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

IN THE MATTER OF:)	Case No. C-04-03-07-30
)	
MID-AMERICA ENERGY, INC.,)	
a Nevada corporation)	
103 Bluegrass Commons Blvd.)	
Hendersonville, TN 37077-0738)	
)	
GARY MILBY, individually, and in)	HEARING EXAMINER'S
his capacity as President of)	<u>PROPOSED</u>
Mid-America Energy)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
CLINTON GOFF, individually, and in)	AND
his capacity as Operations Manager)	ORDER
for Mid-America Energy)	(PURSUANT TO DEFAULT MOTION)
)	
SY SCHAIKEN, individually, and in)	
his capacity as a salesperson for)	
Mid-America Energy)	
)	
Respondents.)	

On April 2, 2008, the Securities Department of the Office of the Montana State Auditor ("Department") submitted Department's "Motion for Default Order" seeking issuance of an order of default imposing the relief requested in the Department's May 8, 2007, "Notice of Proposed Agency Disciplinary Action and

1 Opportunity for Hearing," followed on July 15, 2008, by its
2 submission of "Department's Proposed Findings of Fact,
3 Conclusions of Law and Order."

4 Section § 30-10-305(1)(a)(ii), MCA, provides:

5
6 (1) If it appears to the commissioner that any
7 person has engaged or is about to engage in any act or
8 practice constituting a violation of any provision of
9 parts 1 through 3 of this chapter or any rule or order
10 under this chapter, the commissioner may:

11 (a) issue an order directing the person to cease
12 and desist from continuing the act or practice after
13 reasonable notice and opportunity for a hearing. The
14 commissioner may issue a temporary order pending the
15 hearing that:

16 (ii) becomes final if the person to whom notice is
17 addressed does not request a hearing within 15 days
18 after receipt of the notice.

19 Rules 6.2.101 and 1.3.214 of the Administrative Rules of Montana
20 (ARM), respectively provide:

21 6.2.101 INCORPORATION OF ATTORNEY GENERAL'S MODEL
22 PROCEDURAL RULES BY THE INSURANCE DEPARTMENT

23 (1) The insurance department of the state
24 auditor's office has adopted the attorney general's
25 Model Procedural Rules by reference to such rules as
26 stated in ARM 1.3.101 through 1.3.234 with the
27 exceptions enumerated in this chapter.

28 1.3.214 MODEL RULE 10 CONTESTED CASES, DEFAULT ORDER

29 (1) If a party does not appear to contest an
30 intended agency action, the agency may enter a default
31 order. If a default is entered, the order must contain
32 findings of fact and conclusions of law.

33 Entry of a default is proper in the event an adverse party fails
34 to appear to contest the Department's action. Such inaction
35 renders the facts as alleged in the Department's pleading(s)

1 undisputed and therefore admitted. At no time have any of the
2 Respondents appeared before the undersigned, or responded to the
3 Department's Motion for a Default Order. Respondents should have
4 responded to the Department's motion not later than the first
5 part of May, 2008, allowing for the mail. As a result, the facts
6 as alleged in the Department's pleading(s) are therefore deemed
7 undisputed, and therefore admitted.
8

9 Based on the foregoing, and Respondents' failure to timely
10 request a hearing, the undersigned makes the following proposed:

11 FINDINGS OF FACT

12 1. Respondent, Mid-America Energy, Inc. (Mid-America) was
13 properly served a copy of the Notice of Proposed Agency
14 Disciplinary Action and Opportunity for Hearing and the Temporary
15 Cease and Desist Order pursuant to § 30-10-107(8), MCA, on or
16 about June 12, 2007. Mid-America has not requested a hearing at
17 any time since being served.
18

19 2. Respondent, Clinton Goff (Goff) was properly served a
20 copy of the Notice of Proposed Agency Disciplinary Action and
21 Opportunity for Hearing and the Temporary Cease and Desist Order
22 pursuant to § 30-10-107(8), MCA, on or about June 12, 2007. Goff
23 has not requested a hearing at any time since being served.
24

25
26 ¹ Respondents here include Mid-America Energy, Gary Milby, and Clinton Goff.
Sy Schaiken has not had the service of process perfected to date.

1 3. Respondent, Gary Milby (Milby) was personally served a
2 copy of the Notice of Proposed Agency Disciplinary Action and
3 Opportunity for Hearing and the Temporary Cease and Desist Order
4 by Green County Sheriff, Tim Stumph, Green County, Kentucky, on
5 February 4, 2008. Milby has not requested a hearing at any time
6 since being served.
7

8 4. Mid-America Energy, Inc. (MAE) is a Nevada Corporation,
9 incorporated on June 25, 2004. The Nevada Secretary of State's
10 Office lists MAE's address as 103 Bluegrass Commons Blvd.,
11 Hendersonville, TN 37077-0738. MAE is not now, nor has it ever
12 been registered with the Department in any capacity.
13

14 5. Gary Milby is the President, Treasurer, Secretary and
15 Director for MAE. Milby is not now, nor has he ever been
16 registered in Montana as a securities salesperson as defined at
17 § 30-10-103(20), MCA.

18 6. Clinton Goff is the Operations Manager for MAE. Goff
19 is not now, nor has he ever been registered in Montana as a
20 securities salesperson as defined at § 30-10-103(20), MCA.

21 7. Sy Schaiken is a salesperson for MAE. Schaiken is not
22 now, nor has he ever been registered in Montana as a securities
23 salesperson as defined at § 30-10-103(20), MCA.

24 8. On or about late February 2007 a Missoula, Montana,
25 resident identified herein as "Complainant" contacted the
26

1 Department. At that time Complainant made an oral complaint
2 against Respondents. Complainant delivered copies of
3 documentation supporting the complaint in early March 2007.

4 9. In or about February 2006 Schaiken, acting as a
5 salesperson for MAE contacted Complainant about an investment
6 opportunity in oil. MAE was offering 25 units² of Black Gold Oil
7 #9, LLP, to fund the drilling and completion of three oil wells
8 in Adair County, Kentucky. Schaiken represented to Complainant
9 that each unit of the offering would cost \$24,000 and represented
10 a 2.5% working interest with a 2% net revenue interest in the
11 three oil wells.
12

13 10. In or about March 2006, Schaiken mailed Complainant a
14 private placement memorandum and other marketing materials for
15 Black Gold Oil #9, LLP. The marketing materials state that
16 investors will receive:

- 17 • 3 guaranteed producing oil wells³
- 18 • Monthly income checks for as much as \$3,600 + per
19 unit for as long as 30-50 years
20

21
22
23 ² These units represent interest or participation in an oil, gas, or mining
24 title or lease or in payments out of production under a title or lease and are
25 described in certificates of ownership. These units fall within the
26 definition of a security found at § 30-10-103(22), MCA.

³ The marketing materials state that if any of the wells drilled comes up dry,
the company (Mid-America Energy) will drill a new well at the company's
expense. This is also stated as an assurance for the Black Gold Oil #9
Auxiliary wells and the Black Gold Oil #10 wells.

- 1 ● Approximately \$2,100 in monthly income comes to
- 2 over \$1 million in income over 40 years
- 3 ● Earn 100% return on investment in approximately 12
- 4 months

5 11. The marketing materials state that "Mid-America will
6 guarantee that your program will produce 50 barrels of oil a day,
7 or the company will drill you a fourth well at the company's
8 expense."

9
10 12. In or about March 2006 Complainant was informed that
11 the 25 units for Black Gold Oil #9 LLP were no longer available,
12 but that an offering for Black Gold Oil #9 Auxiliary, LLP was
13 available. The private placement for Black Gold Oil #9
14 Auxiliary, LLP offered 4 units, at a cost of \$24,000 each. These
15 units also represented a 2.5% working interest with a 2% net
16 revenue interest in the three oil wells.

17
18 13. On or about March 30, 2006, Complainant wired \$48,000
19 from Complainant's personal bank account to an account at
20 SunTrust Bank located in Hendersonville, Tennessee, owned by
21 Black Gold Oil #9 or Black Gold Oil #9 Auxiliary, LLP. Further,
22 on or about April 1, 2006, Complainant and Complainant's spouse
23 completed a subscription agreement to purchase two units of Black
24 Gold Oil #9 Auxiliary, LLP.

1 14. On or about April 10, 2006, Complainant received a
2 "Certificate of Ownership" indicating that Complainant and
3 Complainant's spouse had a 4% net revenue interest in Black Gold
4 Oil #9 Auxiliary, LLP.

5 15. In or about April 2006 Complainant and Complainant's
6 spouse visited MAE's headquarters in Hendersonville, Tennessee,
7 as well as its oil fields in Adair County, Kentucky. Complainant
8 met with both Milby and Goff. Milby and Goff told Complainant
9 about a second invest opportunity, Black Gold Oil #10, LLP. The
10 offering of Black Gold Oil #10, LLP, was almost identical to
11 Black Gold Oil #9, LLP, with 25 units being offered at a cost of
12 \$24,000 per unit. Each unit represented a 2.5% working interest
13 with a 2% net revenue interest in three oil wells.

14 16. On or about April 20, 2006, Complainant and
15 Complainant's spouse completed the subscription agreement to
16 purchase three units of Black Gold Oil #10, LLP. On or about
17 April 26, 2006, \$72,000 was wired from Complainant's personal
18 bank account to an account owned by Black Gold Oil #10, LLP at
19 SunTrust Bank located in Hendersonville, Tennessee.

20 17. On or about May 22, 2006, Complainant received a
21 "Certificate of Ownership" indicating that Complainant and
22 Complainant's spouse had a 6% net revenue interest in Black Gold
23 Oil #10, LLP.
24
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1 18. In or about the fall of 2006, Schaiken called
2 Complainant numerous times, encouraging Complainant to invest in
3 an Eagle Oil unit offered by MAE. The Eagle Oil unit was similar
4 to the Black Gold Oil units, offering a fractional working
5 interest in three oil wells. Complainant did not invest in this
6 offering.

7
8 19. In or about January 2007, Schaiken called Complainant
9 informing him that MAE would be sending out K-1 tax forms to
10 investors. Complainant never received a K-1. Complainant never
11 received any monthly dividends, as promised, nor did they receive
12 any other remuneration from MAE. January 2007 was the last
13 contact Complainant has had with MAE or any of its
14 representatives.

15 20. On or about December 6, 2005, the Pennsylvania
16 Securities Commission issued a Summary Order to Cease and Desist
17 against MAE, Milby, and other individuals. This Order alleged
18 the offering and/or sale of unregistered securities in the State
19 of Pennsylvania.

20
21 21. On or about May 5, 2006, the California Department of
22 Corporations issued a Desist and Refrain Order against MAE,
23 Milby, and other individuals. This Order alleged the offering
24 and/or selling of unregistered securities and misrepresentation
25
26

1 and omission of material fact in the offering and/or selling of
2 those securities in the State of California.

3 22. On or about February 28, 2006, the Arizona Corporation
4 Commission issued a Temporary Cease and Desist Order and Notice
5 of Proposed Agency Action against MAE, Milby, and other
6 individuals. This Order alleged the offering and/or selling of
7 unregistered securities and misrepresentation and omission of
8 material fact in the offering and/or selling of those securities
9 in the State of Arizona.

11 23. On or about September 8, 2006, the Arizona Corporation
12 Commission issued a First Amended Temporary Cease and Desist
13 Order and Notice of Proposed Agency Action against MAE, Milby,
14 and other individuals. This amended action added Goff as a
15 Respondent.

16 24. On or about September 29, 2006, Milby and MAE were
17 ordered by the Superior Court of Arizona to pay the state of
18 Arizona \$1,000,000 for violations of the Security Act and
19 violations of the Temporary Cease and Desist Order.

21 25. On or about January 16, 2007, the Arizona Corporation
22 Commission issued a permanent Cease and Desist Order against MAE
23 and Milby.

24 26. On or about December 28, 2006, the Alabama Securities
25 Commission issued a Cease and Desist Order against MAE and Milby.

1 This Order alleged the offering and/or sale of unregistered
2 securities in the State of Alabama.

3 27. On or about February 13, 2007, Milby and his daughter,
4 Ariel, were featured on MTV's "My Super Sweet 16" television
5 show. The show depicts the planning and birthday celebration of
6 teenagers. Ariel's party took place on or about October 14,
7 2006, in Greensburg, Kentucky. The party was extravagant, and
8 according to media reports costs in excess of \$100,000. In
9 addition Milby purchased a BMW for Ariel. The Department
10 believes that monies from investors in MAE may have been used to
11 fund the party and BMW.
12

13 28. The Department has attempted to contact Milby and MAE
14 via mail, however this mail was returned to the Department.

15 From the foregoing findings of fact, the Hearing Examiner
16 makes the following proposed:

17 CONCLUSIONS OF LAW

18 1. The Department's motion for entry of a default order
19 imposing the relief requested in the Department's April 2, 2008,
20 Notice of Proposed Agency Disciplinary Action is granted. § 30-
21 10-305(1)(a)(ii), MCA; ARM 6.2.101 and 1.3.214.

22 2. According to § 30-10-107, MCA, the Montana State
23 Auditor is the Commissioner of Securities (COS).
24
25
26

1 3. The COS has jurisdiction over this matter pursuant to
2 §§ 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-
3 305, 30-10-307, MCA.

4 4. MAE, Milby, and Goff may be collectively known as
5 "Respondents."

6 5. Respondents, and each of them, violated § 30-10-201(1),
7 MCA, when they offered and sold units in Black Gold Oil #9, LLP,
8 Black Gold Oil #9 Auxiliary, LLP, and Black Gold Oil #10, LLP,
9 when not registered to do so in the State of Montana.

10 6. Respondents, and each of them, violated § 30-10-202,
11 MCA, when they offered and sold units in Black Gold Oil #9, LLP,
12 Black Gold Oil #9 Auxiliary, LLP, and Black Gold Oil #10, LLP,
13 because the units are unregistered securities in the State of
14 Montana.

15 7. Respondents, and each of them, violated § 30-10-
16 301(1)(b), MCA, when they misrepresented the expected rate of
17 return on investments they offered and sold by guaranteeing and
18 promising unrealistic investment returns.

19 8. Respondents, and each of them, violated § 30-10-
20 301(1)(c), MCA, when they engaged in an act, practice, and course
21 of business that acted as a fraud, when on three occasions they
22 misrepresented the expected rate of return on investments they
23

1 offered and sold by guaranteeing and promising unrealistic
2 investment returns.

3 9. Respondents, and each of them, violated § 30-10-
4 201(13)(g), MCA, and ARM 6.10.126(1)(q), when they used sales
5 materials that guaranteed and promised unreasonable investment
6 returns on securities they offer and sold to Complainant, a
7 Montana resident.

8 10. Respondents, and each of them, violated § 30-10-
9 201(13)(g), MCA, and ARM 6.10.126(1)(o), when they used sales
10 materials that guaranteed and promised unreasonable investment
11 returns on securities they offered and sold to Complainant, a
12 Montana resident.

13 From the foregoing Findings of fact and Conclusions of Law,
14 the Hearing Examiner proposes to the Commissioner of Securities
15 (COS) the following:
16

17 ORDER

18 1. The Department's motion for entry of a default order
19 imposing the relief requested in the Department's April 2, 2008,
20 Notice of Proposed Agency Disciplinary Action is granted.

21 2. Respondents, and each of them, shall be jointly and
22 severally liable to pay restitution to Complainant in this case,
23 pursuant to § 30-10-309, MCA, in the amount of \$147,513.33.
24

1 3. Respondent, Milby shall pay a fine of \$5,000 for each
2 of sixteen identifiable violations of § 30-10-301, MCA, pursuant
3 to § 30-10-305(3), MCA.

4 4. Respondent, Milby shall pay a fine of \$5,000 for each
5 of sixteen identifiable violations of § 30-10-201, MCA, pursuant
6 to § 30-10-305(3), MCA.

7 5. Respondent, Mid-America Energy shall pay a fine of
8 \$5,000 for each of sixteen identifiable violations of § 30-10-
9 301, MCA, pursuant to § 30-10-305(3), MCA.

10 6. Respondent, Mid-America Energy shall pay a fine of
11 \$5,000 for each of sixteen identifiable violations of § 30-10-
12 201, MCA, pursuant to § 30-10-305(3), MCA.

13 7. Respondent, Goff shall pay a fine of \$5,000 for each of
14 sixteen identifiable violations of § 30-10-301, MCA, pursuant to
15 § 30-10-305(3), MCA.

16 8. Respondent, Goff shall pay a fine of \$5,000 for each of
17 sixteen identifiable violations of § 30-10-201, MCA, pursuant to
18 § 30-10-305(3), MCA.

19 9. Respondents shall each pay a fine of \$5,000 for
20 violating § 30-10-201, MCA, pursuant to § 30-10-201 (18), MCA.

21 10. Respondents, Mid-America and Milby shall each pay
22 fines of \$5,000 for each identifiable violation of § 30-10-202,
23 MCA, pursuant to § 30-10-305(3), MCA.

1 Dated this 21st day of July, 2008.

2
3 
4 Michael J. Rieley, Hearing Examiner

5
6 CERTIFICATE OF SERVICE

7 I do hereby certify I served a copy of the foregoing Hearing
8 Examiner's Proposed Findings of Fact, Conclusions of Law, and
9 Order (Pursuant to Default Motion) upon all parties of record on
10 the 21st day of July, 2008, by mailing, faxing, or hand
11 delivering a copy thereof to:

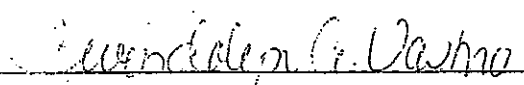
12 Ms. Roberta Cross Guns
13 State Auditor's Office
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28 
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