

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF FINANCIAL INSTITUTIONS
Complaint No. 06-AH-021

The Office of Financial Institutions of the Commonwealth of Kentucky PETITIONER

vs. FINAL ORDER

Mr. Michael Helms, Personally
1026 East 13th Street
Bowling Green, Kentucky 42101

Berkshire Capital, LLC
1026 East 13th Street
Bowling Green, Kentucky 42101

RESPONDENTS

INTRODUCTION

The Office of Financial Institutions by counsel William E. Doyle filed an administrative complaint in this matter on May 5, 2006, pursuant to 808 KAR 10:225. The complaint petitioned the Executive Director, after Notice and opportunity for hearing pursuant to KRS Chapter 13B, to take appropriate action to enforce KRS 292.470(3) (the "Securities Act") and provide any necessary and incidental relief in connection therewith, including petitioning a court of competent jurisdiction to enforce the action of the Executive Director and provide additional relief pursuant to KRS 292.470(2).

A copy of the administrative complaint was sent by United States Certified Mail to the addresses in Bowling Green, Kentucky, contained in the administrative complaint and the caption in this matter. Return receipts indicated that the Administrative Complaint was served on May 17, 2006. No Answer or other responsive pleading was received prior to the expiration of the twenty (20) day period set forth in 808 KAR 10:225 for such response. In fact, as of August 1, 2006, (approximately eleven (11) weeks after service of the administrative complaint) no such Answer or other responsive pleading has been received in this matter from any

respondent or on their behalf. Counsel who performed some work for one or both Respondents and made some contact with the Office on their behalf was asked whether he represented either or both Respondents in this matter. By letter dated July 24, 2006, and received by the Office July 26, 2006, counsel stated that he did not represent either Respondent in this matter.

Pursuant to 808 KAR 10:225, if an administrative complaint is filed and no answer thereto is filed by Respondents, the Executive Director has the power to take the allegations as unchallenged, make findings of fact on the existing record, and enter a Final Order in the matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Executive Director makes the following findings of fact:

1. The respondents were properly served with notice of the complaint against them and have failed to make a timely response in this matter.
2. Respondent Berkshire Capital, LLC (“BC”), is an entity that offers and sells oil and gas programs. Respondent Michael Helms is the owner of BC.
3. BC is a Kentucky Limited Liability Company organized and filed July 24, 2003, that currently is in bad standing with the Kentucky Secretary of State. Michael Helms is its only listed organizer, manager, and registered agent. According to the information provided in the filing, the entity is managed by managers. As such, Helms is a control person as that term is used and defined in the securities laws of Kentucky, the federal government, and the various states.
4. BC, Helms, and/or both of them employed one or several agents to offer and sell the securities issued by BC. The agents were not registered in Kentucky pursuant to KRS 292.330, nor were any filings made in Kentucky on their behalf. The bulk of the agents’ time was spent on sales.

5. BC sold interests in a program called Runnels-Hall #1, LLP (“RH”). No filing pursuant to KRS 292.340 or the Federal Securities Act has been found for BC or RH, nor was there a filing for this LLP with the Kentucky Secretary of State.

6. RH is a program that offered investors interests in oil and gas wells located in Runnels County, Texas. BC was offering eighteen (18) units at \$37,800 per unit of General Partnership interest to raise a total of \$680,400. BC could accept subscriptions for partial units. This was a two (2) well program to find oil and natural gas. Notwithstanding the business form of the entity, it was marketed to persons (individuals) who did not possess the ability to manage the entity and were not ever expected to exercise any management powers. This fact made them, in substance, passive investors who invested or advanced money or capital and were not expected to do anything else in the management of the entity.

7. BC sold interests in a program called Pecos River Crude, LLP (“PR”). There is no filing for this LLP with the Kentucky Secretary of State. PR is a program that offered investors interests in oil and gas wells located in Pecos County, Texas. PR was offering thirty-six (36) units at \$18,900 per unit of General Partnership interest to raise a total of \$680,400. BC could accept subscriptions for partial units. This was a one (1) well program to find oil and natural gas. No filing pursuant to KRS 292.340 or the Federal Securities Act has been found for BC or RH nor was there a filing for this LLP with the Kentucky Secretary of State.

8. The Executive Director finds the following transactions to be in violation of the Securities Act:

a. On or about December 22, 2004, Respondents sold a resident of Michigan 0.375 shares in Runnels-Hall #1 LLP for a total price of \$14,175.00.

b. On or about December 9, 2004, Respondents sold a resident of North Carolina 0.125 shares in Runnels-Hall #1 LLP for a total price of \$4,725.00.

c. On or about December 9, 2004, Respondents sold a resident of Tennessee 0.125 shares in Runnels-Hall #1 LLP for a total price of \$4,725.00.

d. On or about August 2, 2004, Respondents sold a resident of Montreal, Quebec, Canada, 5.000 shares in Runnels-Hall #1 LLP for a total price of \$139,000.00.

e. On or about May 13, 2004, Respondents sold a resident of England, United Kingdom, 0.250 shares in Runnels-Hall #1 LLP for a total price of \$9,450.00.

f. On or about July 5, 2004, Respondents sold a resident of Brussels, Belgium, 0.125 shares in Runnels-Hall #1 LLP for a total price of \$4,725.00.

g. On or about July 8, 2004, Respondents sold a resident of Montreal, Quebec, Canada, 0.750 shares in Runnels-Hall #1 LLP for a total price of \$28,350.00.

h. On or about October 5, 2004, Respondents sold a resident of Brussels, Belgium, 0.125 shares in Runnels-Hall #1 LLP for a total price of \$4,725.00.

i. On or about September 23, 2004, Respondents sold a resident of Montreal, Quebec, Canada, 0.125 shares in Runnels-Hall #1 LLP for a total price of \$4,725.00.

j. On or about April 14, 2004, Respondents sold a resident of London, England, United Kingdom, 0.125 shares in Runnels-Hall #1 LLP for a total price of \$4,775.00.

k. On or about May 20, 2004, Respondents sold a resident of Georgia 0.625 shares in Runnels-Hall #1 LLP for a total price of \$23,625.00.

l. On or about February 24, 2004, Respondents sold a Resident of Honolulu, Hawaii, 0.500 shares in Pecos River Crude, LLP, for a total price of \$9,450.00.

9. The interests offered and sold and described in paragraphs "a" through "l" above were not registered pursuant to KRS 292.340, nor was any filing made in connection therewith with the Office of Financial Institutions.

10. All the persons who offered and sold the interests in transactions described in paragraphs "a" through "l" above were compensated for making such offers and sales, but none of them was registered with the Office of Financial Institutions pursuant to KRS 292.330 (broker-dealer and agent registration).

11. The aforementioned sales of securities occurred in Kentucky either by being completed within the territorial boundaries of Kentucky, by being made pursuant to an offer directed into Kentucky to residents physically present in Kentucky at the time and accepted by said residents while physically present in Kentucky, or by making offers directed from within the territorial boundaries of Kentucky to persons outside of Kentucky.

12. Each of the twelve (12) separate transactions above, listed in paragraphs “a” through “l,” constitutes one count or violation of KRS 292.340 (sale of unregistered securities) and one separate count or violation of KRS 292.330 (sale by unregistered agent or entity or both) for a total minimum number of twenty-four (24) violations of the Act by all of the Respondents, with Helms personally and in his individual capacity being liable for twenty-four (24) violations.

13. In the transactions listed above, Respondents failed to make full and complete disclosure about the offerings, including failing to disclose Helm’s track record of success or failure in the oil and gas drilling business, and such a failure to do so constitutes a violation of KRS 292.320(1) (securities fraud) for at least one additional count in connection with each sale above, or twelve (12) more counts, for a total of no less than thirty-six (36) counts or violations of the Act.

14. More precisely, the violations of KRS 292.320(1) pursuant to the Respondent issuer’s Private Placement Memorandum(s) (“PPM”) (“PPMs”), are as follows for each of the twelve (12) sales above:

a. Count one. The PPM should disclose the background of the issuer in the field. There is no section in the PPMs that indicates what the expertise and history of BC or its principals are in the oil and gas business.

b. Count two. The issuer should disclose the location, character, and condition of its physical property, either now owned or to be acquired, and the nature of its interest. However, on Page 9 of the PPM for Runnels-Hall, and on Page 10 of Pecos River, in the section “The Program Sites,” BC does not disclose in whose name the leases are held, whether drilling has been permitted yet, or if other wells exist on the property, etc. Also in this section, in the Runnels-Hall PPM, is the claim that a map showing proposed locations for the well site can be found in Exhibit E of the PPM. No such map appears in that exhibit. There is also a mention of sub-leases on this property, but the owners of those subleases are not disclosed even though they might someday make a legal claim on the output of any wells that are “hit,” that is, strike oil and/or gas.

c. Count three. The PPM does not list all of the Executive Management; it only names the president in Exhibit F of the Runnels-Hall PPM. Neither PPM discloses any ownership by Mr. Helms. BC does not list what percentage of the interests officers and directors hold, and it does not disclose whether there are other interest holders that own a large interest who are not directors. There is also no list of Non-Management Personnel, nor is there any indication of whether they have an ownership interest.

d. Count four. The annual compensation from all sources (including bonuses, car allowances, etc.) for all officers and directors of the issuer should be disclosed. This information is not disclosed in the PPMs.

e. Count five. The PPM should disclose the sponsor’s (issuer and managing partner if the histories would be different) production history. This history should include information such as locations of wells, initial productions on the wells, investor cost versus investor payout

on completed wells, and the number of dry holes the firm has participated in. The PPMs do not address the sponsor's production history, nor do they disclose that there is no production history.

f. Count six. The PPM should contain an itemized list of estimated costs of drilling and completion even if the offering is sold as turn-key. The PPMs do not contain such an itemized list.

g. Count seven. The PPM should contain an opinion of Counsel as to the validity of the leases. The PPMs do not contain this information.

15. Each of the seven (7) fraud counts above occurred in each of the twelve (12) sales above for a total of eighty-four (84) counts or violations of KRS 292.320(1) (failing to disclose material facts and/or making misleading disclosure in connection with the offer or sale of a security).

16. The total counts of violations of the Act herein, including violations of KRS 292.320 (securities fraud), 293.330 (agent registration), and 292.340 (securities registration) total approximately one hundred eight (108).

17. The Executive Director finds that there is no indication in information in the investigation to date that the Respondents will cease their conduct or cease to violate the Act unless some action is taken to prevent violations of the Act. In fact the information in the investigation demonstrates that the Respondents will continue to violate the Act unless some action is taken. The Executive Director finds, based on the information obtained pursuant to the record, that actions of the Respondents acting alone and/or through agents constitute a present and continuing harm to the investing public of Kentucky.

18. The Executive Director further finds that the failure to take remedial steps to enforce the Act in this matter harms other registered persons and/or entities that adhere to the

provisions of the Act and the applicable regulations and orders of the Executive Director. The failure to take remedial steps to enforce the Act in this matter would encourage others to ignore the provisions of the Act and the regulations and orders of the Executive Director promulgated pursuant thereto, and this would take away from the public the protections afforded the Kentucky investing public by the Act.

19. The Executive Director further finds that, in light of the facts herein, it is in the public interest to take action against the entities, issuers, and agents named herein to cause them to cease and desist violating the Act and to take other remedial measures necessary to make investors whole and to prevent such violations of the Act in the future.

20. The Office and the Executive Director have jurisdiction in this matter.

21. Venue is proper in Franklin County, Kentucky.

22. Based on the foregoing facts, as matters or conclusions of law, the Respondents have violated the act numerous times and will continue to do so unless prevented by remedial actions, and it is in the public interest to take the action herein.

NOW, THEREFORE, IT IS HEREBY ORDERED:

a.) Respondents shall permanently Cease and Desist violating the Securities Act of Kentucky; and

b.) All of the Respondents, and Respondent Helms, in his individual capacity, shall offer rescission for all sales of securities referenced herein to all investors, together with interest at the legal rate (KRS 360.010(1)) of eight (8) percent, and shall be jointly and severally liable; and

c.) The offer of rescission above shall be completed no later than sixty (60) days after entry of this Order; and

d.) A civil fine is hereby levied upon Respondent, Helms, in his personal capacity in an amount of Ten Thousand (\$10,000) dollars; and

e.) The civil fine herein shall be paid to the Commonwealth of Kentucky no later than sixty (60) days after the entry of this Order; and

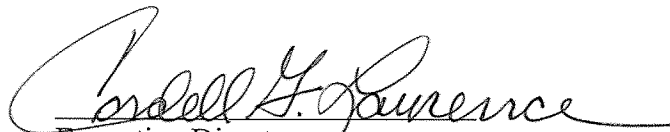
f.) Respondent Helms shall obtain a bill for the costs of investigating and bringing this action from this Office and shall then pay the costs of investigating and bringing this administrative action and both the action of obtaining the bill and paying the costs of said bill shall be done no later than sixty (60) days after the entry of this Order; and

g.) Respondent Helms, in his personal capacity, shall be liable and responsible for payment of costs of investigating and bringing this action.

h.) This is a FINAL and APPEALABLE Order.

i.) This ORDER shall be published on the Internet.

Entered and signed this 15 day of August, 2006.



Executive Director
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Commonwealth of Kentucky
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CERTIFICATE OF SERVICE

I hereby certify that this Final Order was served by mailing a true and correct copy of same by certified mail, return receipt requested, to the following addresses on this the 15th day of August, 2006.

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