

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)
CUNNINGHAM ENERGY LLC)
RYAN E. CUNNINGHAM)
KEVIN THIBEAU)
JAMES LOCKHART)
MICHAEL MERRITT)
DOUGLAS HARDWICK)
JAN PETER BOLTON)
RESPONDENTS)
)
ADMINISTRATIVE ORDER
NO. CD-2016-0011

CEASE AND DESIST ORDER

The Alabama Securities Commission ("Commission"), having the authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act, upon due consideration of the subject matter hereof, has determined as follows.

RESPONDENTS

1. CUNNINGHAM ENERGY LLC ("CE LLC") is a West Virginia Limited Liability corporation with a principle business address of 3230 Pennsylvania Avenue Charleston, West Virginia 25302.
2. RYAN E. CUNNINGHAM ("R. CUNNINGHAM"), at all times relevant, acted as the President and Chief Executive Officer of CE LLC with a principal business address of 3230 Pennsylvania Avenue Charleston, West Virginia 25302.
3. KEVIN THIBEAU ("THIBEAU"), at all times relevant, acted as Director of Investor Relations with CE LLC with a residential address of 7732 Oak Country Lane Mansfield, Texas 76062.
4. JAMES M. LOCKHART, JR. ("LOCKHART"), at all times relevant, acted as an Account Executive with CE LLC with a residential address of 301 Colinas Boulevard Irving, Texas 75039.

5. MICHAEL C. MERRITT ("MERRITT"), at all time relevant, acted as an Account Executive with **CE LLC** with a residential address of 4300 Bilglade Road Fort Worth, Texas 76109.

6. DOUGLAS R. HARDWICK ("HARDWICK"), at all time relevant, acted as an Account Executive with **CE LLC** with a residential address of 1311 Rocky Creek Lane Allen, Texas 75002.

7. JAN PETER BOLTON ("BOLTON"), at all time relevant, acted as an Account Executive with **CE LLC** with a residential address of 8609 San Joaquin Trail Fort Worth, Texas 76118.

STATEMENT OF FACTS

8. The Commission received information that in June 2011, **THIBEAU**, representing **CE LLC**, cold called an Alabama resident to offer an investment in a multi-well natural gas development drilling project called Big Sandy 5. On June 24, 2011, after several subsequent calls by **THIBEAU** to the Alabama resident, **CE LLC** and **THIBEAU** offered and sold ".25% units" of working interest to the Alabama resident for the sum of \$8,200.00. A subsequent sale of an additional ".25% units" of working interest was sold to the same Alabama investor on September 13, 2011 in the amount of \$8,200.00, for a total investment of \$16,400.00 into the Big Sandy 5 project. The operating agreement contained in the execution documents to the Big Sandy 5 model form operating agreement states that **CE LLC** is the "Operator" on all projects and identifies **R. CUNNINGHAM** as the President of **CE LLC**.

9. On January 24, 2012, **THIBEAU** again telephoned the Alabama resident stating that **CE LLC** was seeking investments in another project named Rainmaker 11. **THIBEAU** solicited and sold the Alabama resident ".125% units" of working interest of the **CE LLC** project Rainmaker 11 for the sum of \$9,790.00. The operating agreement contained in the execution documents to the Rainmaker 11 model form operating

agreement states that **CE LLC** is the “Operator” on all projects and identifies **R. CUNNINGHAM** as the President of **CE LLC**.

10. On August 28, 2012, **THIBEAU** solicited and sold to the Alabama resident “.25% units” of working interest of the **CE LLC** project Thunder Horse 5 for the sum of \$8,437.50. The operating agreement contained in the execution documents to the Thunder Horse 5 model form operating agreement states that **CE LLC** is the “Operator” on all projects and identifies **R. CUNNINGHAM** as the President of **CE LLC**.

11. On August, 05, 2016, the Commission received records from **CE LLC** showing that seventeen Alabama residents were solicited by **THIBEAU, LOCKHART, MERRITT, HARDWICK or BOLTON** and subsequently purchased units of working interest in ten **CE LLC** projects. The commissions paid to the respondents by **CE LLC** for sales to the seventeen Alabama residents are listed below:

| | |
|-----------------|--------------|
| THIBEAU | \$34,978.65 |
| LOCKHART | \$118,762.50 |
| MERRITT | \$3,450.00 |
| HARDWICK | \$4,020.50 |
| BOLTON | \$2,619.00 |

12. The PPMs describe the investments offered to the Alabama residents as the participation in units of interest in a joint venture to be formed under West Virginia partnership law to engage primarily in the business of participation in the drilling of oil wells and natural gas.

13. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on October 12, 2016 disclosing no record of registration or any perfected exemption for the securities, to wit: units of working interest in the **CE LLC** projects.

14. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on October 14, 2016 disclosing no record of registration for **R. CUNNINGHAM, THIBEAU, LOCKHART, MERRITT, HARDWICK or BOLTON** as a broker

dealer agent, investment advisor, or investment advisor representative in the state of Alabama.

15. A review of the files of the Registration Division of the Alabama Securities Commission was conducted on October 12, 2016 disclosing no record of registration for **CE LLC** as a broker dealer in the state of Alabama.

CONCLUSIONS OF LAW

16. Pursuant to Section 8-6-2(10), Code of Alabama 1975, the definition of security includes any "...participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease...". The working interests sold in the various projects of **CE LLC** base investment returns on the production from oil, gas or other mining interests and are securities under the Act.

17. Pursuant to Section 8-6-2(2), Code of Alabama 1975, the definition of "Agent" includes any individual who represents a dealer or issuer in effecting or attempting to effect sales of securities. By soliciting and effecting sales of working interests in the various **CE LLC** projects to Alabama residents; **THIBEAU, LOCKHART, MERRITT, HARDWICK or BOLTON** are securities "Agents" as defined in the Act.

18. Pursuant to Section 8-6-3(a), Code of Alabama 1975, it is unlawful for any person to transact business in the state as a dealer or agent for securities unless they are registered under the Act. By soliciting and effecting sales of the working interests of to Alabama residents, **THIBEAU, LOCKHART, MERRITT, HARDWICK or BOLTON** acted as agents of **CE LLC** while not being registered with the Commission in violation of the Act.

19. Pursuant to Section 8-6-3(a), Code of Alabama 1975, it is unlawful for any dealer or issuer to employ an agent unless the agent is registered under the Act. **CE LLC** and **R. CUNNINGHAM**, as President and CEO of **CE LLC**, caused or allowed the employment of unregistered agents to solicit sales of securities in Alabama in violation of the Act.

This Order is appropriate in the public interest for the protection of investors and consistent with the purposes of the Alabama Securities Act.

This Order does not prevent the Commission from seeking such other civil or criminal remedies that may be available to it under the Alabama Securities Act.

Additionally, if the allegations set forth herein are found to be true, through either administrative adjudication, failure of the **RESPONDENTS** to make a timely request for hearing, or default of the **RESPONDENTS**, it is the intention of the Commission to impose sanctions upon the **RESPONDENTS**. Such sanctions may include, *inter alia*, an administrative assessment imposed on **RESPONDENTS**, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against **RESPONDENTS**, and a permanent order to bar **RESPONDENTS** from participation in any securities related industry in the state of Alabama.

ACCORDINGLY, IT IS HEREBY ORDERED that **RESPONDENTS** immediately **CEASE AND DESIST** from further offers or sales of any security into, within or from the state of Alabama.

Entered at Montgomery, AL, this 5th day of December, 2016.

ALABAMA SECURITIES COMMISSION
401 Adams Avenue Suite 280
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(334) 242-22005

BY:

JOSEPH P. BORG
Director