arkansas resident that invested with Walker in APPNLR, BP3, received his money back through payments made by Walker from the PRE account. BP3 had invested \$50,000 with Walker in APPNLR in April 2008 and received a promissory note from Walker. Walker returned BP3's money through two \$25,000 checks from the PRE account in August and September 2009. The money Walker used to repay BP3 came from funds deposited into the PRE account from investors in PRE.

22. By fraudulently diverting funds received from investors in PRE to APPNLR investors, Walker and Anderson duplicated a scheme Walker used a year earlier when he fraudulently diverted funds received from investors in the ball park project, APPNLR, to his real estate development company, Renaissance.

Misrepresentations and Omissions - Violations of Ark. Code Ann. §23-42-507

23. Investors in PRE, including those described in paragraphs 7 through 22 above, were not informed by Walker, Anderson, or PRE that Walker had filed for Chapter 7 personal bankruptcy

in April 2008 prior to entering into the transactions with the Arkansas investors, or that the bankruptcy proceeding was unresolved at the time of the transactions.

24. Investors in PRE, including those described in paragraphs 7 through 22 above, were not informed by Walker, Anderson, or PRE that Walker had been charged in June 2008 in Garland County, Arkansas with the crime of theft of property by deception; that the theft by deception occurred when Walker, through fraudulent means, entered into a real estate contract and took \$250,000 from an individual for the purchase of real property that Walker did not own; or that the money taken from the real estate investor was not returned by Walker.

25. Investors in PRE, including those described in paragraphs 7 through 22 above, were told the following by Walker or Anderson:

- a. Funds invested with PRE would be used to get construction started on a \$180 or \$160 million wood pellet mill in Camden, Arkansas;
- b. PRE would return the principal of their investment, along with interest within a time period of one to four months;
- c. Investors would retain a membership ownership interest in PRE after being repaid their principal investment from PRE;
- d. Membership interests in PRE would be converted to common stock and traded on the Frankfurt Stock Exchange in Germany in the fourth quarter of 2009; and
- e. Special circumstances had opened up an opportunity for them to become an investor in PRE, but they would have to provide their investment money to PRE immediately.

26. All of the representations made by Walker and Anderson to investors, listed in the above paragraph number 25, other than the representation that investors were purchasing membership interests, were false.

Offers and Sales of Unregistered Nonexempt Securities –

Violations of Ark. Code Ann. §23-42-501

27. The promissory notes offered and sold by PRE, Walker, and Anderson were not registered as securities pursuant to the Act. In connection with these promissory notes, the Department has no record of a filing evidencing either an exemption from registration pursuant to the Act or a notice filing for a federal covered security.

FIRST CAUSE OF ACTION
VIOLATION OF ARK. CODE ANN. § 23-42-507(3)
ENGAGING IN ANY ACT, PRACTICE, OR COURSE OF BUSINESS
WHICH OPERATES OR WOULD OPERATE AS A FRAUD OR DECEIT UPON ANY PERSON

28. The Commissioner realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 27 above.

29. The Defendants, in connection with the offer, sale, or purchase of securities, have engaged and are engaging in an act, practice or course of business that has operated and continues to operate as a fraud or deceit upon investors of PRE by giving or directing funds invested by investors in PRE to investors in APPNLR, a completely unrelated entity, previously promoted and sold by Defendant Walker.

30. By reason of the foregoing, the Defendants, directly or indirectly, have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-507(3).

SECOND CAUSE OF ACTION
VIOLATION OF ARK. CODE ANN. § 23-42-507(2)
UNTRUE STATEMENTS OF MATERIAL FACT AND OMISSIONS OF MATERIAL FACT IN
CONNECTION WITH OFFER, SALE, OR PURCHASE OF SECURITIES

31. The Commissioner realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

32. The Defendants, in connection with the offer, sale, or purchase of securities, have made untrue statements of material fact to investors including, but not limited to the following:

- a. Funds invested with PRE would be used to get construction started on a \$180 or \$160 million wood pellet mill in Camden, Arkansas;
- b. PRE would return to investors the principal amount invested, along with interest within a time period of one to four months;
- c. Membership interests in PRE would be converted to common stock and traded on the Frankfurt Stock Exchange in Germany in the fourth quarter of 2009; and
- d. Special circumstances had opened up an opportunity to allow another investor in PRE, but the investor needed to provide their investment money to PRE immediately.

33. The Defendants, in connection with the offer, sale, or purchase of securities, have omitted to state material facts including, but not limited to the following:

- a. Walker had filed for Chapter 7 personal bankruptcy in April 2008 prior to entering into the transactions with the Arkansas investors;
- b. Walker's bankruptcy proceeding was unresolved at the time of the transactions; and

- c. Walker had been charged in June 2008 in Garland County, Arkansas with the crime of theft of property by deception that involved a taking of \$250,000 from an individual by Walker through fraudulent means. The money Walker took from the individual was not returned.

34. By reason of the foregoing, the Defendants, directly or indirectly, have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-507(2).

THIRD CAUSE OF ACTION
VIOLATION OF ARK. CODE ANN. § 23-42-501
OFFERING AND/OR SELLING UNREGISTERED SECURITIES

35. The Commissioner realleges and incorporates by reference each and every allegation contained in the preceding cause of action.

36. The investments in PRE discussed herein were securities, as defined in Ark. Code Ann. § 23-42-102(15)(A).

37. The securities offered and sold by the Defendants, directly or indirectly, personally or through agents, have neither been registered under the Act, nor effectively qualified for any exemption from registration available under the Act or any federal statute or rule.

38. By reason of the foregoing, the Defendants have violated, are violating, and unless enjoined, will continue to violate Ark. Code Ann. § 23-42-501.

PRAYER FOR RELIEF

WHEREFORE, the Commissioner respectfully requests that the Court take the following actions:

- A. Order the Defendants to immediately CEASE AND DESIST from engaging in any fraudulent activity in connection with the offer or sale of any security in Arkansas;

- B. Order the Defendants to immediately CEASE AND DESIST from offering or selling any security in Arkansas until the security is properly registered or is offered or sold pursuant to an exemption from registration under the Arkansas Securities Act;
- C. Impose a civil penalty in an amount not to exceed \$10,000 for each violation of the Act committed by Defendants, and order Defendants to pay the costs of the investigation of this matter; and
- D. Grant such other and further relief, to include an accounting, disgorgement, or restitution, as the Court deems just and appropriate.

Respectfully submitted,

A. Heath Abshure
Arkansas Securities Commissioner



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