



On November 22, 2006, Respondents requested a hearing to set aside the Emergency Order. The case was referred to the State Office of Administrative Hearings ("SOAH"). On December 1, 2006, the Texas State Securities Board Staff ("Staff") issued a notice of hearing to all Respondents, advising that the hearing would be held by a SOAH Administrative Law Judge ("ALJ"). The hearing was continued by agreement of the parties. On December 11, 2006, the hearing on the merits convened at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas with ALJ Craig R. Bennett presiding. Staff was represented by attorneys David Grauer, Stephanie Tourk, and Travis Iles. Respondents were represented by attorneys Phillip W. Offill and Daryl K. Washington. The hearing concluded on that same day, but the record did not close until March 23, 2007, after written closing briefs were submitted.

The ALJ issued a Proposal for Decision ("PFD") on May 7, 2007. On June 12, 2007 Respondents filed their exceptions to the proposed decision of the ALJ. Staff filed its reply to the Respondents' exceptions on June 22, 2007. The ALJ responded to the Respondents' exceptions by letter dated July 2, 2007, declining to make any changes to the Findings of Fact or Conclusions of Law contained in the PFD.

The Findings of Fact and Conclusions from the PFD, are as follows:

### **FINDINGS OF FACT**

- 1 Always Consulting, Inc. (Always Consulting) maintains a last known business address at 901 Waterfall Way, Suite 302, Richardson, Texas 75080.
- 2 Bruce Griffith (Mr. Griffith) is the President and CEO of Always Consulting and maintains a last known business address at 901 Waterfall Way, Suite 302, Richardson, Texas 75080.
- 3 David Kevin Lewis a/k/a David Shane Lewis a/k/a "DW" (Mr. Lewis) is the Director of Field Operations for Always Consulting and maintains a last known business address at 901 Waterfall Way, Suite 302, Richardson, Texas 75080.
4. During the time period relevant herein, Thomas A. Markham (Mr. Markham) was the Chief Geologist of Always Consulting and maintained a last known business address at 901 Waterfall Way, Suite 302, Richardson, Texas 75080.
5. During the time period relevant herein, Charles Roup (Mr. Roup) was Vice president of Marketing Relations for Always Consulting and maintained a last known business address at 901 Waterfall Way, Suite 302, Richardson, Texas 75080. (Collectively, Always Consulting, Mr. Griffith, Mr. Lewis, Mr. Markham, and Mr. Roup are referred to as "Respondents").
6. Respondents have been offering for sale in Texas "units of participation" in the "Rattlesnake Springs 20 Well Prospect," with each unit of participation representing

working interests in 20 new wells to be drilled on a purported oil and gas lease in Osage County, Oklahoma.

7. The units of participation have not been registered by qualification, notification, or coordination and no permit has been granted for their sale in Texas.
8. The letter agreement offered by Respondents for the sale of the units of participation is an instrument representing an interest in or under an oil, gas or mining lease, fee or title.
9. Respondents did not have a joint venture with those persons who invested in the units of participation in the oil and gas leases; there was no mutual right of control between Respondents and investors, nor was there an agreement to share loss and cost or expenses.
10. Respondents have not been registered with the Texas Securities Commissioner (the Commissioner) as dealers or agents at any time material hereto.
11. In connection with the offer for sale of the units of participation, Respondents intentionally failed to disclose the following material facts:
  - a. On February 14, 1989, Mr. Griffith pleaded guilty to theft of property of the value of \$750 or more but less than \$20,000 in case no. F-8880981-QU in the 291st Judicial District Court of Dallas County, Texas, and was sentenced to seven years probation;
  - b. On February 14, 1989, Mr. Griffith pleaded guilty to theft of property of the value of \$750 or more but less than \$20,000 in case no. F-8882008-TU in the 291st Judicial District Court of Dallas County, Texas, and was sentenced to seven years probation;
  - c. On April 4, 1989, the 291st Judicial District Court of Dallas County, Texas revoked Mr. Griffith's probation in case no. F-8880981-QU, because he possessed and concealed falsely made, forged, and counterfeited Federal Reserve Notes;
  - d. On April 4, 1989, the 291st Judicial District Court of Dallas County, Texas revoked Mr. Griffith's probation in case no. F-8882008-TU, because he possessed and concealed falsely made, forged, and counterfeited Federal Reserve Notes;
  - e. On February 14, 1994, Mr. Griffith pleaded guilty to two counts of robbery of a financial institution in case no. 3:93-CR-379-H(1), one count of bank robbery in case no. 3:94-CR-025-H(1), and one count of bank robbery in case no. 3:94-CR-038-H(1) in the United States District Court for the

Northern District of Texas, and was sentenced to 135 months imprisonment to be followed by three years supervised release;

- f. On May 15, 2000, Mr. Lewis pleaded guilty to one count of securities fraud in case no. 3:OO-CR-064-M(01) and one count of conspiracy to commit mail fraud in case no. 1:OO-CR-016-C(01) in the United States District Court for the Northern District of Texas, and was sentenced to 46 months imprisonment to be followed by three years supervised release. Mr. Lewis was also ordered to pay restitution in the amount of \$2,228,171 ;
  - g. On July 18, 1999, Mr. Markham pleaded guilty to one count of mail fraud in case no. SA-99-CR-86(1)(EP) in the United States District Court for the Western District of Texas, and was sentenced to 15 months imprisonment to be followed by three years supervised release. Mr. Markham was also ordered to pay restitution in the amount of \$395,786.26;
  - h. On March 2, 2004, Mr. Roup pleaded guilty to assault causing bodily injury in case no. 004-80697-03 in the County Court at Law No. 4 in Collin County, Texas, and was sentenced to 365 days in jail and two years probation. Mr. Roup was also ordered to pay restitution in the amount of \$93,298.76;
- 12. On October 25, 2006, the Deputy Securities Commissioner issued an emergency cease and desist order (Emergency Order) to the Respondents.
  - 13. In the Emergency Order, the Deputy Securities Commissioner ordered Respondents to cease and desist:
    - a. Offering for sale any security in Texas until the security is registered with the Securities Commissioner or is offered for sale pursuant to an exemption from registration under the Texas Securities Act;
    - b. Acting as securities dealers or agents in Texas until Respondents are registered with the Securities Commissioner or are acting pursuant to an exemption from registration under the Texas Securities Act; and
    - c. Engaging in any fraud in connection with the offer for sale of any security in Texas.
  - 14. On November 22, 2006, Respondents requested a hearing to set aside the Emergency Order.
  - 15. The case was referred to the State Office of Administrative Hearings (SOAH).
  - 16. On December 12, 2006, Staff of the Texas State Securities Board issued a notice of hearing to Respondents, advising that the requested hearing would be held by a SOAH Administrative Law Judge (ALJ).



17. On December 11, 2006, the hearing on the merits convened at SOAH Hearing facilities in the William P. Clements Office Building, 300 West 15th Street, Austin, Texas, with ALJ Craig R. Bennett presiding. Staff was represented by attorneys David Grauer, Stephanie Tourk, and Travis Iles. Respondents were represented by attorneys Phillip W. Offill and Daryl K. Washington. The hearing concluded that same day.
18. The record in this case closed on March 23, 2007, after written closing arguments were submitted.
19. The threat of imminent and irreparable harm to the public existed if the Commissioner had not issued the Emergency Order requiring Respondents to cease their activities in regard to the units of participation.

### **CONCLUSIONS OF LAW**

1. The above-described units of participation are "securities" as that term is defined by Section 4.A of the Texas Securities Act.
2. Respondents violated Section 7 of the Texas Securities Act by offering securities for sale in Texas at a time when the securities were not registered with the Securities Commissioner.
3. Respondents violated Section 12 of the Texas Securities Act by offering securities for sale in Texas without being registered pursuant to the provisions of Section 12 of the Texas Securities Act.
4. Respondents engaged in fraud in connection with the offer for sale of securities.
5. Respondents conduct, acts, and practices threaten immediate and irreparable public harm.
6. The foregoing violations constitute bases for the issuance of the Emergency Order pursuant to Section 23-2 of the Texas Securities Act.
7. On receiving a request for a hearing from a person who is the subject of an emergency order, the Commissioner must serve notice of the time and place of the hearing. The hearing must be held not later than the 10th day after the date the Commissioner receives the request for a hearing unless the parties agree to a later hearing date.
8. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

9. Based on the above Findings of Fact and Conclusions of Law, the Respondents were given the required notice of and a timely hearing.
10. At the hearing, the Commissioner had the burden of proof and was required to present evidence in support of the order. TEX. REV. CIV. STAT. ANN. art. 581-23-2.D.
11. After the hearing, the Commissioner must affirm, modify, or set aside in whole or part the Emergency Order. TEX. REV. CIV. STAT. ANN. art. 581-23-2.E.
12. Based on the above Findings of Fact and Conclusions of Law, the Emergency Order should be affirmed as set out herein.

### ORDER

IT IS THEREFORE ORDERED that the Emergency Cease and Desist Order No. ENF-06-CDO-1622 issued against ALWAYS CONSULTING, INC.; BRUCE GRIFFITH; DAVID KEVIN LEWIS; THOMAS A. MARKHAM; and CHARLES ROUP on October 25, 2006, SHALL REMAIN IN FULL FORCE AND EFFECT.

SIGNED and ENTERED by the Securities Commissioner this 8<sup>th</sup> day of August, 2007.

  
DENISE VOIGT CRAWFORD  
Securities Commissioner

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been sent to the Respondents by certified mail, return receipt requested, at their last known addresses on Page 1 of this Order, and to their representatives named below in this matter by certified mail, return receipt requested, to the Staff by hand-delivery, and by regular mail to the State Office of Administrative Hearings, on this the 8th day of August, 2007.

Phillip W. Offill  
Godwin, Pappas, Langley, Ronquillo, LLP  
1201 Elm Street  
Suite 1700  
Dallas, Texas 75270

Daryl K. Washington  
Godwin, Pappas, Langley, Ronquillo, LLP  
1201 Elm Street  
Suite 1700  
Dallas, Texas 75270

Craig R. Bennett  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West 15th Street, Suite 502  
Austin, Texas 78701

  
Marlene K. Sparkman  
Assistant General Counsel  
State Securities Board