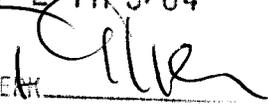


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2013 AUG -2 PM 3:04

DEPUTY CLERK



THE UNITED STATES OF AMERICA §

§

v.

§

No. 3:12-CR-159-D

§

ECF

THOMAS ALDEN MARKHAM JR. (3) §

FACTUAL RÉSUMÉ

Thomas Alden Markham Jr., defendant, Assistant Federal Public Defender John M. Nicholson, the defendant's attorney, and the United States of America (the government), agree as follows:

Superseding Information - Count One

Misprision of Felony
(Violation of 18 U.S.C. § 4)

First: That a federal felony was committed as charged in the superseding information;

Second: That the defendant had knowledge of the commission of the felony;

Third: That the defendant failed to notify an authority as soon as possible. An "authority" includes a federal judge or some other federal civil or military authority, such as a federal grand jury, Secret Service or FBI agent; and

Fourth: That the defendant did an affirmative act, as charged, to conceal the crime.

Stipulated Facts

Always Consulting, Inc. (ACI) was an oil and gas well 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.

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.

David Kevin Lewis ("Lewis"), was chairman and director of field operations of ACI and was its controlling principal. At some point during ACI's existence, Lewis directed ACI employees to refer to him as "DW". Lewis also trained the sales force at ACI and conducted frequent sales meetings.

Bruce Kyle Griffith ("Griffith"), was the president and chief executive officer of ACI. Griffith acted as the President and CEO of ACI, and signed most of the checks.

Thomas Alden Markham Jr., defendant, ("Markham"), was employed by ACI from May 2005, through August, 2006, having applied for a position at ACI as a geologist technician. Markham, who had a Master's degree in Geology eventually learned that Lewis referred to Markham not as a "geologist technician," but rather as ACI's "chief geologist." Although this made Markham unhappy and uncomfortable, Markham did not challenge Lewis about it. Lewis referred to Markham as ACI's "chief geologist" to add legitimacy to ACI's operations. After August 21, 2006, Markham continued his

association with ACI through a prospect generation Agreement signed by Markham and Griffith for ACI on August 30, 2006.

Over the course of his association with ACI, Markham learned that Griffith had a prior criminal conviction, which Griffith described to Markham as drug related. Markham also learned that Griffith had a limited understanding of the oil and gas production industry, and little or no actual experience in oil and gas.

Markham also learned that Lewis had a prior criminal conviction because Markham learned that Lewis had to submit to periodic drug testing as part of some sort of court-ordered supervision.

Markham utilized his education, training, and experience as a geologist to evaluate publicly-available information and give his opinion as to the desirability of oil and gas exploration projects to Lewis. For example, Markham presented his opinion on a particular oil exploration and development project to Lewis and it became the ACI Rattlesnake Springs Drilling Program, 20 Infill Well Development (the ACI Rattlesnake Springs Drilling Program). ACI's subsequent offering on the ACI Rattlesnake Springs Drilling Program 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 of money in a common enterprise with profits to come solely from the efforts of others. ACI led investors to believe that the wells would primarily produce gas.

Lewis, Griffith, 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. One aspect of the conspiracy was that while Lewis, Griffith, and Markham had prior convictions for federal felony offenses, neither Lewis nor Griffith took steps to advise potential ACI investors of those convictions.

Lewis, Griffith, and others 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.

To raise money for the Rattlesnake Springs Drilling Project, Lewis prepared Offering Memorandum. Markham later saw the Offering Memorandum and realized that Lewis had included truthful information about Markham's experience and success in the industry but failed to include Markham's prior conviction, of which Markham knew

Lewis was aware. Nor did the Offering Memorandum advise of Lewis and Griffith's convictions and, unlike Markham, their qualifications were not honestly represented. That is, 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 also identified Lewis only as "DW" and grossly overstated his experience in oil and gas.

While ACI acted upon Markham's technical advice to successfully drill wells in other projects and ACI acquired some of the leases for the ACI Rattlesnake Springs Drilling Program, ACI never obtained permits to drill for the ACI Rattlesnake Springs Drilling Program and none of the wells for the ACI Rattlesnake Springs Drilling Program were drilled. ACI bank records show payments of more than \$200,000 being made towards the purchase of the leases in Osage County, Oklahoma for the ACI Rattlesnake Springs Drilling Program. 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 on any of the tracts, and (2) ACI had not acquired leases on some of the proposed sites.

Although he did not know it at the time, Markham is now aware that one of the reasons ACI did not obtain the necessary permits or drill the wells for the ACI Rattlesnake Springs Drilling Program is that Lewis and Griffith were diverting significant

amounts of investor money to their personal expenses and to support their respective lifestyles.

From time to time, Lewis or someone in ACI's sales department would ask Markham to speak to potential investors about technical matters. For example, Markham spoke to a group of potential ACI investors during a trip to Durango Colorado on August 17, 2006. During this meeting, Markham was present when Lewis described Markham and Markham's background to the group of potential investors. Hence, Markham had first-hand knowledge that Lewis was truthfully describing Markham's education, experience and industry success but failing to tell the potential investors about Markham's prior criminal conviction.

After his introduction during the Durango meeting, Markham suggested to the potential investors that the project being touted was probably a sound investment, considering the risk normally associated with oil and gas investments; Markham made this and similar representations honestly. However, Markham did not take any steps to ensure that Lewis, Griffith, or anyone else at ACI had informed these, or any, potential investors that Lewis, Griffith, and Markham had prior felony convictions. Hence, Lewis and Griffith deprived investors of the ability to make a fully-informed decision about whether to invest in ACI and Markham concealed this misconduct by his own deliberate silence.

On December 11, 2006, Markham testified at a hearing on an Emergency Cease and Desist Order issued by the Texas State Securities Board (TSSB) on October 25, 2006, ordering Lewis, Griffith and Markham to cease and desist violating state securities

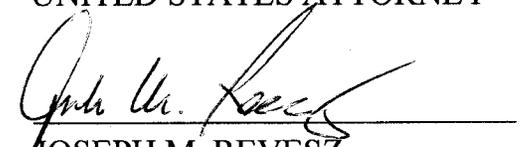
statutes in connection with the ACI Rattlesnakes Springs Drilling Program, specifically, selling unregistered securities, selling securities with themselves being registered, and fraud in connection with the offer and sale of securities. Markham testified truthfully at this hearing. However, Markham did not disclose to the TSSB that, during the August, 2006 investor meeting in Durango, Colorado, Lewis and Griffith had failed to advise the potential investors that Markham, Lewis, and Griffith had prior convictions.

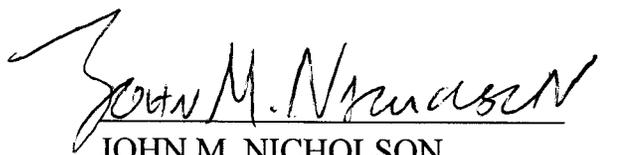
Although Markham had knowledge that Lewis and Griffith were actually committing a felony by concealing the prior convictions of Lewis, Griffith and Markham from investors, Markham helped conceal their conduct by staying silent during both the Durango, Colorado trip and again during the TSSB hearing. That is, Markham knew Lewis and Griffith were committing crimes in connection with the ACI and the Rattlesnake Springs Drilling Program but, because he was anxious about losing his job at ACI, anxious about his prospects of finding another geologist position despite his prior felony conviction, and because he wanted to preserve his relatively modest salary at ACI, he stayed quiet about what Lewis and Griffith were doing. Markham's answers to the questions he was asked gave the impression that he knew nothing of any criminal offense being committed by Lewis and Griffith. Markham did not ever make his knowledge that Lewis and Griffith were committing a felony known to any judge or other person in civil or military authority under the United States. Markham's conduct therefore violated 18 U.S.C. § 4, Misprison of a Felony.

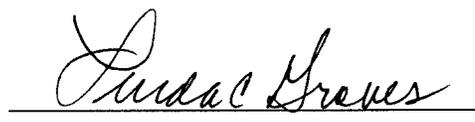
The foregoing facts are true and correct.

AGREED TO AND SIGNED this ^{1st} day of AUG, 2013.


THOMAS ALDEN MARKHAM, JR.
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


JOHN M. NICHOLSON
Assistant Federal Public Defender
Attorney for Thomas Alden Markham
Texas State Bar No. 24013240
525 Griffin Street, Suite 629
Dallas, TX 75202
Telephone: 214.767.2746
Facsimile: 214.767.2886
Email: john.nicholson@fd.org


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