

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MAR 27 1997

MICHAEL N. MILBY, Clerk of Court

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ENSERCO, INC., D/B/A
ENERGY SERVICE COMPANY,
JOHN P. BRINK,
ANTHONY J. LEO and
FRANK BRAVO, JR.,

Defendants.

CIVIL ACTION NO.

H - 97 - 0983

COMPLAINT

Plaintiff Securities and Exchange Commission, for its claim, alleges that:

SUMMARY

1. During the period from April 1993 to and including October 1995, defendants John P. Brink, Anthony J. Leo and Frank Bravo, Jr. raised approximately \$3.6 million from at least 239 investors in 39 states, including Texas, from fraudulent sales of unregistered investment contract securities. Brink, Leo and Bravo raised money through Enserco, Inc., d/b/a Energy Service Company, Inc. ("Enserco"), to purchase oil field equipment and pipe; Enserco was to resell these materials and pay investors a portion of the transaction profits. Investors were guaranteed returns of up to 25% per annum, with complete security as to their invested principal, and told that there were "no risks" associated with an investment in Enserco's business. In fact, Brink operated an undisclosed "Ponzi" scheme, whereby monies contributed by new

investors were paid as purported "profits" to previous investors. Brink misappropriated investors' funds, and Leo and Bravo received undisclosed commissions for their efforts in selling Enserco securities.

2. By engaging in such conduct, as detailed in this Complaint, these defendants violated provisions of the federal securities laws as follows:

a. Enserco, Brink, Leo and Bravo have violated Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77(e)(a), 77(e)(c) and 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and

b. Leo and Bravo have separately violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C §§ 77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78t(d), 78t(e) and 78aa].

4. Certain of the acts, practices, courses of business, and transactions constituting violations of the Securities Act and the Exchange Act as alleged in this Complaint, have occurred within the Southern District of Texas. Furthermore, Enserco maintains its principal office in Houston, Texas.

PARTIES

5. The Commission brings this action pursuant to authority conferred on it by Sections 20(b) and 20(d) of the Securities Act [15 U.S.C. §§ 77t(b) and 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

6. Enserco, incorporated in 1992 under the laws of the State of Texas, is located at 3315 Mercer, Suite B, Houston, Texas, 77027. On February 20, 1996, Enserco filed a Chapter 11 petition in bankruptcy (USBC SD/TX No. 96-41438); any monetary claims against the company resulting from this litigation will be resolved in that bankruptcy proceeding.

7. Brink, a resident of Houston, Texas, is the sole officer and director of Enserco. At all times relevant to this matter, Brink controlled and participated in the activities of Enserco, including preparation of the written sales materials used in the offer and sale of these securities to investors.

8. Leo, a resident of Yorba Linda, California, raised money for Enserco and received commissions as his compensation. Leo was not registered as a broker or dealer with the Commission or with any state at any of the times alleged herein.

9. Bravo, a resident of Santa Ana, California, raised money for Enserco and received commissions as his compensation. Bravo was not registered as a broker or dealer with the Commission or with any state at any of the times alleged herein.

STATEMENT OF FACTS AND ALLEGATIONS
RELEVANT TO ALL COUNTS

10. From at least April 1993 through August 1995, defendants Enserco, Brink, Leo and Bravo, directly and indirectly, offered, sold, and delivered after sale, securities, in the form of investment contracts, raising at least \$3.6 million from at least 239 investors residing in 32 states, including Texas, through eight integrated, or aggregated, offerings. Investors were solicited with offering materials and oral presentations that were delivered or made through the use of the means and instrumentalities of interstate commerce, including overnight courier deliveries, telephone calls and facsimiles, and the U.S. Mails. The investment contracts, which are participations in a venture to purchase pipe and other oil field-related equipment to resell for a profit, have not been and are not registered with the Commission.

11. Defendants offered and sold these securities by means of statements of material fact, which were and are false and misleading, and by omissions of material fact necessary to make the statements made not misleading, as follows:

a. Enserco and Brink made false and misleading statements of material fact, including:

i) that all investment funds would be used to purchase oil field pipe and equipment;

ii) that there were "no risks" associated with the investments;

iii) that investors would receive a return on investment between 16.75 and 25 percent annually, depending upon the offering;

iv) that the return on investment was guaranteed and would be paid quarterly; and

v) that investors were entitled to receive their principal investments back at the end of the one-year term of each investment program.

b. Enserco and Brink omitted to disclose material facts necessary to make the statements made not misleading, including:

i) that the source of putative "profits" paid to investors was the contributions of other investors, rather than from profits earned by Enserco through the purchase and resale of oil field pipe and equipment;

ii) that Enserco and Brink were operating a "Ponzi" scheme, which would necessarily result in substantial losses to certain, later investors;

iii) that substantial amounts of investor monies were spent for unauthorized expenditures including: commissions for capital raising activities, funding an unrelated business, and by defendant Brink for personal purposes;

iv) that orders of prohibition or to cease and desist had been entered against Enserco by securities regulators in Illinois, Minnesota, Nebraska and

Pennsylvania (Illinois: In the Matter of Enserco Energy Service Corporation, File No. C9400681, December 21, 1994; Minnesota: In the Matter of Energy Service Company, a/k/a EnSerCo, and John Brink, Case No. SE9401434/TMF, June 10, 1994; Nebraska: In the Matter of Energy Service Corporation and John P. Brink, April 25, 1995; and Pennsylvania: In the Matter of Energy Service Company, Inc., John P. Brink and Alan Davis, Docket No. 9504-8, October 18, 1995); and that Brink was a subject of the Minnesota, Nebraska and Pennsylvania orders;

v) that Leo had been subject of administrative prohibition orders in Kansas (Gold Star Petroleum and Anthony Joseph Leo, a/k/a Tony Leo, Case No. 89E022/88-1375, January 27, 1989), Wisconsin (Gold Star Petroleum, Inc., Tony J. Leo and Dan Riley, Case No. X88100(E), June 27, 1989), Minnesota (M.A.T. Oil and Gas Exploration, Inc., a Pennsylvania corporation, including Mark A. Thompson, President; Anthony & Associates and Tony Leo, Case No. SE8903935, October 16, 1989), and Iowa (Anthony Leo, Michele Passino and Gold Star Petroleum, Inc. Case No. C91-02-333, February 20, 1991); and

vi) that Brink had pleaded guilty to the felony offense of theft of property in the State of Texas in 1989, for which he was sentenced to three-years probation, and eight-days incarceration (State of Texas v. John Brink a/k/a John Patrick, 263rd Harris County

District Court, No. 510353, July 11, 1989); and has twice been found guilty of the misdemeanor offense of theft by check in the State of Texas in 1991 and 1993, and was fined \$100 and sentenced to four-days incarceration for the first offense, and fined \$445 for the second (State of Texas v. John Patrick Brink, County Criminal Court at Law No. 11 of Harris County, No. 9104787, July 16, 1991; State of Texas v. John Brink, Justice of the Peace Court, Precinct 4, Harris County, April 20, 1993).

c. Leo omitted to disclose material facts necessary to make the statements made not misleading, including:

i) that he received substantial sales commissions for raising capital for Enserco;

ii) that Brink was operating a "Ponzi" scheme, which would necessarily result in substantial losses to certain, later investors; and

iii) that, prior to his association with Enserco, he had been the subject of administrative prohibition orders in four states.

d. Bravo omitted to disclose material facts necessary to make the statements made not misleading, including:

i) that he received substantial sales commissions for raising capital for Enserco; and

ii) that Brink was operating a "Ponzi" scheme, which would necessarily result in substantial losses to certain, later investors.

FIRST CLAIM

FRAUD IN CONNECTION WITH THE PURCHASE AND SALE OF SECURITIES

**Violations of Section 10(b) of
the Exchange Act [15 U.S.C. § 78j(b)] and
Rule 10b-5 [17 C.F.R. § 240.10b-5] Thereunder**

12. The allegations of paragraphs 1 through 11 of this Complaint are realleged and incorporated herein by reference as if set forth here verbatim.

13. Defendants Enserco, Brink, Leo and Bravo, singly, in concert, and with others, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce and by use of the mails have:

- (a) employed devices, schemes and artifices to defraud;
- (b) made untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and

(c) engaged in acts, practices and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers and other persons.

14. As a part of and in furtherance of the scheme, defendants, directly and indirectly, prepared, disseminated or used written offering documents, promotional materials, investor correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made not misleading, including but not limited to those set forth in paragraph 11 above.

15. As a part of and in furtherance of the scheme, defendants omitted to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the omissions set forth in paragraph 11 above.

16. Defendants Enserco, Brink, Leo and Bravo have intentionally, knowingly, and/or recklessly engaged in the devices, schemes, artifices to defraud, making of untrue statements and omissions, acts, practices and courses of business described in this cause of action. By reason of the foregoing, these defendants have violated and, unless enjoined, will continue to violate the provisions of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM

FRAUD IN THE OFFER AND SALE OF SECURITIES

Violations of Section 17(a) of the
Securities Act [15 U.S.C. § 77q(a)]

17. The allegations of Paragraphs 1 through 16 of this Complaint are realleged and incorporated herein by reference, as if set forth here verbatim.

18. Defendants Enserco, Brink, Leo and Bravo, singly, in concert, and with others, directly and indirectly, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have:

- (a) employed devices, schemes or artifices to defraud;
- (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and
- (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

19. As part of and in furtherance of this scheme, defendants, directly and indirectly, prepared, disseminated or used written offering documents, promotional materials, investor correspondence, and oral presentations, which contained untrue statements of material fact and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances
Complaint

under which they were made, not misleading, including, but not limited to, those statements and omissions set forth in paragraph 11 above.

20. By reason of the foregoing, defendants Enserco, Brink, Leo and Bravo have violated, and unless enjoined, will continue to violate Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) and (3)]. Furthermore, defendants have intentionally, knowingly and/or recklessly engaged in the acts and practices described in this claim, so they have violated, and, unless enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)(1)].

THIRD CLAIM

OFFERS AND SALES OF UNREGISTERED SECURITIES

**Violations of Sections 5(a) and 5(c) of the
Securities Act [15 U.S.C. 77 (e) (a) and 77(e) (c)]**

21. The allegations of paragraph 1 through 20 of the Complaint herein are realleged and incorporated herein by reference as if set forth here verbatim.

22. Defendants Enserco, Brink, Leo and Bravo, singly, in concert, and with others have, directly and indirectly:

(a) made use of the means and instruments of transportation and communication in interstate commerce and of the mails to sell securities through the use of written contracts, offering documents, and otherwise;

(b) carried and caused to be carried such securities through the mails and in interstate commerce by means and

instruments of transportation, for the purpose of sale and for delivery after sale; and

(c) made use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

Upon information and belief, these defendants are currently engaged in such activities, and, unless all are enjoined, will continue to engage in similar activities.

23. No registration statements have been filed with the Commission or are otherwise in effect with respect to any of the securities offered and sold by defendants.

24. By reason of the foregoing, defendants Enserco, Brink, Leo and Bravo have violated and, unless enjoined, will continue to violate Section 5(a) and 5(c) of the Securities Act [15.U.S.C. 77(e) (a) and 77(e) (c)].

FOURTH CLAIM

UNREGISTERED BROKER-DEALER

Violations of Section 15(a) (1) of the Exchange Act [15 U.S.C. § 78o(a) (1)]

25. The allegations of paragraphs 1 through 24, above, are realleged and incorporated herein by reference, as if set forth here verbatim.

26. At the times alleged in this Complaint, defendants Leo and Bravo have been in the business of effecting transactions in securities for the accounts of others.

27. Defendants Leo and Bravo have made use of the mails and of the means and instrumentalities of interstate commerce to effect

transactions in, and to induce or attempt to induce the purchase of, the securities described herein.

28. At the times alleged in this Complaint, neither Leo nor Bravo was registered with the Commission as a broker or dealer, in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

29. By reason of the foregoing, defendants Leo and Bravo have violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully prays that this Court:

I.

Permanently enjoin defendants Enserco, Brink, Leo and Bravo from violating Sections 5(a), 5(c) and 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder.

II.

Permanently enjoin defendants Leo and Bravo from violating Section 15(a) of the Exchange Act.

III.

Order defendants Enserco, Brink, Leo and Bravo to prepare and file with the Court and serve on the Commission a sworn accounting detailing all funds or other assets received from Enserco, or its investors.

IV.

Order defendants Brink, Leo and Bravo to disgorge any monies or other assets received from Enserco or its investors and any

income or profit therefrom, including prejudgment interest, and assess, but not order payment of, disgorgement as to Enserco, provided that any monetary claims against Enserco will be resolved in its pending bankruptcy proceeding.

V.

Order defendants Brink, Leo and Bravo to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 79u(d)], and assess, but not order payment of, a civil money penalty as to Enserco, provided that any monetary claims against Enserco will be resolved in its pending bankruptcy proceeding.

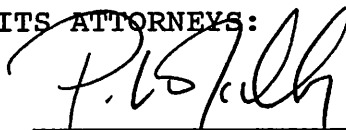
VI.

Order such further relief as this Court may deem just and proper.

FOR THE COMMISSION, BY ITS ATTORNEYS:

Date:

3/26/97



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