

COMMONWEALTH OF KENTUCKY
PUBLIC PROTECTION CABINET
DIVISION OF SECURITIES
ADMINISTRATIVE ACTION NO. 2019-AH-00030



DEPARTMENT OF FINANCIAL INSTITUTIONS

COMPLAINANT

vs.

TYPHON ENERGY, LLC; and
JEREMIAH DECKER

RESPONDENTS

FINAL ORDER OF DEFAULT

Comes now the Department of Financial Institutions (DFI), by counsel, pursuant to Kentucky Revised Statute (KRS) 292.470, KRS 292.500 and 808 Kentucky Administrative Regulation (KAR) 10:225, and hereby enters this **Final Order of Default** against Typhon Energy, LLC, and Jeremiah Decker. In support thereof, DFI states as follows:

PARTIES

1. DFI is responsible for administering the provisions of KRS Chapter 292, the Securities Act of Kentucky (“the Act”), as well as any applicable rules, regulations and orders entered pursuant to the Act.

2. Respondent Typhon Energy, LLC (hereafter “Typhon”) is a Kentucky Limited Liability Company with a registered principal office at 375 Terrebone Loop, Greenville, Kentucky 42345. Typhon’s registered agent is LegalInc Corporate Services, Inc., located at 4965 US Highway 42, Suite 1000, Box 34, Louisville, Kentucky 40222.

3. Respondent Jeremiah Decker (“Decker”) is the sole member and organizer of Typhon, and a Kentucky resident. Neither Typhon nor Decker has ever been registered with DFI under the Act.

4. On July 19, 2019, the Department filed an Administrative Complaint in the above-styled action, alleging numerous violations of the Act by Respondents.

SERVICE OF THE ADMINISTRATIVE COMPLAINT

5. On July 19, 2019, DFI sent, via certified mail, copies of the Administrative Complaint to Typhon's registered agent of service, to Decker at his last known residential address, and to Respondents' attorney, Hunter Durham. DFI received confirmation that the Complaint was successfully delivered to Typhon's registered agent on July 22, 2019. The Complaint was also successfully delivered to Hunter Durham on July 22, 2019. The Complaint addressed to Decker was returned as unclaimed.

6. As DFI never received a response to the Complaint from either Respondent or from Respondents' attorney, a Final Notice was sent via certified mail to both Respondents on February 3, 2020. This Final Notice indicated that DFI would accept any response to the Complaint received on or before February 21, 2020.

7. DFI received confirmation that the Final Notice was delivered to Typhon's registered agent, but the Final Notice addressed to Decker was returned as unclaimed.

8. As the Complaint was successfully served on both Respondents through their attorney, and as no response to the Complaint was received by the Department despite multiple attempts to correspond with Respondents, this Final Order of Default is appropriate.

STATEMENT OF FACTS

Misstatement and Omission of Material Facts

9. Respondent Decker established Typhon on September 3, 2013. Between 2014 and 2016, Decker, through the issuer, Typhon, solicited investors to purchase interests in oil leases and/or well drilling projects.

10. On October 28, 2016, DFI began an investigation into Respondents' investment-related activities after receiving a complaint regarding Respondents' business activities. This investigation established the facts and violations set forth herein.

11. While soliciting prospective investors, Respondents routinely provided inaccurate, unsupported, and extremely speculative representations about the amount of oil produced by Typhon's wells and the potential returns investors could expect to receive. For example, in October of 2015, Respondent Decker wrote on LinkedIn that "Prices of oil fluctuate just the same as stock market, but the difference is oil prices always go back up and you have no loss." From 2014 through 2016, Respondent Decker, in support of his efforts to solicit new investors, continued to make false or misleading statements across various social media platforms including but not limited to LinkedIn, Twitter, and YouTube.

Misuse of Investor Funds

12. During the course of the investigation, DFI discovered that Respondents offered to sell and sold fractional undivided interests in oil lease and/or well drilling projects to investors. In these transactions, Typhon's oil leases and drilling projects were divided into fractional investment units. Investors were allowed to purchase any number of units up to the maximum allotted. In return, investors were assigned a percentage interest in the net revenue produced by the wells.

13. Typhon's bank records show that Respondents received more than two million dollars (\$2,000,000) in investor capital from sixty-three (63) investors for the purchase of fractional undivided interests in oil well programs operated by Typhon.

14. Respondents' bank records also show that investor funds were spent on non-business related items, including but not limited to child support, groceries, and fireworks.

15. Additionally, Typhon's bank accounts show the use of money received from new investors to fund payments made to prior investors.

16. None of Typhon's documents or other communications to investors disclosed that funds received from investors would be used to fund payments to other investors, or for non-business related expenses.

Failure to Register

17. While soliciting and selling investments in the oil well programs described above, Respondents failed to file a registration statement or a notice of exemption from registration with DFI for Typhon's oil well programs.

18. While soliciting investors for Typhon and coordinating investments in Typhon's oil well programs, Respondent Decker failed to register with DFI as an agent of Typhon.

Failure to Cooperate with Investigation

19. On January 11, 2016, DFI issued a subpoena to Respondents directing that they produce information and documents pursuant to DFI's authority to investigate potential violations of the Act. Respondents failed to provide a sufficient response to this subpoena.

20. On October 19, 2018, Respondent Decker appeared for an investigatory interview with DFI personnel. During this interview, Respondent Decker made several misrepresentations and misleading statements about facts that were material to DFI's investigation.

21. During the course of the investigation, Respondents repeatedly made false and misleading statements to DFI and failed to provide DFI with required information and documentation when requested.

STATUTORY AUTHORITY

22. KRS 292.310(1) defines an Agent as “any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.”

23. KRS 292.310(13) defines an Issuer, in part, as “any person who issues or proposes to issue any security.”

24. KRS 292.310(17) defines "sale" or "sell", in part, as,

“[E]very contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. “Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.”

25. KRS 292.310(19) defines "Security", in part, as,

“any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, *investment contract*, life settlement investment, voting-trust certificate, certificate of deposit for a security; *fractional undivided interest in oil, gas, or other mineral rights*; or, in general, any interest or instrument commonly known as a "security.” (emphasis added)

26. Pursuant to KRS 292.320(1), “It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

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

- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”

27. KRS 292.330(3) requires the registration of Agents, unless exempt, by stating, “It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration.”

28. Similarly, KRS 292.340 requires the registration of securities offered or sold in Kentucky, unless exempt, by providing that “It is unlawful for any person to offer or sell any security in this state, unless the security is registered under this chapter, or the security or transaction is exempt under this chapter, or the security is a covered security.”

29. 808 KAR 10:440 Section 1(27) - (29)(a)(b) and Section 3(1), which establish ethical standards for broker-dealers and issuer agents, state in part,

“Section 1. Broker-dealers shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers and the conduct of their business. Acts and practices such as the following shall be considered contrary to these standards;

...

(27) Lying to or otherwise misleading representatives of the Department of Financial Institutions conducting an authorized examination or investigation;

(28) Failing to make requested records available to or otherwise impeding a representative of the Department of Financial Institutions conducting an authorized examination or investigation;

(29) Failing to respond within the specified time period to a written request from an authorized representative of the Department of Financial Institutions for:

- (a) Information,
- (b) An explanation of practices or procedures,

...

Section 3. *Issuer agents* shall observe high standards of commercial honor and just and equitable principles of trade in their dealings with customers. The following acts and practices are considered contrary to these standards:

(1) Engaging in conduct specified in *Section 1*(2), (13), (15) through (18), or *(25) through (30)* of this administrative regulation.” (emphasis added)

30. KRS 292.470 (3) describes the Commissioner’s authority and provides in part that,

“Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, the commissioner may in his or her discretion bring any or all of the following remedies:

(3) Issue a final order, after notice and an opportunity for a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter:

(a) To cease and desist from the activity;

(b) To perform any other reasonable mandates directed by the commissioner pursuant to an appropriate remedy fashioned by the commissioner and reasonably calculated to carry out the provisions of this chapter; or

(c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).”

31. KRS 292.500(14) further authorizes the Commissioner to “impose civil fines against any person who violates any provision of this chapter or any rule or order or voluntary agreement entered into under this chapter.”

VIOLATIONS

Violations of KRS 292.340- Failure to Register Securities

32. The definition of security under KRS 292.310(19) specifically includes a “fractional undivided interest in oil, gas, or other mineral rights” and “an investment contract.”

33. Accordingly, the fractional undivided interests in the revenue from Typhon’s oil well programs that were sold to investors by Respondents are securities *per se*.

34. Investments in Typhon's oil well programs also qualify as investment contracts, as the investor's interest "involves an investment of money in a common enterprise with profits to come solely from the efforts of others." *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946).

35. Respondents offered to sell and sold securities to investors that were comprised of fractional undivided interests in oil, gas or other mineral rights. Respondents also offered to sell and sold investment contracts to investors. These securities were not registered with DFI, exempt from registration, or covered securities.

36. By reason of the foregoing, Respondents violated KRS 292.340 by selling unregistered securities.

Violations of KRS 292.330(3) - Failure to Register as an Agent

37. Under KRS 292.330(3), "[i]t is unlawful for an individual to transact business in this state as an Agent unless the individual is registered under this chapter...."

38. An Agent is further defined under the Act as anyone who represents an issuer "in effecting or attempting to effect purchases or sales of securities."

39. Respondent Decker routinely acted as an intermediary between investors and Typhon, and represented Typhon in soliciting and selling the securities described above. Respondent Decker facilitated Typhon's communications with its investors, personally conducted Typhon's marketing and social media campaigns, and sent and received paperwork used to execute transactions with Typhon's investors.

40. By reason of the foregoing, Respondent Decker violated KRS 292.330(3) by transacting business and selling securities as an unregistered agent of Typhon.

Violations of KRS 292.320(1) - Misstatement and Omission of Material Facts; Misuse of
Investor Funds

41. Pursuant to KRS 292.320(1), “[i]t is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

- (a) To employ any device, scheme, or artifice to defraud;
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.”

42. In social media posts, communications with investors, and advertising materials, Respondents routinely misrepresented both the actual and potential production of the oil wells operated by Typhon, and the investment returns they could reasonably produce.

43. Further, Respondents routinely exaggerated the financial return the investors would earn on their investments and misled their investors as to the profit potential of the investment.

44. While soliciting investments in Typhon’s securities, Respondents omitted material facts concerning:

- (a) The use of investor money for non-business purposes;
- (b) Respondent Decker’s legal, personal, and professional history; and
- (c) Respondents’ use of money received from later investors to make payments to previous investors.

45. By reason of the foregoing, Respondents violated KRS 292.320(1).

Violations of 808 KAR 10:440 § 3(1) - Failure to Cooperate with Investigation

46. Respondents, during the course of the investigation, made false and misleading claims to DFI investigators, including but not limited to the following:

- (a) Statements that investors would receive payments from oil purchasers pursuant to a distribution agreement, but never from Typhon directly, while Typhon's bank records show numerous payments to investors; and
- (b) Providing an incomplete list of investors in Typhon's oil wells.

47. Furthermore, Respondents failed to provide DFI with information and documents when required by subpoena.

48. By reason of the foregoing, Respondents violated 808 KAR 10:440 § 3(1).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

49. Respondents did offer and sell securities to investors that were neither registered with DFI nor exempt from registration under the Act in violation of KRS 292.340;

50. Respondent Decker did unlawfully transact business in this state as an Agent of Typhon while he was neither registered with DFI nor exempt from registration under the Act in violation of KRS 292.330(3);

51. In connection with the sale of the aforementioned securities, Respondents misused investor funds and made untrue statements of material fact, and did omit material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in violation of KRS 292.320(1);

52. In the course of DFI's investigation, Respondents made misleading statements to DFI personnel and failed to provide required information and documentation as required by DFI, and failed to comply with a subpoena issued by DFI, in violation of 808 KAR 10:440 Section 3(1); and

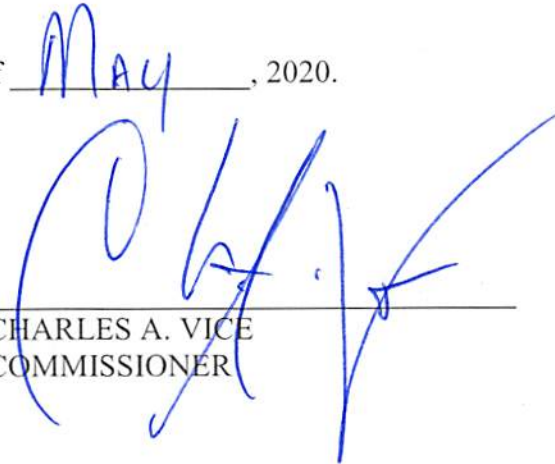
53. This Order is in the public interest.

ORDER

In light of the foregoing, the Commissioner hereby **ORDERS** that:

1. Respondents shall be jointly and severally liable for all fines, costs, and penalties assessed herein;
2. Respondents shall pay a civil fine in the amount of \$252,000 for the violations of KRS 292.320(1), KRS 292.330(3), KRS 292.340 and 808 KAR 10:440 Section 3(1) described herein;
3. Respondent Decker shall cease and desist from all securities-related activity, and shall be permanently banned from participation in the securities industry in Kentucky;
2. Respondents shall CEASE AND DESIST from solicitations of all securities, from future violations of the Act, and from any and all securities-related activities;
5. Respondents shall pay the DFI's costs and attorney's fees; and
6. Respondents shall make restitution to investors for any losses incurred due to the violations described herein.
7. This Order shall be final and appealable.

IT IS SO ORDERED on this the 19th day of May, 2020.



CHARLES A. VICE
COMMISSIONER

NOTICE OF APPEAL RIGHTS

Pursuant to KRS 292.490 and 13B.140, as applicable, you are hereby notified that any person aggrieved by the FINAL ORDER of the Commissioner may obtain a review of the Order by the Franklin Circuit Court. If you choose to appeal, you must file a written petition asking that the Order be modified or set aside, in whole or in part, in the Franklin Circuit Court within thirty (30) days after the entry of the Order. A copy of the petition must be served on the Commissioner.

CERTIFICATE OF SERVICE

I, Allison Reed, hereby certify that a copy of the foregoing Administrative Complaint was sent on this the 28 day of June, 2020, by certified mail, return receipt requested, to the following:

Mr. Jeremiah Decker
375 Terrebone Loop
Greeneville, Kentucky 42345
RESPONDENT

LegalInc Corporate Services, Inc.
4965 US Highway 42
Suite 1000, Box 34
Louisville, Kentucky 40222
AGENT FOR RESPONDENT TYPHON ENERGY, LLC

AND

Hand delivered to:

Stuart D. Michael
Public Protection Cabinet
Department of Financial Institutions
500 Mero Street 2 SW 19
Frankfort, Kentucky 40601
COUNSEL FOR COMPLAINANT



Department of Financial Institutions

Name: Allison Reed

Title: Executive Staff Advisor