

IRVING L. FAUGHT  
ADMINISTRATOR



MARY FALLIN  
GOVERNOR

STATE OF OKLAHOMA  
DEPARTMENT OF SECURITIES

**MEMORANDUM**

**To:** *Irving L. Faught, Administrator*

**From:** *Melanie Hall, Deputy Administrator* mh

**Date:** *September 7, 2016*

**Re:** **ENFORCEMENT REPORT**

Attached is the report of the enforcement activities of the Department for the months of July and August, 2016.

Attachment

h/home/londonb/EnforcementReports/16\_Enf-Reports\_Jul-Aug\_2016.doc

**OKLAHOMA DEPARTMENT OF SECURITIES  
ENFORCEMENT ACTIVITIES  
JULY AND AUGUST 2016**

		<b>FY-17</b>	<b>FY-16</b>
		<b>YTD</b>	<b>YTD</b>
<b>I.</b>	<b>Enforcement Files</b>		
	a. Enforcement Files Opened	11	10
	1. Securities Act	10	9
	2. Business Opportunity Sales Act	1	1
	3. Other	0	0
	b. Enforcement Files Closed	17	13
	c. Active Enforcement Files	123	181
<b>II.</b>	<b>Actions Taken</b>		
	a. Administrative Subpoenas	10	9
	1. Securities Act	10	9
	2. Business Opportunity Sales Act	0	0
	b. Orders Initiating Investigation	1	0
	1. Securities Act	1	0
	2. Business Opportunity Sales Act	0	0
	c. Summary Orders	0	0
	1. Securities Act	0	0
	2. Business Opportunity Sales Act	0	0
	d. Notices of Opportunity for Hearing Served	3	2
	1. Securities Act-Notices	3	2
	i. Hearing Set	0	0
	ii. Hearings Held	0	0
	2. Business Opportunity Sales Act Notices	0	0
	i. Hearing Set	0	0
	ii. Hearings Held	0	0

		<b>FY-17</b>	<b>FY-16</b>
		<b>YTD</b>	<b>YTD</b>
e. Other Orders		6	4
1. Securities Act		6	4
2. Business Opportunity Sales Act		0	0
f. Public Undertakings/Agreements		3	2
1. Securities Act		3	2
2. Business Opportunity Sales Act		0	0
g. Confidential Settlement Agreements		0	0
1. Securities Act		0	0
2. Business Opportunity Sales Act		0	0
h. Letters of Caution		2	2
1. Securities Act		2	2
2. Business Opportunity Sales Act		0	0
i. Appeals from Final Orders		0	0
1. Securities Act		0	0
2. Business Opportunity Sales Act		0	0
j. Civil Penalties - Amounts Collected		\$0	\$0
1. Securities Act		\$0	\$0
2. Business Opportunity Sales Act		\$0	\$0
k. Administrative Costs - Amounts Collected		\$0	\$0
1. Securities Act		\$0	\$0
2. Business Opportunity Sales Act		\$0	\$0

		<b>FY-17</b>	<b>FY-16</b>
		<b>YTD</b>	<b>YTD</b>
	1. Civil Enforcement Activities		
	1. Securities Act		
	i. Subpoenas Issued	0	0
	ii. Civil Petitions Filed	0	0
	iii. Civil Trials Held	0	0
	iv. Criminal Referrals	0	1
	v. Civil Appeals Filed	0	0
	vi. Administrative or other Court Appearances (including pleadings filed)	3	11
	2. Business Opportunity Sales Act		
	i. Subpoenas Issued	0	0
	ii. Civil Petitions Filed	0	0
	iii. Civil Trials Held	0	0
	iv. Criminal Referrals	0	0
	v. Civil Appeals Filed	0	0
	vi. Administrative or other Court Appearances (including pleadings filed)	0	0
	m. Miscellaneous Activities		
	1. Public Information/Press Releases (copy attached)	1	0
	2. Trainings/Seminars Attended	13	1
	3. Coordinated Activities	0	0
	<b>III. Inquiries and Complaints</b>		
	a. Inquiries	5	8
	b. Referrals from Other Oklahoma Agencies	0	1
	c. Referrals from Out of State Agencies	0	0

Administrative Actions

SUMMARY

**In the Matter of: William B. Mulder  
ODS File No. 14-057**

On July 1, 2016, the Administrator of the Department issued a Notice of Opportunity for Hearing on an Enforcement Division Recommendation (Recommendation) relating to the activities of William B. Mulder (“Mulder”) of Tulsa, Oklahoma. Mulder was registered under the Oklahoma Uniform Securities Act of 2004 (“Act”) as an agent of MetLife Securities, Inc., from 1986 until 1997, and as an agent and investment adviser representative of Merrill Lynch, Pierce, Fenner & Smith, Inc. (“Merrill Lynch”), from 1997 and 1995, respectively, to May 2012. Merrill Lynch filed a Form U5 that disclosed an internal review of Mulder in connection with “potential irregularities relating to the sale of a variable life insurance policy.” The internal review ended with the conclusion that Mulder “executed documents relating to a life insurance application [that] contained certain inaccuracies.” The Financial Industry Regulatory Authority (“FINRA”) barred Mulder from association with any FINRA member, through an Acceptance, Waiver and Consent based upon violations of FINRA Rules 8210 and 2010.

On August 2, 2016, the Administrator issued an order barring Mulder from registration in any capacity under the Act and from association with a broker-dealer or investment adviser.

**In the Matter of: R & J Financial, Inc. and John Michael Arledge, Jr.  
ODS File No. 16-022**

On July 20, 2016, the Administrator issued an Order Initiating Investigation against R & J Financial, Inc. and John Michael Arledge, Jr., both of Edmond, Oklahoma, in connection with possible violations of the Act and/or the Rules of the Oklahoma Securities Commission and the Administrator of the Department of Securities (“Rules”).

**In the Matter of: David Lyle Armstrong and Retirement Housing Management Corp.  
ODS File No. 14-024**

The Enforcement Division of the Department conducted an investigation into the activities of David Lyle Armstrong (“Armstrong”) and Retirement Housing Management Corp. (“RHMC”) (“collectively, the “Respondents”), in connection with the issuance, offer and/or sale of securities in and/or from Oklahoma. The securities were in the nature of debt instruments issued by RHMC. On August 3, 2016, an Agreement was entered into between Respondents and the Administrator of the Department wherein Respondents agreed not to issue, offer and/or sell, as an issuer, agent or broker-dealer, any security in and/or from Oklahoma for a period of two (2) years from the effective date of the Agreement. At the end of the two (2) years, Armstrong will consult with securities counsel before he, or any entity that he controls, issues, offers and/or sells securities in and/or from Oklahoma. Respondents previously made restitution payments totaling \$1,622,205.73 to twelve (12) investors.

**In the Matter of:     David Perry Newman**  
**ODS File No. 16-033**

On August 5, 2016, the Administrator issued a Notice of Opportunity for Hearing on an Enforcement Division Recommendation (Recommendation) relating to the activities of David Perry Newman (“Newman”) of Duncan, Oklahoma. Newman was registered under the Act as an agent of First Western Securities, Inc., a registered broker-dealer, from April 2008 until January 2016. From October 1985 until April 2008, Newman was registered as an agent of other broker-dealers. The Department alleged that Newman engaged in dishonest or unethical practices in the securities business by failing to observe high standards of commercial honor and just and equitable principles of trade; violating FINRA rules with respect to customers, transactions and business in this state; and recommending the purchase of notes to a customer without having reasonable grounds for believing that the recommendation was suitable for the customer. Newman is the subject of a FINRA order suspending him from association with a member of the organization. Newman did not answer or request a hearing. On August 31, 2016, the Administrator issued an order barring Newman from registration in any capacity under the Act and from association with a broker-dealer or investment adviser registered under the Act.

**In the Matter of:     Pangean Energy, LLC, Pangean Energy Bakken Shale #1H, LLC**  
**ODS File No. 14-025**

An investigation was conducted by the Department into the activities of Pangean Energy, LLC, and Pangean Energy Bakken Shale #1H, LLC (collectively, the “Respondents”), both of Bedford, Texas. The investigation revealed that Respondents employed unregistered individuals to offer Oklahoma residents membership interests in Pangean Energy Bakken Shale #1H, LLC. Offering documents provided to potential investors described the limited liability company as involved in a one well oil and natural gas drilling prospect in North Dakota. In resolution of this matter, an Agreement was entered between Respondents and the Administrator of the Department wherein Respondents agreed that neither they nor any entity or person controlled by them including, but not limited to, Pangean Energy McKenzie 7, LLC; Midwest Holdings, LLC/NV; and/or Midwest Holdings McKenzie 7, LLC, will transact business in and/or from this state as an issuer, issuer agent, broker-dealer, or broker-dealer agent or otherwise offer or sell any security in or from this state on or for their own account or on behalf of any person directly or indirectly controlled by them. Respondents also agreed to issuance of a cease and desist order. On August 10, the Administrator ordered that Respondents cease and desist from employing unregistered agents to transact business on their behalf in Oklahoma.

**In the Matter of:     Troy A. Orlando**  
**ODS File No. 17-005**

On July 21, 2016, Troy A. Orlando (“Orlando”), a resident of New Jersey, applied for registration under the Act as an agent of Spartan Capital Securities, LLC, a broker-dealer registered under the Act. In July 2015, the New Mexico Securities Division alleged that Orlando violated certain provisions of the New Mexico Uniform Securities Act while associated with a

broker-dealer other than Spartan. To resolve the Department's concerns regarding the pending allegation against Orlando, an Agreement was entered between Orlando and the Administrator of the Department on August 15, whereby Orlando's registration under the Act as an agent of Spartan is conditioned on his conducting his securities business from Spartan's home office where he will be subject to on-site supervision.

**In the Matter of: Philip Matthew Hale *dba* Smart Business Pros LLC, Internet Market Master, LLC and Jennifer Fernandez  
ODS File No. 15-075**

On August 29, 2016, the Administrator issued an order to cease and desist against Philip Matthew Hale (Hale), Philip Matthew Hale *dba* Smart Business Pros LLC (SBP), Internet Market Master, LLC (IMM) and Jennifer Fernandez (Fernandez) (collectively, "Respondents"). Respondents violated Sections 1-301 and 1-402 of the Act in connection with the offer and sale of a credit card processing business. Respondents have thirty (30) days after service of the order to request a hearing.

Civil Actions

SUMMARY

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v. Jasmine, Inc.; Oklahoma Energy Exchange, LLC; Harrisburg Prospect Lease Fund, LLC; Gates Oil & Gas, Ltd.; Harrisburg 2 Prospect Lease Fund, LLC; Jimmy W. Gray; Greg L. Gray; Michael K. Gray; and Lance P. Bowman  
Civil Case No. CJ-2013-5023**

On September 9, 2013, the Department filed a Petition for Permanent Injunction and other Relief in the District Court of Oklahoma County against the above-named Defendants alleging violations of Sections 1-301, 1-402 and 1-501 of the Act. The Department also filed an application for a temporary restraining order, an asset freeze, an accounting and a temporary injunction. On the same date, Judge Patricia Parrish, for Judge Barbara Swinton, issued a temporary restraining order, an order for an asset freeze as to the business entities, and an order for an accounting. On September 30, a hearing was held wherein Judge Swinton entered an agreed order appointing L. Vance Brown (Brown) as the Receiver for Defendants Jasmine, Inc. (Jasmine), Gates Oil & Gas, Ltd. (Gates), and Harrisburg 2 Prospect Lease Fund, LLC (Harrisburg 2). She also issued a temporary injunction against Defendants Jasmine, Gates, Harrisburg 2, Jimmy Gray, Michael Gray and Lance Bowman. On October 17, Judge Swinton entered an order appointing Brown as the Receiver for Defendants Oklahoma Energy Exchange, LLC and Harrisburg Prospect Lease Fund, LLC. On October 23, Judge Swinton entered an agreed order vacating the asset freeze as to the entities subject to the receivership. Judge Swinton also issued a temporary injunction against Defendants Oklahoma Energy Exchange, LLC (OEE) and Harrisburg Prospect Lease Fund, LLC.

On April 1, 2014, the Administrator and Defendant Bowman agreed to the entry of an Agreed Judgment wherein Bowman is restrained and enjoined from, directly or indirectly, participating in or facilitating, the offer and/or sale of any security in and/or from Oklahoma for a one-year period beginning March 31, 2014 through March 31, 2015. Defendant Bowman agreed to disclaim and relinquish all legal and equitable right, title, claim, or interest in Jasmine, Inc., Oklahoma Energy Exchange, LLC, Harrisburg Prospect Lease Fund, LLC, Gates Oil & Gas, LTD, and Harrisburg 2 Prospect Lease Fund, LLC.

On January 8, 2015, Defendants Jimmy Gray and Michael Gray agreed to the entry of judgments wherein Defendant Jimmy Gray is restrained and enjoined from, directly or indirectly, participating in or facilitating the offer and/or sale of any security in and/or from Oklahoma. Defendant Michael Gray is restrained and enjoined from, directly or indirectly, participating in or facilitating the offer and/or sale of any security in and/or from Oklahoma for a five-year period commencing December 28, 2014. Defendants Jimmy Gray and Michael Gray also agreed to disclaim and relinquish all legal and equitable right, title, claim, or interest in Jasmine, Inc., Oklahoma Energy Exchange, LLC, Harrisburg Prospect Lease Fund, LLC, Gates Oil & Gas, LTD, and Harrisburg 2 Prospect Lease Fund, LLC; to take no action, directly or indirectly, to hinder or obstruct the Receiver in the conduct of his duties or to interfere in any manner, directly

or indirectly, with the custody, possession, or control exercised by said Receiver; and to make restitution to investors to be identified by the Court, in amounts to be determined by the Court. On January 8, Judge Swinton entered judgments against Defendants Jimmy Gray and Michael Gray.

On August 26, 2015, the Receiver filed applications to request a judicial determination of ownership of certain working interests in the Mackenzie Well under the Mackenzie Well Private Placement Memorandum, and to submit an authorization for expenditure to working interest owners.

During the month of September, the Department filed its response to the application for attorney fees and costs filed by counsel for certain of the defendants. Judge Swinton granted the application in the amount of \$50,221.37. Judge Swinton also granted the Receiver's application for payment of fees and expenses in the amount of \$165,532.40. Judge Swinton entered an order continuing the hearing on the Receiver's application to request a judicial determination of ownership of certain working interests in the Mackenzie Well.

On October 26, the Administrator and Defendant Greg L. Gray agreed to the entry of an Agreed Judgment wherein Gray is restrained and enjoined from, directly or indirectly, participating in or facilitating the offer and/or sale of any security in and/or from Oklahoma. Gray agreed to disclaim and relinquish all legal and equitable right, title, claim, or interest in Jasmine, Inc., Oklahoma Energy Exchange, LLC, Harrisburg Prospect Lease Fund, LLC, Gates Oil & Gas, LTD, and Harrisburg 2 Prospect Lease Fund, LLC. Defendant Gray is to make restitution to investors to be identified by the Court, in amounts to be determined by the Court. On October 28, Judge Swinton determined those persons with ownership interests in the Mackenzie Well.

On August 17, 2016, an entry of appearance was filed by Wyatt D. Swinford of Elias Books Brown & Nelson PC as counsel for the Receiver. The Receiver filed an application for approval to pay an expenditure associated with the emergency remediation of a disposal well.

**Oklahoma Department of Securities *ex rel.* Irving L. Faught, Administrator v. Nick's Oil & Gas Corporation, Sumper Fidelis Exploration & Production, LLC, Harbor Resources, LLC, BTJ Consulting, Inc. and Nicholas P. Yukich, III**  
**Civil Case No. CJ-2016-2884**

On June 8, 2016, the Department filed a Petition for Permanent Injunction and Other Relief ("Petition") in the District Court of Oklahoma County against the above-named Defendants, alleging violations of Sections 1-301, 1-401, 1-402 and 1-501 of the Act. The Department alleged that the Defendants offered and/or sold unregistered securities in the nature of oil and gas working interests; transacted business in this state as unregistered broker-dealers or unregistered agents; and perpetrated a fraud in connection with the offer and sale of the securities.

The Defendants did not file an answer. On July 28, 2016, the Department filed a Motion for Default Judgment. Defendants Nick's Oil & Gas Corporation, Semper Fidelis Exploration & Production LLC and Nicholas P. Yukich III filed a motion for leave to file their answer out of time. The Department filed an objection to the motion.

On August 25, a hearing was held wherein Judge Timmons denied the default judgment motion and granted Defendants Nick's Oil & Gas Corporation, Semper Fidelis Exploration & Production LLC and Nicholas P. Yukich III five days to file their answer. Defendants Nick's Oil & Gas Corporation, Semper Fidelis Exploration & Production LLC and Nicholas P. Yukich III filed their answer to the Petition. Stephen Q. Peters of Tomlins & Peters, PLLC filed his entry of appearance as counsel for Defendants.

*Appellate Actions*

SUMMARY

**Southeast Investments, N.C., Inc. and Frank H. Black v.  
The State of Oklahoma *ex rel.* the Oklahoma Securities Commission  
CV-2015-86**

On January 20, 2015, Southeast Investments, N.C., Inc., and Frank H. Black (collectively, the "Plaintiffs") petitioned the District Court for review of the Final Order of the Oklahoma Securities Commission (the "Commission") on December 22, 2014.

On February 10, the Commission filed its response to the petition.

On August 11, Judge Aletia Haynes Timmons entered an order setting the briefing and hearing schedule. On August 17, the Plaintiffs filed their Opening Brief.

During the months of September and October, the Commission filed its response to the Plaintiffs' Opening Brief. The Plaintiffs filed a Reply Brief. The Commission filed a brief in response. The Plaintiffs filed a motion for a stay or for the deferral of a ruling by the District Court until the ruling by the Supreme Court in Case No. 113585. The Department filed its objection to the Plaintiffs' motion. At a hearing on October 28<sup>th</sup>, Judge Timmons denied Plaintiffs' motion.

On July 15, 2016, Judge Timmons sustained the ruling of the Commission concluding that the ruling was not arbitrary or capricious and was supported by substantial evidence.

**Southeast Investments, N.C., Inc. and Frank H. Black, Appellants v.  
Oklahoma Department of Securities *ex rel.* the Oklahoma Securities Commission, Appellee  
Supreme Court Case No. 113585**

On January 20, 2015, Southeast Investments, N.C., Inc., and Frank H. Black (collectively, the “Appellants”) filed their petition in error to appeal the Final Order of the Oklahoma Securities Commission (the “Commission”) entered on December 22, 2014.

On February 10, 2015, the Commission filed its response to the petition in error.

On August 21, 2015, the Appellants filed their Brief in Chief.

On September 23, 2015, the Commission filed its Answer Brief.

On July 20, 2016, the Court of Civil Appeals, in an unpublished opinion, affirmed the Commission’s order, as modified. The Court removed the finding that the violations amounted to dishonest and unethical practices in the securities business.

On August 30, 2016, Chief Justice John F. Reif ordered the Clerk of the Supreme Court to issue the mandate pursuant to Rule 1.16 of the Supreme Court Rules.