



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
SYNERGY OIL, LLC; ROBERT FALCO; and) Case No. AP-15-13
TONY PISTILLI,)
Respondents.)

**FINAL ORDER TO CEASE AND DESIST AND ORDER AWARDING
RESTITUTION, CIVIL PENALTIES, AND COSTS**

Now on the 20th day of January, 2016, the Commissioner, having reviewed this matter, issues the following findings and order:

I. PROCEDURAL BACKGROUND

1. On April 17, 2015, the Enforcement Section of the Securities Division of the Office of Secretary of State (the “Enforcement Section”), through its Director of Enforcement John Phillips, submitted a Petition for Order to Cease and Desist and Order to Show Cause why Restitution, Civil Penalties, and Costs Should not be Imposed (the “Petition”).
2. On April 21, 2015, the Missouri Commissioner of Securities (the “Commissioner”) issued an Order to Cease and Desist and Order to Show Cause why Restitution, Civil Penalties, and Costs Should not be Imposed (the “C&D Order”). On that same day, a copy of the C&D Order and Notice of Right to Request a Hearing were sent, via certified mail, return receipt requested, to Respondent Synergy Oil, LLC’s registered agent, the Oklahoma Secretary of State.
3. On or around April 21, 2015, a copy of the C&D Order was made available to the general public on the Missouri Secretary of State’s website.¹
4. On April 27, 2015, a copy of the C&D Order and Notice of Right to Request a Hearing were sent, via certified mail, return receipt requested, to the Respondents’ last two known addresses. These were returned to the Commissioner, as “Unable to forward.”
5. On April 28, 2015, the Oklahoma Secretary of State stated via letter that the C&D Order was being returned because “Service upon the Secretary of State must be made in

¹ See <http://www.sos.mo.gov/cmsimages/securities/orders/AP-15-13.pdf>.

duplicate” and “A \$25 service fee must accompany the attached documents. (Title 18, Section 1142).”

6. On May 21, 2015, the Missouri Securities Division Office Manager processed the \$25 service fee required by the Oklahoma Secretary of State for payment, and included duplicate copies of the C&D Order and Notice of Right to Request a Hearing.
7. On June 2, 2015, the Enforcement Section made telephone contact with an individual identifying himself as Tony Pistilli. Tony Pistilli advised the Enforcement Section of an address where a copy of the C&D Order could be mailed.
8. On June 8, 2015, the Oklahoma Secretary of State mailed a copy of the C&D Order to the Commissioner stamped “Service of Summons Accepted.”
9. On June 18, 2015, a copy of the C&D Order and Notice of Right to Request a Hearing were sent, via certified mail, return receipt requested, to the address Tony Pistilli advised the Enforcement Section of as well as another address associated with Robert Falco.
10. On July 6, 2015, the return receipt card for Robert Falco was returned signed by someone with the last name of “Falco.” On that same day, the C&D Order and Notice of Right to Request a Hearing sent to the address Tony Pistilli advised the Enforcement Section of were returned to the Commissioner “Insufficient Address, unable to forward.”
11. The Petitioner has made numerous attempts to locate and serve the Respondents.
12. On July 14, 2015, the Commissioner was served pursuant to Section 409.6-611(b), RSMo. (Cum. Supp. 2013),² by providing a copy of the process to the office of the Commissioner.
13. On July 21, 2015, an Amended Notice of Service and Copy of Process were sent to Respondents Falco and Pistilli, via certified mail, return receipt requested, to their last known addresses.
14. On September 22, 2015, the Petitioner filed an Affidavit of Compliance with Section 409.6-611 demonstrating that the Enforcement Section had exercised reasonable steps to give notice to the Respondents and that substitute service on the Commissioner was justified.
15. Respondents failed to request a hearing within the time allowed by Section 409.6-604.
16. The Commissioner has not ordered a hearing in this matter pursuant to Section 409.6-604.

² Unless otherwise noted, all statutory references are to the 2013 cumulative supplement of the Revised Statutes of Missouri.

17. On November 6, 2015, the Enforcement Section submitted a Motion for Final Order.
18. To date, the Respondents have failed to respond to the Motion for Final Order.

II. FINDINGS OF FACT

A. Respondents and Related Parties

19. Synergy Oil, LLC (“Synergy”) is a limited liability company organized in Oklahoma on July 14, 2009. The registered agent for Synergy is listed as the Oklahoma Secretary of State, 2300 N. Lincoln Blvd., Suite 101, Oklahoma City, Oklahoma 73105.
20. Synergy maintained an address at 328 Old Newport Boulevard, Suite B, Newport Beach, California 92633. It also maintained an address at 20371 Irvine Avenue, Suite 170, Newport Beach, California 92633. In 2009 and 2010 Synergy filed a new and amended Form D offering with the Securities and Exchange Commission (“SEC”). In that offering Robert Falco (“Falco”) and Tony Pistilli (“Pistilli”) identified themselves as “Executives” of Synergy. Synergy, Falco, and Pistilli are collectively referred to herein as “Respondents.”
21. At all times relevant, neither Falco nor Pistilli were registered in Missouri as broker-dealer agents or investment adviser representatives.
22. Synergy was not registered in Missouri as a broker-dealer.
23. Synergy did not notice file the 2009 Form D offering with the State of Missouri Securities Division.
24. Infinity Healthcare Services, Inc. (“Infinity”) was a corporation formed in Florida on June 6, 1997, with a principal address of 3333 West Commercial Blvd., Suite 203, Ft. Lauderdale, Florida 33309. The registered agent for Infinity was Joseph Y. Zumwalt (“Zumwalt”). Since October 16, 1998, Infinity’s business status has been inactive due to an administrative dissolution.
25. From November 1997 until March 1998, Zumwalt was registered in Florida as a broker-dealer agent with CRD number 1219907. Zumwalt was discharged by his broker-dealer in March 1998 for abandonment of his position and nonproduction.
26. At all times relevant to this matter, there was no registration, granted exemption or notice filing indicating status as a “federal covered security” for any securities issued by Synergy or Infinity.

Missouri Investor (MR)

27. In or around October 2011, a 53-year-old Missouri resident (“MR”) received a cold call from an individual purporting to be Jason Foxe (“Foxe”) and purporting to represent Synergy.

28. At all times relevant to the Petition, Foxe was not registered in Missouri as a broker-dealer agent or investment adviser representative.
29. Foxe told MR, among other things:
 - a. Synergy was soliciting potential investors for a “private investment opportunity”;
 - b. the investment funds would be used for an oil drilling operation;
 - c. MR could expect distribution checks every three months and the distribution amount would depend on the success of the drilling operation;
 - d. MR could expect to receive MR’s initial investment back within one-and-a-half years; and
 - e. after receiving the initial investment back, MR would receive distribution checks for an unspecified period of time.
30. During this same phone call, Foxe also solicited MR to invest in Infinity. MR was told, among other things, that Infinity was about to go public and the stock price was guaranteed to double at that time.
31. On or around October 19, 2011, MR invested \$25,000 in Synergy via a check payable to Synergy.
32. On or around October 20, 2011, MR executed a subscription agreement with Synergy, which was accepted and signed by Falco as manager of Synergy on October 20, 2011. The subscription agreement stated, among other things:
 - a. MR purchased one-fourth “units of working interest” in Synergy for \$25,000;
 - b. MR had retained Foxe, 20371 Irvine Avenue Suite A170, Newport Beach, California 92660, as a Purchaser Representative; and
 - c. MR was not indicated as an accredited investor.
33. On or around March 19, 2012, MR invested \$10,000 in Infinity via a check payable to Infinity.
34. On or around April 2, 2012, MR invested an additional \$4,800 in Infinity via a check payable to Infinity.
35. In or around early April 2012, MR received a stock certificate from Infinity indicating MR owned 567 shares in Infinity. This certificate is dated April 5, 2012.
36. The only return MR received on MR’s investments was a check in the amount of \$194.66

from Big Oil, LLC Distribution Account, Suite 114, Jenks, Oklahoma 74037, dated May 9, 2012.

Court Actions

37. On or around October 29, 1996, Pistilli, one of the Executives for Synergy, pleaded guilty to felony conspiracy to commit wire fraud and was sentenced to 18 months in federal prison.
38. On or around February 23, 1998, Pistilli pleaded guilty to felony mail fraud and aiding and abetting and causing an act to be done and was sentenced to nine months in prison.
39. On or around September 18, 2006, the SEC filed a civil action against Zumwalt, the registered agent for Infinity, alleging hedge fund fraud and market manipulation.
40. On or around October 3, 2006, Zumwalt was sentenced to five years in federal prison after pleading guilty to mail fraud in connection with Zumwalt's role in a fraudulent hedge fund and stock manipulation scheme.
41. On March 17, 2011, the California Corporations Commissioner issued a Desist and Refrain Order against Pistilli, Falco, and Synergy that prohibited Pistilli, Falco, and Synergy from offering or selling unregistered or non-exempt securities in the form of units of working interests in oil drilling operations in the State of California. Pistilli, Falco, and Synergy were served with the order on March 24, 2011. Pistilli and Falco did not request a hearing or otherwise challenge the order. As a result, the order became final.
42. On or about June 24, 2014, the Superior Court of the State of California for the County of Orange issued a judgment against Synergy and Falco for, among other things, violating the Desist and Refrain Order by selling unregistered securities. Falco and Synergy were ordered to pay \$13,775,047.86 in restitution to investors and \$6,625,000.00 in civil penalties. The judgment lists all investors in Synergy and the amounts invested. MR is listed as investing \$25,000.

Additional Facts

43. Synergy has not made any payments for restitution under the court order referenced in paragraph 42 above and the matter is currently in a collections process.
44. It is unknown if Synergy has any assets left to seize in order to pay back investors.
45. Prior to making the investments with Synergy and Infinity, the individual representing Synergy and Infinity failed to inform MR about, among other things:
 - a. the March 17, 2011, California Corporations Commissioner's Desist and Refrain Order against Pistilli, Falco, and Synergy;
 - b. Pistilli's convictions for mail and wire fraud;

- c. that Infinity's business registration became inactive in 1998;
- d. the September 18, 2006, SEC civil action against Zumwalt; and
- e. Zumwalt's conviction and sentencing after pleading guilty to mail fraud as described above.

III. CONCLUSIONS OF LAW

- 46. Because Respondents failed to request a hearing within the time allowed by Section 409.6-604, and because the Commissioner never ordered such a hearing, the Order issued on April 21, 2015, against Respondents became **FINAL** by operation of law.

Multiple Violations of Offering and Selling Unregistered, Non-Exempt Securities

- 47. **THE COMMISSIONER CONCLUDES** that Respondents violated Section 409.3-301 when Respondents offered and sold unregistered, non-exempt securities to MR.
- 48. At all times relevant to this matter, there was no registration, granted exemption, or notice filing indicating status as a "federal covered security" for the securities offered and sold by Respondents.
- 49. Respondents offered and sold securities in Missouri without these securities being (1) a federal covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-203, or (3) registered under the Missouri Securities Act of 2003.
- 50. Respondents' conduct in violation of Section 409.3-301 constitutes engaging in an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

Multiple Violations of Transacting Business as an Unregistered Broker-Dealer

- 51. **THE COMMISSIONER FURTHER CONCLUDES** that Respondent Synergy violated Section 409.4-401(a) when Respondent Synergy offered and sold more than one security to MR in Missouri, including securities in a company unrelated to Synergy.
- 52. These activities constitute transacting business as a broker-dealer in the State of Missouri under Section 409.1-102(4).
- 53. At all times relevant to this matter, Respondent Synergy was not registered as a broker-dealer in the State of Missouri.
- 54. Respondent Synergy transacted business by offering and selling securities to an investor in Missouri without being registered or exempt from registration as a broker-dealer in violation of Section 409.4-401(a).

55. Respondent Synergy's conduct in violation of Section 409.4-401(a) constitutes an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

Multiple Violations of Employing or Associating with an Unregistered Agent

56. **THE COMMISSIONER FURTHER CONCLUDES** that Respondent Synergy violated Section 409.4-402(d) when Respondent Synergy employed or associated with agents who offered or sold securities to MR in Missouri on behalf of Synergy.
57. Respondent Synergy's activities constitute employing or associating with an agent in the State of Missouri under Section 409.4-402(d).
58. At all times relevant to this matter, Respondent Synergy had no registration or granted exemption from registration for any agents to transact business in the State of Missouri.
59. Respondent Synergy employed or associated with agents who offered or sold securities to an investor in Missouri without being registered or exempt from registration as an agent in violation of Section 409.4-402(d).
60. Respondent Synergy's conduct in violation of Section 409.4-402(d) constitutes an illegal act, practice, or course of business, and such conduct is subject to the Commissioner's authority under Section 409.6-604.

Multiple Violations of Omitting to State Material Facts or Engaging in An Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit Upon Another Person in Connection with the Offer or Sale of a Security

61. **THE COMMISSIONER FURTHER CONCLUDES** that, in connection with the offer, sale or purchase of a security, Respondents made untrue statements and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. stating to MR that Synergy was soliciting potential investors for a "private investment opportunity";
 - b. stating that MR could expect distribution checks every three months and the distribution amount would depend on the success of the drilling operation;
 - c. stating that MR could expect to receive MR's initial investment back within one-and-a-half years;
 - d. stating that, after the initial investment, MR would receive distribution checks for an unspecified period of time; and
 - e. representing that Infinity was about to go public and that the stock would thereafter double.

62. **THE COMMISSIONER FURTHER CONCLUDES** that, any and all of the above statements are either untrue or misleading because of omissions of material fact. To wit:
- a. at the time of soliciting MR for investment in Synergy, Respondents were already subject to a Desist and Refrain Order from the California Corporations Commissioner precluding Respondents from offering or selling unregistered or non-exempt securities in the form of units of working interests in oil drilling operations in the State of California;
 - b. that Synergy's executive, Pistilli, pleaded guilty to conspiracy to commit wire fraud, mail fraud, and aiding and abetting mail fraud in two separate criminal prosecutions;
 - c. that the securities were not registered, nor subject to any exemption from registration; and
 - d. at the time MR purchased Infinity stock, Infinity was not poised to become a public corporation.
63. Respondents' above acts, practices, or courses of business in connection with the offer or sale of a security operated as a fraud on MR, and would operate as a fraud or deceit upon another person.
64. Respondents made multiple untrue statements of material fact, made material omissions of fact, and engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person in violation of Section 409.5-501.
65. Respondents' conduct in violation of Section 409.5-501, constitutes engaging in an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.
66. This order is in the public interest and is consistent with the purposes of the Missouri Securities Act of 2003. *See* Section 409.6-605(b).

IV. ORDER

NOW, THEREFORE, it is hereby ordered that Respondents, their agents, officers, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order be prohibited from violating or materially aiding in any violation of:

- A. Section 409.3-301, by offering or selling any securities as defined by Section 409.1-102(28), in the State of Missouri unless those securities are registered with the Securities Division of the Office of the Secretary of State in accordance with the provisions of Section 409.3-301;
- B. Section 409.4-401(a), by transacting business as an unregistered broker-dealer;

- C. Section 409.4-402(d), by employing or associating with an unregistered agent; and
- D. Section 409.5-501, by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), each Respondent shall pay a civil penalty in the amount of \$10,000 for multiple violations of Section 409.3-301. This amount shall be made payable to the State of Missouri. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within 30 days from the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondent Synergy shall pay a civil penalty in the amount of \$10,000 for multiple violations of Section 409.4-401(a). This amount shall be made payable to the State of Missouri. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within 30 days from the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondent Synergy shall pay a civil penalty in the amount of \$10,000 for multiple violations Section 409.4-402(d). This amount shall be made payable to the State of Missouri. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within 30 days from the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), each Respondent shall pay a civil penalty in the amount of \$10,000 for multiple violations of Section 409.5-501. This amount shall be made payable to the State of Missouri. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within 30 days from the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondent Synergy pay restitution to MR in the amount of \$52,279.05. This amount shall be made payable to the Missouri Secretary of State's Investor Restitution Fund, and the Commissioner will take reasonable and necessary actions to distribute such funds to MR. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101, within 30 days from the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(e), Respondent Synergy shall pay \$4,985.65 in actual costs for investigation into, and the proceedings associated with, this matter. This amount shall be made payable to the Investor Education and Protection Fund. This amount shall be sent to the Missouri Securities Division, at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within 30 days from the date of this Final Order.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS TWENTIETH OF JANUARY, 2016.



JASON KANDER
SECRETARY OF STATE

Andrew M. Hartnett

ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2016, a copy of the foregoing Final Order to Cease and Desist and Order Awarding Restitution, Civil Penalties, and Costs in the above styled case was **mailed by Certified U.S. mail, Return Receipt Requested, to:**

Gregory Lee
Attorney for Robert Falco
17821 17th Street, Suite 190
Irvine, CA 92614

Diane Bass
Attorney for Tony Pistilli
100 Spectrum Center Drive, Suite 520
Irvine, CA 92618

Robert Falco
3221 South Manitoba Drive
Santa Ana, CA 92704-6636

and

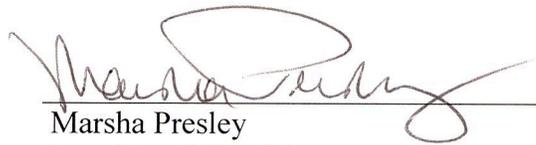
Tony Pistilli
1516 Bellgreen Place
Castle Rock, CO 80104-9691

and by U.S. mail to:

Synergy Oil, LLC
Oklahoma Secretary of State, Registered Agent
2300 North Lincoln Boulevard, Suite 101
Oklahoma City, OK 73105

and by hand-delivery to:

John Phillips
Director of Enforcement



Marsha Presley
Securities Office Manager