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BEFORE THE MONTANA STATE AUDITOR
EX-OFFICIO COMMISSIONER OF SECURITIES AND INSURANCE
HELENA, MONTANA

IN THE MATTER OF:)	Case No. 445-04
)	
TRI ENERGY INC. ("TRI Energy").)	
H&J ENERGY COMPANY, INC. ("H&J"))	
and MARINA INVESTORS GROUP)	
("Marina"), and their agents)	HEARING EXAMINER'S
and Representatives including)	<u>PROPOSED</u>
Robert Jennings, Arthur Simburg,)	FINDINGS OF FACT,
Lowell Decker, Thomas Avery,)	CONCLUSIONS OF LAW,
Henry Jones, Debbie Loveless,)	AND ORDER
and John and Jane Does 1-10,)	
)	
Respondent.)	

Pursuant to mailed notice, on Monday, May 19, 2008, in the First Floor Conference Room of the State Auditor's Office, 840 Helena Avenue, Helena, Montana, a contested case hearing was conducted by the undersigned Hearing Examiner in this matter. The hearing was conducted pursuant to the hearings and appeals provisions of the Montana Insurance Code (§§ 33-1-701, et seq., MCA); the contested case provisions of the Montana Administrative Procedure Act (§§ 2-4-601, et seq., MCA); and Montana's

1 statutory, public participation in governmental operations notice
2 and hearing provisions (§§ 2-3-101, et seq., MCA).

3 Roberta Cross Guns, Legal Counsel for the Montana State
4 Auditor's Office (MSAO) represented the Securities Department
5 (Department) of the Commissioner of Insurance and Securities
6 (Commissioner). Although Mr. David Gallick (Gallick), attorney
7 at law, entered himself as counsel of record for most of the
8 named Respondents, on September 13, 2007, Gallick submitted
9 notices of withdrawal as counsel for Respondents Arthur Simburg,
10 Tri Energy, Inc., Marina Investors Group, H&J Energy, Inc.,
11 Robert Jennings, and Thomas Avery for each of whom he previously
12 had entered himself as counsel. On this same date, Gallick
13 reentered appearances for Respondents Lowell Decker (Decker) and
14 Debbie Loveless (Loveless). However, Gallick did not seek
15 permission to withdraw, nor did he receive any, nor did he
16 provide updated contact information for those Respondents for
17 which he submitted representation withdrawals. Subsequently, on
18 April 23, 2008, Respondents Loveless and Decker entered into
19 settlement agreements with the Department. The Department's
20 motion to accept this consent agreement as final resolution of
21 the matter as it related to Loveless and Decker was granted via
22 the undersigned's April 29, 2008, Order dismissing these two
23 Respondents from the case.

1 At the hearing, none of the remaining Respondents appeared.
2 The evidence presented at the hearing consisted of the
3 Department's reiteration of the allegations set forth in its
4 Amended Notice of Proposed Agency Action and Opportunity for
5 Hearing.
6

7 From the evidence being uncontested at the hearing,
8 including Respondents' failure to present evidence to the
9 contrary, the Hearing Examiner makes the following proposed:

10 FINDINGS OF FACT

11 1. This case evolved from the Department's May 17, 2005,
12 issuance of an Order to Cease and Desist and Notice of Proposed
13 Agency Action.
14

15 2. On or about August 23, 2007, the Department moved to
16 amend the May 2005 Notice to include specific allegations and
17 relief and to conform the earlier filing to standard Department
18 procedure. The motion was granted and a scheduling conference
19 was held. Gallick indicated he had not spoken with his numerous
20 clients during the two-year period the case languished.
21

22 3. H&J Energy Company, Inc. (H&J Energy), a Nevada
23 corporation, with corporate offices at 350 S Center Street, Suite
24 500, Reno, Nevada, represents that it is in the business of coal
25 mining.
26
27

1 4. Marina Investors Group, Inc. (Marina Investors Group),
2 a California corporation, with corporate offices at 1801 Lincoln
3 Blvd., Suite 113, Venice, California, and 3017 Washington Blvd.,
4 Suite 115, Marina Del Rey, California, represents that it is in
5 the business of movie and music production.
6

7 5. Tri Energy, Inc. (Tri Energy), a Nevada corporation,
8 with corporate offices at 2533 N Carson Street, Box T-305, Carson
9 City, Nevada, represents that it is in the business of coal
10 mining.
11

12 6. Thomas Avery (Avery) of Moreno Valley, California, is
13 the Senior Vice President and Vice Chairman of Tri Energy. Avery
14 is the Secretary of H&J Energy.

15 7. Decker of Placerville, California, is an officer of Tri
16 Energy.

17 8. Robert Jennings (Jennings) of Perris, California, is
18 the President and Chairman of Tri Energy. Jennings is the
19 President and Treasurer of H&J Energy.
20

21 9. Henry Jones (Jones) of Culver City, California, is the
22 owner of Marina Investors Group.

23 10. Arthur Simburg (Simburg) of Los Angeles, California, is
24 the Senior Vice President of Tri Energy.

25 11. Loveless of Kalispell, Montana, is a promoter/sales
26 agent of Tri Energy and Marina Investors Group.
27

1 12. Respondents Tri Energy, H&J Energy, and Marina
2 Investors Group are each a sales plan, operation, investment
3 contract or investment program, and each entity, in the course of
4 conducting its business, offered securities to participants in
5 the form of promissory notes and the promise of extremely high
6 rates of return.
7

8 13. Loveless solicited other private individuals to
9 purchase the investment contracts.

10 14. Respondents failed to register the sales contracts as
11 securities with DOS.
12

13 15. Loveless is a participant in the sales plan, operation,
14 investment contract, or investment program, and has solicited
15 other private individuals to join the sales plan, operation,
16 investment contract, or investment program while living in
17 Kalispell, Montana. Loveless is not registered as a salesperson
18 with DOI.
19

20 16. Beginning no later than September, 2003 and continuing
21 through at least February, 2005, H&J Energy, Tri Energy, Avery,
22 Decker, Jennings, and Simburg solicited over \$257,000.00 from at
23 least nine Montana investors towards funding alleged coal mine
24 operations of Tri Energy, H&J Energy, and a Middle East "gold
25 investment" organized by Marina Investors Group and Jones.
26
27

1 17. Loveless, acting in concert with and on behalf of
2 Respondents H&J Energy, Tri Energy, Avery, Decker, Jennings,
3 Simburg, Marina Investors Group, and Jones solicited and
4 introduced approximately seven of the investors to these
5 investment opportunities. Loveless told them about the Tri
6 Energy and Marina Investors Group investment opportunity and
7 provided the potential investors with a telephone number for a
8 nightly conference call coordinated by Decker for Tri Energy.
9

10 18. When the investors called the conference call telephone
11 number, they were introduced to Simburg and Jennings who
12 explained to them the investment opportunity in Tri Energy and
13 directed the callers to the company web site, www.trienergy.net,
14 for additional information.
15

16 19. Jennings and Simburg told the investors that the
17 investors would double their investment in 30 to 60 days by
18 investing in Tri Energy. Investors were also told that if they
19 invested \$100,000.00 the money was going to be used for an
20 investment in a gold transaction through Jones and Marina
21 Investors Group and that they could triple their money in the
22 gold investment. Simburg and Jennings said that the money was
23 going toward the gold investment because they were going to get
24 so much money from that transaction that they would be able to
25
26
27

1 pay the investors back and finance the development and expansion
2 of the coal mine operations.

3 20. Investors were told that Jones was facilitating the
4 sale and transfer of 5,000 metric tons of Israeli gold to Dubai.
5 Investors were told that the gold was stored in Jordan, that the
6 deal was going to be finalized in Luxemburg and that it was
7 politically sensitive because the countries involved would not
8 want the public to know they were conducting business with one
9 another. Investors were told that their money was going to be
10 used to pay costs, including legal fees and storage fees
11 associated with the transaction.
12

13
14 21. Interested individuals were sent a packet of
15 information that included a memo from Simburg on Tri Energy
16 letterhead explaining particular coal mine acquisitions the
17 company was making, a promissory note stating that the investor
18 would receive their principal and 100% interest in sixty days or
19 their principal and 200% interest if the money was used for the
20 Marina Investors Group project. The packet of information also
21 included a coal mine project evaluation and wire instructions for
22 where investors should send their money.
23

24 22. Loveless solicited others, including Ms. C, to pay
25 \$100,000.00 for a return of \$300,000.00 in 30 days. Loveless
26 facilitated Ms. C getting information on Tri Energy from a Robert
27

1 B. Jennings, the president of Tri Energy. Loveless also
2 approached other members of her church, M.N., Dr. S.F., and Ms.
3 S.F. along with Ms. S.F.'s two daughters, K.F. and J.S, all who
4 invested various amounts into Tri Energy.

5
6 23. D.O. was solicited by Simburg, Sr. Vice President of
7 Tri Energy. D.O. invested \$70,000.00 into Tri Energy and its
8 predecessor, H&J Energy. D.O. indicated that he has not received
9 any of the promised interest on his investment and that he has
10 requested the return of his principal several times. He was
11 eventually repaid his principal.

12
13 24. In a September 1, 2004, fax from Jennings to Ms. C,
14 Jennings promised a return of "3x" within thirty days. The
15 accompanying memo dated August 16, 2004, from Simburg promised a
16 100% return within 60 days. Attached was a promissory note for
17 Ms. C to sign along with the instruction that Ms. C needed to
18 remit remuneration with the signed promissory note.

19
20 25. On October 11, 2004, J.S. and G.S. advised the
21 Department that they had invested \$5,000.00 on January 29, 2004.

22
23 26. On October 14, 2004, M.N. advised the Department that
24 she and her husband R.N. had invested \$7,000.00 in August, 2004.

25
26 27. On November 1, 2004, S.F. advised the Department that
27 six or seven months prior, S.F. had invested \$13,000.00. S.F.
28 had received his \$13,000.00 back in September or October, 2004.

1 S.F. did not receive any return on the funds that he had
2 invested.

3 28. B.S. had been solicited by Jennings and had been
4 promised a 3:1 return that was supposed to be paid within 4-8
5 weeks after the initial investment. He invested \$5,000.00 in Tri
6 Energy on November 21, 2003.

7
8 29. M.N. advised that M.N. and her husband R.N. invested
9 \$7,000.00 in August of 2004 with the promise of double or triple
10 returns. In October of 2004, M.N. and R.N. had requested that
11 their money be returned due to concerns regarding the investment,
12 and a need for the funds to pay other obligations as M.N. and
13 R.N. were in dire straights for cash. Prior to the end of 2004,
14 M.N. and R.N. had received their \$7,000.00 back, but had not
15 received any return on the money as promised.

16
17 30. In February, 2005, Loveless visited M.N. and R.N. and
18 convinced them to reinvest in Tri Energy. M.N. and R.N. obtained
19 a mortgage on their home and reinvested \$29,000.00. As of May 3,
20 2005, M.N. and R.N. have not received their investment back and
21 have not received any return on the investment as promised.

22
23 31. Ms. C, M.N., R.N., Dr. S.F., Ms. S.F., K.F., J.S.,
24 B.S., and D.O. as Montana investors, were not provided
25 appropriate disclosure documents including, but not limited to:

- 26 a. the use of their investment funds;

- 1 b. investors were not informed that Tri Energy was
2 not conducting any significant coal mining
3 operations in Kentucky;
- 4 c. at all times material hereto, the programs were
5 not registered as securities in the State of
6 Montana;
- 7 d. the liquidity of the investment and whether the
8 promissory notes were secured;
- 9 e. financial information regarding Tri Energy and its
10 officers; and
- 11 f. the solvency of Tri Energy and its officers.

12 32. Jennings, Simburg, Avery, Decker, Jones, and Loveless
13 have not been registered as securities salespersons or broker-
14 dealers in the state of Montana.

15 33. On February 28, 2005, the State of Washington,
16 Department of Financial Institutions, Securities Division issued
17 a Cease and Desist Order against Tri Energy, Inc., H&J Energy
18 Company, Inc., Marina Investors Group, Avery, Decker, Jennings,
19 Jones, Simburg, Mildred Stultz, and Ronald Stultz, Cause #S-04-
20 181-05-T001.

21 34. Indications from the Securities and Exchange Commission
22 (SEC) are that the majority of money owed to Respondents' victims
23 was repaid.

24 From the foregoing findings of fact, the Hearing Examiner
25 makes the following proposed:

CONCLUSIONS OF LAW

1
2 1. According to §§ 2-15-1901 and 30-10-107, MCA, the State
3 Auditor is the ex officio Securities Commissioner a/k/a the
4 Commissioner of Securities (COS).

5
6 2. The administration of the Securities Act of Montana,
7 §§ 30-10-101, et seq., MCA, is under the general supervision and
8 control of the COS. Section 33-10-107, MCA.

9 3. The COS has jurisdiction over this matter pursuant to
10 § 33-10-107, MCA.

11 4. The Securities Act of Montana shall be construed to
12 protect investors, persons engaged in securities transactions,
13 and the public interest. Section 30-10-102, MCA. Under §§
14 30-10-304 and 305, MCA, the COS has a duty to investigate
15 violations of the Securities Act of Montana. The COS has
16 jurisdiction over this matter pursuant to § 33-10-107, MCA, by
17 reason of Respondents' offer and sale of securities to persons in
18 Montana.
19

20
21 5. Under § 30-10-102(15), MCA, an "offer" or "offer to
22 sell" includes "each attempt or offer to dispose of or
23 solicitation of an offer to buy a security or interest in a
24 security for value."

25 /////

26 /////

1 6. Under § 30-10-103(22), MCA, the definition of a
2 "Security," Respondents' sales plans, operations, investment
3 contracts, or investment programs constitute securities.

4
5 7. Regarding their respective business transactions (as
6 defined by § 30-10-103(24), MCA) in this matter, each of the
7 Respondents acted as salespersons under § 30-10-103(20), MCA.

8 8. In connection with their respective offers of
9 securities to/from persons in Montana, Respondents violated § 30-
10 10-201(1), MCA, by transacting business as a salesperson in
11 Montana without registering as such.

12
13 9. In connection with their respective offers of
14 securities to/from persons in Montana, Respondents violated § 30-
15 10-202, MCA, by transacting business in unregistered securities.

16 10. In connection with their respective offers of
17 securities to/from persons in Montana, Respondents violated § 30-
18 10-301(1)(b), MCA, by failing to state the following material
19 facts, which facts were necessary to disclose in order to make
20 the statements made about the investment, in light of the
21 circumstances under which they were made, not misleading:
22

- 23 a. how the proceeds will be used;
- 24 b. that at all times material hereto, the programs
25 were not registered as securities in the State of
26 Montana;

- 1 c. the liquidity of the investment and whether the
2 promissory notes were secured;
- 3 d. financial information regarding Tri Energy and its
4 officers;
- 5 e. the solvency of Tri Energy and its officers; and
- 6 f. registration of officers/registration of product.

7 11. In connection with their respective offers of
8 securities to/from persons in Montana, Respondents violated § 30-
9 10-301(1)(c), MCA, by engaging in an act, practice, and/or course
10 of business which operated, or would operate, as a fraud or
11 deceit upon any person in the sale of unregistered securities.

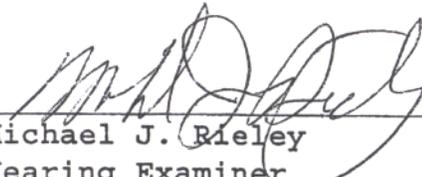
12 From the foregoing Findings of Fact and Conclusions of Law,
13 the Hearing Examiner proposes to the COS the following:

14 ORDER

15 1. Because the victims have generally been repaid through
16 the action brought by the SEC, the relief proposed by the
17 Department for the respective Respondent's violations of the
18 Securities Act of Montana is hereby approved and accepted.

19 2. The Respondents, excluding Decker and Loveless, are
20 each ordered to permanently cease and desist from engaging in the
21 securities business in Montana.

22 Dated this 23rd day of June, 2008.

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Michael J. Rieley
Hearing Examiner

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Hearing Examiner's Proposed Findings of Fact, Conclusions of Law, and Order upon all parties of record on the 23rd day of June, 2008, mailing, faxing, or e-mailing a copy thereof to:

Ms. Roberta Cross Guns
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Helena, MT 59601

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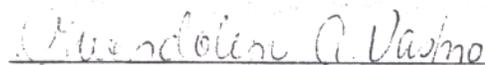
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Gwendolyn A. Vashro