United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE COMMISSION v. MIEKA ENERGY CORPORATION, VADDA ENERGY CORPORATION, DARO RAY BLANKENSHIP, ROBERT WILLIAM MYERS, JR. and STEPHEN ROMO	§ § § § § § § § §	CIVIL ACTION NO. 4:15-CV-00300-ALM JUDGE MAZZANT

MEMORANDUM OPINION AND ORDER

Pending before the Court is Plaintiff Securities and Exchange Commission's Motion for Partial Summary Judgment as to Defendants Robert William Myers, Jr. and Stephen Romo (Dkt. #32). The Court, having considered the motion, finds it should be granted.

BACKGROUND

Between September 2010 and October 2011, Daro Blankenship ("Blankenship"), though his company, Mieka Energy Corporation ("Mieka"), and with assistance from Stephen Romo ("Romo") and Robert Myers, Jr. ("Myers"), raised almost $4.4 million from approximately 60 investors by selling interests in the "2010 Mieka PA/WestM/Marcellus Project II" (the "2010-JV"). According to the confidential information memorandum Blankenship prepared, Mieka's management would use these offering proceeds to drill and complete two gas wells—one horizontal, the other vertical—and the investors would receive, in return, production revenue from the wells. However, Blankenship depleted the offering proceeds by immediately applying them to expenses and projects unrelated to the 2010-JV, leaving insufficient funds to drill the horizontal well or complete the vertical well.

From 1981 to 1984, Robert Myers was CEO, president and owner of the Securities and Exchange Commission ("Commission")-registered broker-dealer Janus Securities, Inc. Myers joined Mieka in 2004 as a salesman. But Myers has not been registered with the Commission in any capacity, or associated with any Commission-registered entity, including any broker-dealer, since 1984. In May 2005, Stephen Romo joined Mieka as a salesman. Both Myers and Romo admit that, during the relevant period, they were not registered as brokers with the Commission or affiliated with a broker-dealer registered with the Commission. (Dkt. #14 ¶ 50); (Dkt. #13 ¶ 50).

Blankenship provided Myers and Romo with lead lists to recruit investors. Blankenship also required a particular approach to their sales efforts—brokers would begin by cold-calling potential investors from the lead lists, making introductions, and notifying the potential investor that they would be sending an introductory letter about Mieka to the investor. After sending the letter, the brokers would continue to call the potential investors to develop a relationship, generally discussing Mieka, its business, and the potential investor's investing history. During this time, Blankenship did not allow the brokers to discuss specific projects with the potential investors. After forty-five days had passed, the brokers would then send a pre-completed confidential information memorandum to the investor, using the information they had learned over the course of the previous phone calls. The memorandum would include the potential investor's contact information, investment history, qualification as an accredited investor, and other information.

Using these methods, for the 2010-JV and other projects, Myers received $165,453.47 in total commissions from Mieka in 2010 and $102,484 in 2011. Of these total commissions, Myer received $121,466 for selling the 2010-JV. Romo received $69,962 of commissions for his sales of the 2010-JV.

Blankenship prepared, or directed the preparation of, the written materials for each offering that were provided to investors ("Offering Documents"). Those documents included: (1) a confidential information memorandum that purported to describe generally how the venture would operate; (2) brochures summarizing the offering and used to pitch prospective investors; (3) a Joint Venture Agreement ("JVA") that designated Mieka as the managing joint venturer, with sole authority to bind the venture; (4) a subscription or application agreement that investors signed; and (5) an investor questionnaire. At all times, Blankenship had ultimate control and authority over the content of the Offering Documents and how the disclosures contained therein were communicated to investors.

The JVA appoints Mieka as the managing venturer and explicitly delegates management of the day-to-day JV operations to Mieka. As a result, Blankenship controlled nearly every aspect of the venture. Blankenship identifies the prospect, drafts the organizational documents and agreements, sets the offering and completion price, controls who is admitted to the venture, and extends the offering period at its sole discretion. The JVA specifically authorized the managing venturer to retain or act as operator, drill, complete, equip, test, rework, operate, recomplete and, if necessary, plug the well and abandon the prospect. Blankenship also had the authority to enter into operating and other agreements relating to the JV property. The JVA required the joint venture to pay "Management Fees" to the managing venturer "[i]n consideration of the supervision and management of the affairs of the Joint Venture . . . ." (Dkt. #32, Appendix Part 5 at 12). Thus, Blankenship had the power to make all of the significant decisions regarding the oil and gas activities that are the purpose of the 2010-JV.

Under the terms of the offerings, all decisions made by Mieka as the managing venture were binding on the joint venture, but investors could not bind the joint venture or act on its behalf. Blankenship could enforce this prohibition by filing suit.

From the outset of the investment, investors had no control over the price, terms, and counterparty of the factor most important to the success of the investment—the turnkey drilling and completion contract. Blankenship set these out in the confidential information memorandum before the offering commenced. It determined the form of the joint-venture agreement. Blankenship had the final authority to approve the information and disclosures in the confidential information memorandum; determined who the managing venturer would be; identified the prospective wells; and required the joint venture to enter a turnkey drilling contract at a fixed price with itself as the managing venturer. Also, the terms of the JVA were presented as non-negotiable.

Other than removal of the managing venturer, which requires a vote of 60% of the interests, the JVA specifies few matters that required a vote. Acts such as assignment of the JV property for the benefit of a creditor, confession of judgment, and submission of claims to arbitration or litigation require unanimous approval. The managing venturer controls access to information regarding the JV, who can condition disclosure of the books, records, and reports upon a showing of a "proper purpose" by the partner. Investors had no insight into how the votes would be calculated, or what any other investor voted.

Several barriers inhibited the investors' ability to exercise their power of removal. Blankenship could restrict access to the JV's books and records, thus preventing partners from communicating with one another to marshal the required 60% votes. Further, the investors are numerous, geographically dispersed, and have no prior relationship to one another, which also impedes their ability to organize and exercise their removal power. Investors had no access to information except through Blankenship, and no way of initiating a vote. It was, therefore, practically impossible for investors to confer with each other and organize to vote to replace Mieka.

Blankenship took the funds raised from the 2010-JV and commingled them into his own account at the outset of the investment. Thus, had the JV partners attempted to remove the managing venturer, the venture would have been left without sufficient funds to conduct their intended business. Further, Mieka's management was entitled under the JVA to execute documents and hold interests in their own names. Thus, if the JV partners tried to remove Mieka, they would have not possessed the working interest. As a result, from the outset of the investment, the investors had no realistic alternative to Mieka as managing venturer.

As a condition to acceptance as an investor in these ventures, the JVA required the purchaser to agree to the JVA as written, including the appointment of Mieka as managing venturer. Prospective investors had no ability to negotiate the terms, which were presented on a take-it-or-leave-it basis. Mieka's salesmen, including Myers and Romo, did not seek out investors with managerial experience in oil and gas drilling operations and instead marketed the investments to the general public using generic lead lists and other general solicitation efforts, ultimately raising over $4 million from around 60 investors in 21 states. Those who purchased the investments were scattered throughout the United States, had no prior relationships with or contact information for each other, and lacked experience in and knowledge about oil and gas exploration. Thus, investors were dependent on Mieka's efforts for profits, as they understood from the outset of the investment.

The confidential information memorandum for the 2010-JV misled investors about the expected use of offering proceeds. It said that the funds raised would be paid to Mieka to be used to cover "all costs associated with the Venture's acquisition of interests in the Prospect Wells and the Working Interests in connection with the drilling, testing and Completion of the undrilled Prospect Wells and pay all Organization Costs . . . ." (Dkt. #32, Appendix Part 4 at 17). In reality,

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