

State of Missouri
Office of Secretary of State

Case No. AP-07-44

IN THE MATTER OF:

TARGET OIL & GAS CORPORATION; *and*
MICHAEL SMITH,

Respondents.

Serve both at:

474 Highway 738
Albany, Kentucky 42602

And

1137 N. Plantation Drive
Cookeville, Tennessee 38506

**ORDER TO CEASE AND DESIST AND ORDER TO SHOW CAUSE WHY CIVIL
PENALTIES AND COSTS SHOULD NOT BE IMPOSED**

On August 17, 2007, the Enforcement Section of the Securities Division of the Office of Secretary of State, through its Assistant Commissioner of Securities Mary S. Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

1. Target Oil & Gas Corporation (“Target Oil & Gas”) purports to be a corporation operating in the State of Kentucky with last known business addresses of 474 Highway 738, Albany, Kentucky 42602, and 1137 N. Plantation Drive, Cookeville, Tennessee 38506. Target Oil & Gas purportedly engages in the business of selling oil and gas interests to investors.
2. Michael Smith (“Smith”) purports to be the president of Target Oil & Gas and has last known business addresses of 474 Highway 738, Albany, Kentucky 42602 and 1137 N. Plantation Drive, Cookeville, Tennessee 38506.
3. As used in this document, the term “Respondents” refers to Target Oil & Gas and Smith.
4. Sometime in early 2007, a Missouri Resident (“MR”) received a telephone call [1] from a representative (the “Representative”) of Target Oil & Gas. MR questioned the Representative regarding how the Representative obtained MR’s cellular number. The Representative informed MR that Target Oil & Gas obtained MR’s cellular number from a list. Among other things, the Representative asked MR if MR was an accredited investor. MR responded that MR was not an accredited investor. The Representative informed MR that it was “still alright to invest” because a limited number of non-accredited investors could invest.
5. The Representative further stated:
 - a. Target Oil & Gas needed investors because one investor had passed away and left an opening for a new investor;
 - b. Target Oil & Gas was going to tap into another oil and gas well; and
 - c. if MR was unable to invest the entire amount of forty-five thousand dollars (\$45,000), MR could invest half that amount.
6. MR requested that the Representative send MR additional information on the investment offering.
7. In early 2007, shortly after the telephone conversation between MR and the Representative, MR received a package from Target Oil & Gas. This package included, among other things, the following:
 - a. a two-sided document titled “PROPOSAL Zephyr #2 Well BROWN COUNTY, TX” (the “Proposal”) on one side, and “OIL AND GAS BENEFITS Tax Consideration” (the “Tax Consideration”) on the other;
 - b. a five-page document titled “Joint Venture Subscription Agreement” dated March 23, 2007; [2]
 - c. a two-page document titled “Joint Venture Subscription Agreement Exhibit A;”

- d. a ringed booklet titled "The Oil & Gas Potential of the Zephyr #2 Well Brown County, TX prepared exclusively for Target Oil & Gas Corp." This booklet appeared to contain information concerning oil and gas wells in Brown County, Texas, including various color photographs;
- e. a United Parcel Service (UPS) shipping document with a return address of Target Oil & Gas Corp, 1137 N. Plantation Drive, Cookeville, TN 38506.

8. The Proposal stated, among other things, the following:

"Dear Prospective Investor:

We are proposing a 1 (one) well Joint Venture project in Brown County, Texas. There are 3 primary oil and/or gas bearing formations in this region: Marble Falls, Chappel Reef, and Ellenburger. This well will be drilled I Brown County, Texas.

The Unit Price may be paid as follows:

- o \$45,000.00 in cash upon subscription for 1 (one) unit, which is equivalent to 3.125% working interest in this project.
- o \$3,200.00 per well in cash to be paid within 14 (fourteen) days after notification that this well is to be completed.

In the event you wish to participate in this Joint Venture offering, I will be happy to mail you a Subscription Agreement. Please make your check payable to Target Oil & Gas Corp. and mail it to my attention.

I will keep you advised as to the progress being made and will notify you concerning the drilling of this well. Please feel free to contact the undersigned if you have any questions, comments, or concerns about this offer.

Sincerely,

By: Michael Smith /s/ [3]

Printed Name: Michael Smith, President
Company: Target Oil & Gas Corp."

9. The Joint Venture Subscription Agreement dated March 23, 2007, contained, among other things, the following sections:

"It is understood and agreed that [investor] is purchasing 3.125% of the working interest in the **Texas-Zephyr Well #2**. Three and One-eighth[sic] percent 3.125% working interest is equal to 2.5390625% of the total production.

The undersigned represents and certifies that (i) he/she is an Accredited Investor as defined in Exhibit A attached hereto (ii) is of sufficient legal capacity to execute this Agreement without the assistance of others and (iii) has received all the information which he/she feels is necessary to participate in this Joint Venture.

1. Subscription. The undersigned (Subscriber) agrees to purchase 3.125% working interest in said wells for \$45,000.00 plus completion costs payable as set forth in paragraph 2 following.

....

3. Power of Attorney. The Operator, Target Oil and Gas Corporation, is hereby designated as the agent and attorney-in-fact of the subscriber.

....

8. The Operator, shall be entitled to a monthly fee of \$400.00 per well to perform all functions normal for an Operator The Operator, as the owner of 96.875% working interest, will pay \$387.50 of this \$400.00 charge"(Emphasis in original)

10. The Joint Venture Subscription Agreement Exhibit A stated, among other things:

"This investment represents a long-term, illiquid investment. A market for this investment is not expected to develop, and the transfer of this investment will be restricted by federal and state securities laws. This investment, therefore, is suitable only for persons who have no need for liquidity with respect to this investment and can bear the complete loss of this investment.

Each individual making this investment must satisfy the Operator that he/she is an accredited investor as that term is defined in Rule 501 promulgated under the 33 Act. **This investment will be sold exclusively to accredited investors.**"(Emphasis added)

11. Prior to receiving the investment packet from Target Oil & Gas, MR received at least five (5) telephone calls from the Representative of Target Oil & Gas.

12. During one conversation, MR informed the Representative that MR was not interested in investing with Target Oil & Gas, and MR has since ceased receiving telephone calls from the Representative.
13. On or about April 4, 2007, the Missouri Securities Division received information that indicated that Respondents allegedly offered nonexempt and unregistered securities in Missouri.
14. On May 14, 2007, the Division sent a letter, via certified mail, to Target Oil & Gas and Smith. The letter asked Respondents to provide the definitional or registration exemption upon which Respondents had relied in offering unregistered securities. The letter also requested additional information about the offers and advised Respondents that failure to respond within a reasonable time as set by the Commissioner constituted further proceedings to prohibit Respondents from offering or selling securities in this State.
15. On June 4, 2007, the Division sent a second letter, via certified mail, to Target Oil & Gas and Smith requesting the same information that was requested in the Division's letter of May 14, 2007.
16. On July 2, 2007, the United States Postal Service returned the June 4, 2007, letter to the Securities Division. The envelope of the letter was marked as "Unclaimed Unable to Forward."
17. To date, the Division has not received a response from Respondents with regard to the Division's letters dated May 14, 2007, and June 4, 2007.
18. The Division has information that Target Oil & Gas offered unregistered, non-exempted securities in other states and as a result, those states took the following actions:
 - a. On December 27, 2000, the Pennsylvania Securities Commission issued a Summary Order to Cease and Desist against Target Oil & Gas and Smith prohibiting Respondents from offering unregistered securities by an unregistered agent. *In the matter of Target Oil & Gas Corporation, Michael Smith et al. Summary Order to Cease and Desist, Docket No. 00120-10, December 27, 2000 (Commonwealth of Pennsylvania, Securities Commission);*
 - b. On December 20, 2001, the State of Wisconsin, Department of Financial Institutions, Division of Securities, issued an Order of Prohibition and Revocation against Respondents Target Oil & Gas. This order prohibited Target Oil & Gas from offering unregistered securities in the form of working interests in oil and gas wells by an unlicensed broker-dealer and agent and alleged that Target Oil & Gas had engaged in fraud in the offer of these interests. *In the matter of Target Oil & Gas Corporation and Michael Smith, et al., File No. S-01082 (Ex), December 20, 2001 (State of Wisconsin, Department of Financial Institutions);*
 - c. On February 18, 2003, the Commissioner of the Kentucky Department of Financial Institutions entered into an Agreed Order with Respondents Target Oil & Gas and Smith whereby Respondent Target Oil & Gas agreed that its individual agents who make contact with potential investors would have to have a reasonable belief that the individuals being contacted were accredited investors, that Respondents would obtain written information from potential investors to verify their accredited status prior to making any offers, and that Respondents would provide a prospectus or offering circular each time an offer or sale of an investment was made that contained all material information a reasonable investor could want to know about the offering and the circumstances surrounding the offering. *In the matter of Target Oil & Gas Corporation and Michael Smith, Agreed Order No. V02017, February 18, 2003, (Commonwealth of Kentucky, Department of Financial Institutions); and*
 - d. On March 22, 2007, the Deputy Securities Commissioner of the Texas State Securities Board issued an Emergency Order to Cease and Desist against Target Oil & Gas for offering for sale working interests in the Texas-Zephyr Well #2, a gas well to be drilled in Brown County, Texas. The order alleged that the working interests were not registered in Texas. *In the matter of Target Oil & Gas Corporation and Michael Smith, et al., File No. ENF-07-CDO-1627, March 22, 2007, (State of Texas, Texas State Securities Board).*
19. A check of the records maintained by the Missouri Commissioner of Securities revealed no registration, granted exemption or notice filing indicating status as a "federal covered security" for any securities offered by Respondents in or from Missouri.
20. Respondents were not registered to offer and sell securities in or from the State of Missouri.
21. Respondents have no issuer agents registered to offer or sell securities in the State of Missouri.
22. The securities offered by the Respondents were not federal covered securities.
23. Respondents did not inform MR among other things, the following:
 - a. that the Respondents were not registered to sell securities in or from the State of Missouri;
 - b. that the securities were not registered in the State of Missouri;
 - c. sufficient facts or information regarding the risks of the investment;

- d. that Respondents were the subject of an order from Pennsylvania;
 - e. that Respondents were the subject of an order from Wisconsin;
 - f. that Respondents were the subject of an order from Kentucky; or
 - g. that Respondents were the subject of an order from Texas.
24. Respondents told MR that an unaccredited investor could purchase the investment when, in fact, the offering documents indicated that the investment was to be sold exclusively to accredited investors.
25. An order is in the public interest and consistent with the purposes intended by the Missouri Securities Act of 2003. See Section 409.6-605(b), RSMo. (Cum Supp. 2006).

II. STATUTORY PROVISIONS

26. Section 409.1-102(17), RSMo. (Cum Supp. 2006), defines “Issuer” as:
- “a person that issues or proposes to issue a security, subject to the following . . . (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interest for the purpose of sale.”
27. Section 409.1-102(26), RSMo. (Cum Supp. 2006), defines “sale” to include “every contract of sale, contract to sell, or disposition of, a security or interest in a security for value.” That same section defines “offer to sell” as “every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.”
28. Section 409.1-102(28), RSMo. (Cum Supp. 2006), includes, in part, any “certificate of interest or participation in a profit-sharing agreement,” and “investment contract” within the definition of a security.
29. Section 409.3-301, RSMo. (Cum Supp. 2006), states:
- “It is unlawful for a person to offer or sell a security in this state unless: (1) The security is a federal covered security; (2) The security, transaction, or offer is exempted from registration under sections 409.2-201 to 409.2-203; or (3) The security is registered under this act.”
30. Section 409.4-402(d), RSMo. (Cum Supp. 2006), states:
- “It is unlawful for any broker-dealer or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associated with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).”
31. Section 409.4-402(a), RSMo. (Cum Supp. 2006), states:
- “It is unlawful for any person to transact business in this state as an agent unless the individual is registered under this act as an agent or exempt from registration as an agent under section (b).”
32. Section 409.5-501, RSMo. (Cum Supp. 2006), states:
- “It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly: (1) To employ a device, scheme, or artifice to defraud; (2) To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.”
33. Section 409.6-604(a), RSMo. (Cum Supp. 2006), states:
- “If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act . . . the commissioner may: (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act”
34. Section 409.6-604(d), RSMo. (Cum Supp. 2006), states:
- “In a final order under subsection (c), the commissioner may impose a civil penalty up to one thousand dollars (\$1,000) for a single violation or up to ten thousand dollars (\$10,000) for more than one violation.”
35. Section 409.6-604(e), RSMo. (Cum Supp. 2006), states:
- “In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of

this act These funds may be paid into the investor education and protection fund.”

36. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. Section 409.6-604(a), RSMo. (Cum. Supp. 2006).

III. CONCLUSIONS OF LAW

Offering Nonexempt, Unregistered Securities

37. Paragraphs 1 through 36 are incorporated by reference as though fully set forth herein.
38. The investments offered by the Respondents come under the definition of “securities” contained in Section 409.1-102(28), RSMo. (Cum. Supp. 2006).
39. The Respondents’ actions in offering securities to Missouri Residents is an “attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value,” which satisfies the definition of “offer to sell” under Section 409.1-102(26), RSMo. (Cum. Supp. 2006).
40. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration, granted exemption or notice filing indicating status as a “federal covered security” for any security offered by Respondents.
41. The Respondents violated Section 409.3-301, RSMo. (Cum. Supp. 2006), when they offered securities in Missouri without the securities being (1) a federal-covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-202, RSMo. (Cum. Supp. 2006), or (3) registered under the Missouri Securities Act of 2003.
42. Respondents’ actions in offering or selling unregistered securities, constitute an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2006).

Violation by Respondent Target Oil and Gas of Employing an Unregistered Agent

43. Paragraphs 1 through 36 are incorporated by reference as though fully set forth herein.
44. Respondent Target Oil & Gas created the fractional interests for the purpose of the sale of these securities. Target Oil & Gas is owner of these fractional working interests in the well and is thus the issuer of these securities as that term is defined under Section 409.1-102(17), RSMo. (Cum. Supp. 2006).
45. As the issuer Respondent Target Oil & Gas employed the Representative who solicited a Missouri Resident on numerous occasions to purchase a fractional interest in an oil and gas well. These solicitations constitute transacting business in the State of Missouri.
46. Respondent Target Oil & Gas has not registered any issuer agents in the State of Missouri.
47. Respondent Target Oil & Gas employed an unregistered agent who transacted business in the State of Missouri in violation of Section 409.4-402(d), RSMo. (Cum. Supp. 2006).

Multiple Violations of Omitting to State Material Facts in Connection with the Sale of a Security

48. Paragraphs 1 through 36 are incorporated by reference as though fully set forth herein.
49. In connection with the offer of securities, Respondents omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. that the Respondents were not registered to sell securities in or from the State of Missouri;
 - b. that the securities were not registered in the State of Missouri;
 - c. facts or information regarding the risks of the investment;
 - d. that Respondents were the subject of an order from Pennsylvania, *In the matter of Target Oil & Gas Corporation, Michael Smith et al. Summary Order to Cease and Desist, Docket No. 00120-10, December 27, 2000 (Commonwealth of Pennsylvania, Securities Commission)*;
 - e. that Respondents were the subject of an order from Wisconsin, *In the matter of Target Oil & Gas Corporation and Michael Smith, et al., File No. S-01082 (Ex), December 20, 2001 (State of Wisconsin, Department of Financial Institutions)*;
 - f. that Respondents were the subject of an order from Kentucky, *In the matter of Target Oil & Gas Corporation and Michael Smith, Agreed Order No. V02017, February 18, 2003 (Commonwealth of Kentucky, Department of*

Financial Institutions); or

g. that Respondents were the subject of an order from Texas, *In the matter of Target Oil & Gas Corporation and Michael Smith, et al., File No. ENF-07-CDO-1627, March 22, 2007 (State of Texas, Texas State Securities Board)*.

50. Respondents violated Section 409.5-501(2), RSMo. (Cum. Supp. 2006), when they omitted to state the material facts described immediately above and when stating such facts was necessary to make the statements made not misleading. Such omissions constitute an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2006).

Violation of Making an Untrue Statement of a Material Fact in Connection with the Sale of a Security

51. Paragraphs 1 through 36 are incorporated by reference as though fully set forth herein.

52. In connection with the offer of securities, Respondents made untrue statements of material fact, including, but not limited to, stating to MR that an unaccredited investor could purchase the investment when, in fact, offering documents indicated that the investment was to be sold exclusively to accredited investors.

53. Respondents violated Section 409.5-501(2), RSMo. (Cum. Supp. 2006), when they made an untrue statement of material fact as described immediately above. Such an untrue statement constitutes an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2006).

IV. ORDER

NOW, THEREFORE, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this Order are prohibited from:

- A. offering or selling securities as defined by Section 409.1-102(28), RSMo. (Cum. Supp. 2006), 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 409.3-304, RSMo. (Cum. Supp. 2006);
- B. employing an unregistered agent to transact business in the State of Missouri on behalf of any issuer; and
- C. violating or materially aiding in any violation of Section 409.5-501(2), RSMo. (Cum. Supp. 2006), 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 a statement made, in the light of the circumstances under which it is made, not misleading.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2006), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to one thousand dollars (\$1,000) against each Respondent individually for violation of Section 409.3-301, RSMo. (Cum. Supp. 2006), in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2006), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to one thousand dollars (\$1,000) against each Respondent individually for violations of Section 409.4-402(d), RSMo. (Cum. Supp. 2006), in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2006), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against each Respondent individually for multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2006), in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an award of costs of the investigation against Respondents in this proceeding, the Commissioner will issue a final order pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2006), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and show cause why an award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 27TH DAY OF AUGUST, 2007.

State of Missouri
Office of Secretary of State

ROBIN CARNAHAN
SECRETARY OF STATE
(Signed/Sealed)

IN THE MATTER OF:

TARGET OIL & GAS CORPORATION; *and*
MICHAEL SMITH,

Respondents.

Serve both at:

474 Highway 738
Albany, Kentucky 42602

And

1137 N. Plantation Drive
Cookeville, Tennessee 38506

NOTICE

TO: Respondents and any unnamed representatives aggrieved by this Order:

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to § 409.6-604(b), RSMo Supp. 2005, and 15 CSR 30-55.020.

A request for a hearing must be mailed or delivered, in writing, to:

Matthew D. Kitz, Commissioner of Securities
Office of the Secretary of State, Missouri
Kirkpatrick State Information Center
600 West Main Street, Room 229
Jefferson City, Missouri, 65102.

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of August, 2007, copies of the foregoing Order to Cease and Desist in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

Target Oil & Gas Corporation
474 Highway 738
Albany, Kentucky 42602

Michael Smith
474 Highway 738
Albany, Kentucky 42602

Target Oil and Gas Corporation
1137 N. Plantation Drive
Cookeville, Tennessee 38506

Michael Smith
1137 N. Plantation Drive
Cookeville, Tennessee 38506

And hand delivered to:

Mary S. Hosmer
Assistant Commissioner
Missouri Securities Division

John Hale, Specialist

[1] MR stated that MR had no prior relationship with Target Oil & Gas.

[2] The date of March 23, 2007, was hand written in blue ink on this document.

[3] Smith's signature appeared to be in an electronic form.