

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

GC RESOURCES, LLC and BRIAN J. POLITO,

Defendants.

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Case No.:

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”) alleges:

SUMMARY

1. From January 2012 through August 2014, Brian J. Polito, through the company he controlled, GC Resources, LLC (“GCR”), raised approximately \$11.8 million by selling working interests in oil and gas wells owned by EOG Resources, Inc. (“EOG”), an unrelated publicly traded company. Polito told investors that GCR had an interest in the EOG wells and showed them a contract allegedly executed between GCR and EOG. In reality, the contract was fake. Polito drafted the contract and forged EOG’s signatures. At no time while GCR was marketing its alleged interests in the EOG wells to investors did GCR or Polito have a contract with, or own anything with regard to, EOG or its wells.

2. Throughout these offerings, Defendants made a variety of material false representations and omissions to investors. Principally, GCR and Polito sent investors copies of the fake EOG contract and took investors to EOG well sites that GCR did not own. Defendants also sent to investors production reports of EOG wells pulled from the public Texas Railroad Commission website, falsely claiming these were the wells in which investors owned interests.

Moreover, Polito edited and increased the expenses on these wells to minimize the amounts GCR would pay investors. Defendants never disclosed that the investors' funds were not going to any oil and gas interest or project, but instead were being spent by Polito on luxury vehicles, watches, and vacations.

3. By reason of the foregoing: Defendants GCR and Polito violated, and unless enjoined will continue to violate, Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], and Section 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder. In the interest of protecting the public from any further violations of the federal securities laws, the Commission brings this action against the Defendants, seeking permanent injunctive relief and disgorgement plus prejudgment interest from all Defendants, civil money penalties from Defendant Polito, and all other equitable and ancillary relief deemed necessary by the Court.

JURISDICTION AND VENUE

4. The Commission brings this action under Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], seeking to restrain and enjoin permanently the Defendants from engaging in the acts, practices, and courses of business alleged herein.

5. This Court has jurisdiction over this action under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa]. The fractional undivided interests offered and sold in this matter are securities as that term is defined under the federal securities laws.

6. The Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the transactions, acts, practices, and courses of business described in this Complaint.

7. Venue is proper because transactions, acts, practices, and courses of business described below occurred within the jurisdiction of the Northern District of Texas.

PARTIES

8. Plaintiff Commission is an agency of the United States of America charged with enforcing the federal securities laws.

9. Defendant GCR is a Texas limited liability company with its principal place of business in Dallas, Texas. GCR was formed by Polito and two partners in 2007. Polito later bought out his partners' ownership interests in 2008 to become the sole owner of GCR. Initially, GCR sold working interests in wells it did indeed own; however, since January 2012, GCR has not had any legitimate operations.

10. Defendant Polito, age 34, of Dallas, Texas, is a co-founder of GCR and at all times relevant to this complaint, was GCR's sole owner and operator. During the Commission's investigation, Polito admitted he forged the EOG contract, lied to investors about GCR's supposed ownership of certain working interests, and instead spent investor funds to fund his lavish lifestyle.

STATEMENT OF FACTS

A. The Beginning of GC Resources, LLC

11. Defendant Polito was born and raised in Plano, Texas and attended Blinn Junior College in College Station, Texas for two years.

12. In early 2007, Polito formed GCR with two colleagues. GCR initially sold working interests in 5,000 foot vertical wells with Lexgas, Inc. as the operator.

13. GCR solicited investors via cold calls, sending anybody interested a package with an accredited investor survey, joint venture agreement, operating agreement, and limited power of attorney. Despite using accredited investor questionnaires borrowed from another entity, GCR still sold investments to approximately thirty-five non-accredited investors. GCR turned a portion of the raised funds to Lexgas to operate the well and kept approximately thirty percent to pay the principals.

14. In 2008, Polito had a falling out with his former colleagues, and then bought out their interests in GCR. GCR continued to conduct legitimate business until December 2011, selling interests in approximately twenty-five wells, some of which are still producing. During this time Polito made approximately \$200,000 to \$250,000 per year as an independent contractor for GCR.

B. Polito Creates a Fraudulent Agreement to Sell Interests in EOG Wells.

15. In late 2011, Polito became frustrated that the GCR wells were not producing much oil or gas, which hindered his ability to raise additional investments. When Polito visited the well site, he discovered several nearby wells that were tremendously successful. Polito visited the Texas Railroad Commission's website and learned that EOG Resources owned the adjacent wells.

16. Rather than alter GCR's drilling strategy, Polito decided to solicit investments for EOG wells that GCR did not actually own. Polito's first step was to draft a false contract between GCR and EOG, and then forge EOG's signature. To create the appearance of legitimacy, Polito attached to the bogus contract EOG's actual drilling permits he found online.

Polito told GCR's salesmen that EOG had approached Lexgas, the operator of GCR's legitimate wells, looking to drill on GCR's lease. In return for the right to drill, Polito asked EOG for an ownership interest in other EOG wells, which EOG granted. None of those facts were true. GCR did not have any interest in any EOG well at any time, although no one other than Polito knew that.

C. *GCR Sells Investments in the EOG Wells It Does Not Own.*

17. Polito used the fraudulent EOG contract to lure prospective investors to GCR. Interested investors were sent a package with the fake EOG contract, information from the Texas Railroad Commission with production history for the EOG wells GCR was claiming to own, a geological book, an accredited investor questionnaire, and a paid return envelope. The offering materials were copied from a website, but Polito wrote in an "educated guess" for the expenses. GCR requested that interested investors enclose a check to GCR in the return envelope.

18. To further the charade, Polito and his salesmen took prospective investors to the EOG well site, which Polito said helped the investors feel better about their investment. If investors had further questions, Polito instructed his salesmen to direct investors to the Texas Railroad Commission website to verify the information on the EOG wells. This misdirection worked because, even though GCR did not own them, the wells existed and were producing. Polito also regularly sent investors a record of the production history from the Texas Railroad Commission website for the EOG wells, but he increased the expenses to minimize investor payouts.

19. From early 2012 to mid-2014, Polito used approximately twelve EOG wells for fraudulent offerings. He allowed only 35 investors in each offering to avoid raising red flags. In total he raised approximately \$11.8 million dollars off the fraudulent EOG offerings. The

investors were never informed that GCR did not have an interest in any of the EOG wells, and therefore, their money was not actually being used to invest in anything at all.

20. All of the investor funds were commingled into a single GCR operating account. There was no segregation or linkage to the wells each investor supposedly owned. Polito manufactured the amount of monthly or quarterly “returns” paid to investors.

21. Polito treated GCR’s operating account as his personal piggybank, regularly withdrawing money to live an increasingly lavish lifestyle. Over a 3 year period, Polito leased 76 luxury cars, including Rolls Royces and Lamborghinis. He also used investor funds to buy over \$1 million worth of watches, to vacation in exotic locations around the world, and to purchase in cash his Allen, Texas home.

D. The Fraud Runs Out.

22. In early 2014, Polito was running short on funds to pay investors in the fraudulent EOG wells. Because Polito had referred investors to the Texas Railroad Commission website, investors could see that the wells GCR allegedly owned were doing very well and producing oil. Polito hoped EOG would drill some dry holes, but they never did. To delay revenue, Polito told investors that EOG had switched from a monthly payment system to a quarterly one. One investor balked at this lie and began the process of suing EOG. This litigation alerted EOG to Defendants’ false claims of ownership in EOG wells, and the scheme slowly unraveled. In June of 2014, EOG sent Polito a Cease & Desist letter and published a statement on its website disclaiming any relationship with GCR. Shortly thereafter, Polito terminated all of the company’s salesmen.

23. In September 2014, Polito confessed his fraudulent activity to Commission representatives.

E. Polito Acted As An Unregistered Broker.

24. Section 15(a)(1) of the Exchange Act prohibits a broker or dealer from using jurisdictional means such as the telephone or mails to effect transactions in securities unless the broker or dealer is registered with the SEC. Section 3(a)(4) of the Exchange Act defines a “broker” as any person who is engaged in the business of effecting transactions in securities for the account of others.

25. During all relevant periods, and while not registered as a broker with the Commission or associated with a registered broker-dealer, Polito used the telephone and the mails to actively solicit investors to purchase interests in GCR securities, and he thereby effected purchases and sales of securities for the accounts of others. Polito also handled investor funds, advised on the merits of the fake EOG well interests, and received compensation derived from the proceeds raised.

26. In addition, Polito hired, directed, and supervised sales agents, and paid the sales agents transaction-based compensation. Through these activities, Polito acted as an unregistered broker.

FIRST CLAIM

**Fraud
Violations of Section 17(a) of the Securities Act**

Against GCR and Polito

27. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 26 of this Complaint by reference as if set forth in this Claim.

28. Defendants GCR and Polito directly or indirectly, singly or in concert with others, in the offer or 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)

obtained money or property by means of untrue statements of a material fact and omitted to state a material fact 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, and courses of business which operate or would operate as a fraud and deceit upon the purchasers.

29. With respect to violations of Sections 17(a)(2) and (3) of the Securities Act, Defendants GCR and Polito were negligent in their actions regarding the representations and omissions alleged herein. With respect to violations of Section 17(a)(1) of the Securities Act, Defendants GCR and Polito made the referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

30. For these reasons, Defendants GCR and Polito have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

SECOND CLAIM

Fraud

Violations of Section 10(b) of the Exchange Act and Rule 10b-5

Against GCR and Polito

31. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 26 of this Complaint by reference as if set forth in this Claim.

32. Defendants GCR and Polito, directly or indirectly, singly or in concert with others, in connection with the purchase or 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 a material fact and omitted to state a material fact 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 or would operate as a fraud and deceit upon purchasers, prospective purchasers, and any other persons.

33. Defendants GCR and Polito made the above-referenced misrepresentations and omissions knowingly or with severe recklessness regarding the truth.

34. For these reasons, Defendants GCR and Polito violated and, unless enjoined, will continue to violate 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].

THIRD CLAIM

Offers and Sales of Unregistered Securities Violations of Sections 5(a) and 5(c) of the Securities Act

Against GCR and Polito

35. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 26 of this Complaint by reference as if set forth in this Claim.

36. Defendants GCR and Polito, directly or indirectly, singly and in concert with others, have been offering to sell, selling and delivery after sale, certain securities, and have been, directly and indirectly, (a) making 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) carrying and causing to be carried through the mails and in interstate commerce by the means and instruments of transportation, such securities for the purpose of sale and for delivery after sale; and (c) making use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

37. As described herein, Defendants GCR and Polito offered and sold fraudulent interests in oil and gas wells to investors. No registration statement has been filed with the Commission or is otherwise in effect with these securities.

38. By reason of the foregoing, Defendants GCR and Polito violated, and unless enjoined, will continue to violate Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and 77(e)(c)].

FOURTH CLAIM

Offers and Sales of Securities by an Unregistered Broker-Dealer Violations of Exchange Act Section 15(a) [15 U.S.C. § 78o(a)]

Against Polito

39. Plaintiff Commission re-alleges and incorporates paragraphs 1 through 26 of this Complaint by reference as if set forth in this Claim.

40. Defendant Polito, while engaged in the business of effecting transactions in securities for the account of others, made use of the mails or the means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, a security without being registered in accordance with Section 15(a) of the Exchange Act.

41. Defendant Polito violated, and unless restrained and enjoined will in the future violate, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

RELIEF REQUESTED

Plaintiff Commission respectfully requests that this Court:

(1) Permanently enjoin Defendants from violating Sections 5(a), 5(c), and 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Sections 10(b) and 15(a) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78o(a)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder;

(2) Prohibit Defendant Polito under Section 20(e) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78l], from acting as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports under Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)];

(3) Permanently enjoin Defendant Polito from: (a) directly or indirectly, soliciting investors existing or potential investors to purchase or sell securities, provided however, that such injunction shall not prevent Polito from purchasing or selling securities for his own account; and (b) directly or indirectly, participating in any oil and gas related securities offering, including: acting as a manager, administrator, promoter, finder, consultant, agent, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance of interests in oil and gas investments;

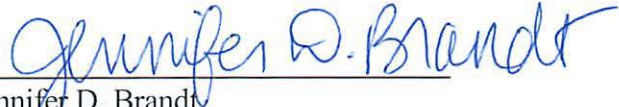
(4) Order Defendants to disgorge an amount equal to the funds and benefits obtained illegally, or to which it/he is otherwise not entitled, as a result of the violations alleged, plus prejudgment interest on that amount;

(5) Order Defendant Polito to pay civil monetary penalties in an amount determined appropriate by the Court 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. § 78u(d)] for the violations alleged herein;

(6) Order such other relief as this Court may deem just and proper.

DATED: April 6, 2015

Respectfully submitted,



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