


ORIGINAL

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NORTHERN DIST. OF TX
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

2012 OCT 29 AM 10:47

DEPUTY CLERK



THE UNITED STATES OF AMERICA §

§

v.

§

No. 3:12-CR-159-D

§

ECF

BRUCE KYLE GRIFFITH (2)

§

FACTUAL RESUMÉ

Bruce Kyle Griffith, Neil L. Durrance, the defendant's attorney, and the United States of America (the government), agree as follows:

Elements - Count One

Conspiracy to Commit Securities Fraud

(Violation of 18 U.S.C. § 371 [15 U.S.C. §§ 77q(a) and 77x])

First: That the defendant and at least one other person made an agreement to commit the crime of securities fraud in violation of 15 U.S.C. §§ 77q(a) and 77x, as charged in the indictment;

Second: That the defendant knew the unlawful purpose of the agreement and joined in it willfully, that is, with the intent to further the unlawful purpose; and

Third: That one of the conspirators during the existence of the conspiracy knowingly committed at least one of the overt acts described in the indictment, in order to accomplish some object or purpose of the conspiracy.

Elements - Count Two

Securities Fraud and Aiding and Abetting
(Violation of 15 U.S.C. §§ 77q(a) and 77x and 18 U.S.C. § 2)

Securities Fraud - 15 U.S.C. §§ 77q(a) and 77x

First: Defendant or another offered or sold the securities described in the indictment;

Second: In the offer or sale of these securities, defendant or another made use of any means or instruments of transportation or communication in interstate commerce or made use of the United States mails; and

Third: In the offer or sale of these securities, defendant or another knowingly and deliberately either:

(a) employed any device, scheme, or artifice to defraud; or

(b) obtained money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

© engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

Aiding and Abetting - 18 U.S.C. § 2

First: That the offense of securities fraud was committed by some person;

Second: That the defendant associated with the criminal venture;

Third: That the defendant purposefully participated in the criminal venture; and

Fourth: That the defendant sought by action to make that venture successful.

Stipulated Facts

Always Consulting, Inc. (ACI) was an oil and gas well promotions corporation located at 901 Waterfall Way, Suite 302, Richardson, Dallas County, Texas 75080. ACI was chartered in Nevada on February 6, 2004. It was authorized to conduct business in Texas on May 16, 2005.¹

From February, 2004 through November, 2006, ACI offered and sold to the public interests in oil and gas well drilling projects and investments in equipment purchasing and oil and gas lease purchasing deals.

The ACI Rattlesnake Springs Drilling Program, 20 Infill Well Development (the ACI Rattlesnake Springs Drilling Program) was the last well project offered by ACI. The offering was for 35 units of interest at a cost of \$100,285.71 per unit, or a total of \$3,509,999.80. ACI raised \$2,231,329.25 from the sale of units of interest in the project to 37 investors from June, 2006 through October, 2006. Each unit equaled a 1.85714% working interest and a corresponding 1.39285% net revenue interest in 14 separate leaseholds located in the Osage Nation Reservation in Osage County, Oklahoma.

Said units were securities within the meaning of 15 U.S.C. §77b(a)(1), namely, fractional undivided interests in oil, gas, or other mineral rights. Moreover, an agreement to purchase said units was an investment contract under § 77b(a)(1), that is, an investment

¹Always Consulting, Inc.'s certificate of authority to business in Texas was forfeited in April of 2007.

of money in a common enterprise with profits to come solely from the efforts of others.²

ACI led investors to believe that the wells would primarily produce gas.

David Kevin Lewis, defendant (“Lewis”), was chairman and director of field operations of ACI and was its controlling principal. Bruce Kyle Griffith, defendant (“Griffith”), was the president and chief executive officer of ACI. Thomas Alden Markham Jr., defendant (“Markham”), was the chief geologist of ACI.

Lewis was in charge of the day-to-day activities in ACI’s office, and decided which invoices would be paid. Griffith acted as the President and CEO of ACI, and signed most of the checks. Griffith had a limited understanding of the oil and gas production industry, and no experience in oil and gas. Griffith also directly sold units to many of the investors.

Lewis, Griffith, Markham, and others, conspired to engage in and engaged in a scheme to defraud investors in the ACI Rattlesnake Springs Drilling Program, in violation of 18 U.S.C. § 371 and 15 U.S.C. §§ 77q(a) and 77x. Lewis, Griffith and Markham had prior convictions for federal felony offenses, and these facts were intentionally never disclosed to the investors.³

²*S.E.C v. W. J. Howey Co.*, 328 U.S. 293, 301 (1946).

³Griffith: Bank robbery, in violation of 18 U.S.C. § 2113(a), nos. 3:93-CR-379-H, 3:94-CR-025-H, and 3:94-CR-038-H. On April 14, 1994, Griffith was sentenced to 135 months imprisonment followed by three years supervised release. Griffith also had a prior federal controlled substance conviction in 3:89-CR-053-P, and two felony theft convictions in Dallas County. Lewis: Securities fraud in violation of 15 U.S.C. § no. 3:00-CR-064-M and conspiracy to commit mail fraud, in violation of 18 U.S.C. §§ in no. 1:00-CR-016-C. On December 8, 2000, Lewis was sentenced to 46 months imprisonment followed by three years supervised release and was ordered to pay \$2,228,171.00 restitution. Markham: Mail fraud in violation of 18 U.S.C. § 1341, in no. SA-99-CR-86(1)(EP), W. Dist. Texas. On January 11, 2000, Markham was sentenced to 15 months imprisonment followed by three years supervised release and was ordered to pay \$395,786.26 restitution.

Defendants used the United States mail and other means and instruments of transportation and communication in interstate commerce to facilitate the scheme. This included making and receiving interstate telephone calls to and from investors through interstate wire facilities, and interstate carriers to send and receive investment offering documents, participation agreements, and purchase checks from investors, which included using the interstate check collection system of JPMorgan Chase Bank, NA, where ACI had its accounts.

While Lewis and Griffith received a modest amounts as employees of ACI, they also received "consulting fees" through Davmon, Inc., and Diversified Group International, Inc., Nevada shell corporations formed in order for Lewis and Griffith to conceal their true incomes.

Defendants provided "fronter" employees with prospective investor contact information, written instructions, including outlines and scripts containing sales pitches, arguments, and talking points touting the investment, all designed to make a prospective investor believe that ACI's programs were potentially profitable investments. Defendants provided to ACI sales employees who contacted prospective investors a written "do not call" list, entitled "Undercover Regulators" which listed, state by state, the names and other contact information of individuals across the United States who defendants suspected of being state or federal regulators posing as potential investors, attempting to

identify individuals illegally selling and offering for sale securities in violation of state or federal law;

ACI acquired most of the leases for the ACI Rattlesnake Springs Drilling Project, but none of the wells for the project were drilled. ACI bank records show payments of more than \$200,000 being made towards the purchase of the leases in Osage County, Oklahoma. In addition, ACI purchased bonds for drilling on the leases, as required by the Bureau of Indian Affairs, at a cost of approximately \$100,000. There were no other significant expenditures made towards drilling the 20 wells in Osage County.

As to the well sites for the ACI Rattlesnake Springs Drilling Program in Osage County, Oklahoma: (1) there was never any drilling activity or site preparation on any of the tracts, (2) ACI had not acquired leases on some of the proposed sites, and (3) no consideration was given to the distance between the well sites and existing gas gathering pipelines.

The ACI-Rattlesnake Springs Drilling Program Offering Memorandum sent to investors falsely claimed that Griffith was “involved in the oil and gas industry since 1985.” It identified Lewis only as “DW” and grossly overstated his experience in oil and gas. It also overstated Markham’s experience and failed to include the fact that all three were convicted felons. The ACI Offering Memo also stated: “The company agrees to use the amounts tendered to commence site preparation, drilling, testing and completion of the Project Wells. . . .” ACI’s bank records evidence the use of investors’ funds contrary to the representation in the offering memorandum.

On June 13, 2006, initial investor and Missouri resident G. Amen's check to ACI for \$50,142.86 for an interest in the ACI Rattlesnake Springs Drilling Program, payable to the order of Rattlesnake Springs Drilling Program, drawn on First Missouri National Bank, Brookfield, Missouri, on June 12, 2006, was credited to the ACI Rattlesnake Springs Drilling Program account # *****0905 at JPMorgan Chase Bank, N.A. in Richardson, Texas, and was collected on that date through the collecting bank's interstate check collection system. On June 14, 2006, Griffith caused \$48,000 to be transferred from the ACI Rattlesnake Springs Drilling Program account # *****0905 to the ACI operating account *****1265, at JPMorgan Chase Bank, N.A. where the funds were commingled with funds from several other ACI projects.

Subsequent investors' funds deposited to the ACI Rattlesnake Springs account were also transferred to the ACI operating account. Once in the operating account, the funds were used to pay office overhead, salaries, commissions, consulting fees, oil well operating and drilling expenses, equipment acquisition expenses, apartment rent, and personal expenses. Significant "consultant fees" were paid to the Lewis and Griffith directly or through shell corporations under their control.

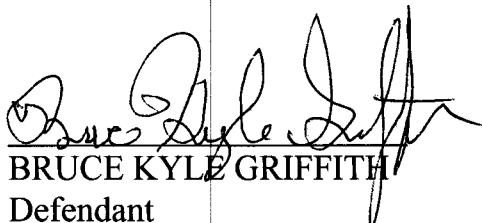
Additionally, ACI's comptroller and his accounting firm were paid thousands of dollars via checks from the ACI operating account. Said comptroller in turn wrote checks on his firm's account to Griffith, Lewis, and shell corporations under their control, including Davmon, Inc. and Diversified Group International, Inc.

On November 3, 2006, the Texas State Securities Board obtained and assisted in the execution of a search warrant on the offices of ACI. The raid effectively shut down


the company's sales operation. At that time ACI did not have sufficient funds to drill a single well for the ACI Rattlesnake Springs Drilling Program. On November 8, 2006, Griffith transferred \$85,000 of that money into ACI's operating account, leaving the balance of the ACI Rattlesnake Springs Program account at less than \$200.

The foregoing facts are true and correct.


AGREED TO AND SIGNED this 20 day of Oct, 2012.


BRUCE KYLE GRIFFITH
Defendant

SARAH R. SALDAÑA
UNITED STATES ATTORNEY


JOSEPH M. REVESZ
Assistant United States Attorney
Texas State Bar No. 16792700
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Telephone: 214.659.8664
Facsimile: 214.659.8803
Email: joe.revesz@usdoj.gov


NEIL L. DURRANCE
Attorney for Bruce Kyle Griffith
Texas State Bar No. 06287550
1108 N Locust St.
Denton, TX 76201-2958
Telephone: 940.898.1975
Facsimile: 940.381.2036
Email: n.durrance3@verizon.net


LINDA C. GROVES
Deputy Criminal Chief
Texas State Bar No. 08553100
1100 Commerce Street, 3rd Floor
Dallas, TX 75242
Telephone: 214.659.8600
Facsimile: 214.767.4104
Email: Linda.Groves@usdoj.gov