

Schedule "B"

FILED 101 #202
August 31, 2012

Ontario Court

Regional Municipality of York

R vs RASH
File # 10000614
Exhibit # BETWEEN
Produced by CROWN
Date JAN 14 2013
MITCHELL J
Clerk

ONTARIO COURT OF JUSTICE
(Toronto Region)
CENTRAL EAST
ONTARIO SECURITIES COMMISSION

Court Reporter
SUSAN CLARK
JUDGE
WILLIAM GEORGE

- and -

HOWARD RASH

STATEMENT OF FACTS FOR GUILTY PLEA

I. Overview

1. The following facts are presented by the Ontario Securities Commission (the "Commission") upon the plea of guilty by Howard Rash ("Rash") to one count of fraud contrary to section 126.1 of the *Securities Act* (Ontario), the "Act" and to one count of contravening Ontario securities law by trading in securities at a time when he was prohibited from doing so contrary to section 122(1)(c) of the Act.

2. All charges emanate from a course of conduct engaged in by Rash and other persons associated with a company called Global Energy Group, Ltd. ("Global Energy").

3. Rash was at all material times a sales representative of Global Energy and was never a directing mind of that company.

A. Overview of the Global Energy Fraud and Rash's Involvement

i) Overview of the Global Energy Fraud

4. Global Energy operated an unregistered securities sales office, commonly called a boiler room, trading units of a series of limited partnerships called New Gold LLP (the "New Gold Securities") to members of the public.

5. The Global Energy boiler room offices were located at units located at 2727 Steeles Avenue, West in Toronto, Ontario and on Tandem Road in Concord, Ontario (the "Ontario Offices").

6. From approximately June 1, 2007 to June 25, 2008 (the "Material Time"), primarily using telephone solicitations, Rash and other persons associated with Global Energy (the "Global Energy Agents"), sold at least \$14.75 million (U.S.) worth of New Gold Securities to approximately 200 members of the public (the "New Gold Investors"), the majority of whom lived in western Canada. The New Gold Securities purported to constitute ownership interests in Kentucky oil and gas leases.

7. Rash was employed at Global Energy from mid-September 2007 to mid-June 2008. During that time, 15 to 20 of the persons whom he approached ended up investing with Global Energy.

Rash did not raise \$14.75 million and does not know how much money Global Energy raised before or during his employment.

8. The operations of Global Energy in Ontario were supervised and directed by Vadim Tsatskin ("Tsatskin") and Christina Harper ("Harper").

9. Under the direction and supervision of Tsatskin and Harper, the Global Energy Agents, including Rash, sold the New Gold Securities to members of the public using deceit, falsehood and other fraudulent means.

10. The New Gold Investors were led to believe that the offices of Global Energy were in Kentucky and were instructed by the Global Energy Agents to send their investment funds to bank accounts in Kentucky in the name of American Oil & Gas Resources Inc. ("American Oil & Gas") controlled by Brian Coffman ("Coffman"), a Kentucky lawyer and one of the directing minds of Global Energy. These investor funds were then diverted to number of overseas bank accounts and were also sent back to Canada to the fund operations from the boiler rooms at the Ontario Offices.

11. While Rash was aware that some persons he persuaded to buy New Gold Securities received an invoice with instructions to wire money to American Oil & Gas,, he had no involvement in the design or implementation of these instructions. He further had no knowledge that any monies were sent or diverted overseas accounts as described in paragraph 10.

12. A significant amount of New Gold Investor Funds was transferred to accounts in the Bahamas, Panama, personal accounts controlled by Coffman and to accounts in Toronto linked to Tsatskin, Harper and others. Initially, the New Gold Investors did receive some minimal payments

or royalties in relation to their investments. This was done, in part, to persuade them to reinvest. However, by the time that the illicit scheme was detected by regulatory authorities including Staff, the New Gold Investors had suffered significant losses and received only nominal returns as compared to the returns promised by the Global Energy Agents. Rash was not aware that investor funds were being diverted overseas and to the personal accounts linked to Coffman, Tsatskin, Harper and others.

13. Rash did not own or operate an offshore account at any material time and does not do so at this time. He never received any funds by wire. Other sales staff received commission payments by wire, but Rash received cheques. Other than receiving inquiries from investors as to the quantum and delivery times of the royalty payments, Rash had no knowledge of these matters.

ii) Overview of Rash's Involvement

14. Rash clearly deceived investing members of the public in the following ways:

- i) Rash lied about his true identity by using the alias of David Wells;
- ii) Rash lied about where he was selling securities from, stating that he was in Kentucky when he was in Ontario; and
- iii) Rash improperly withheld from investors and potential investors that he was prohibited by Order of the Commission from trading in securities which would have prohibited him from selling New Gold Securities.

15. By engaging in the conduct set out in the previous paragraph, Rash prevented any members of the public from ascertaining his registration status with the Commission and the fact that he was prohibited from selling New Gold Securities to any member of the public from Ontario.

16. Further, during the course of his solicitations, Rash provided information to members of the public about Global Energy's prior business history, the expertise and qualifications of Global Energy's management, the oil production of the wells purportedly underlying the New Gold Securities and the use of the proceeds from the sale of the New Gold Securities that was false, untrue and/or misleading.

17. Rash primarily relied on information about Global Energy and its operations provided by Tsatskin, Coffman and Harper. While believed the information and made some inquiries, Rash failed to conduct sufficient due diligence to ensure the information being conveyed to investors was correct, in circumstances where he had reason to believe the information was inaccurate.

18. ~~In sum, Rash was willfully blind as to whether this information being conveyed about Global Energy and the investments in New Gold was false.~~

B. Sale of New Gold Securities: Badges of Fraud

19. The following points serve to demonstrate fraud linked to the sale of the New Gold Securities subject to the facts contained in paragraphs 14-¹⁷~~18~~ as they apply to Rash:

- i) There is no record of the registration of the New Gold Securities in Kentucky nor any legitimate evidence of their registration in the Bahamas (Coffman had prepared the Offering Memorandum that was

distributed to prospective investors and Rash had no role in preparing any materials provided to investors or potential investors);

- ii) Investors were told that the senior management of Global Energy had a long history of successful drilling in the oil and gas field. This was incorrect;
- iii) A significant amount of New Gold Investor funds were transferred to accounts in the Bahamas, Panama, personal accounts controlled by Coffman and to accounts in Toronto linked to Tsatskin, Harper, and other individuals involved in the sale of the New Gold Securities;
- iv) Global Energy Agents used aliases when selling the New Gold Securities, Rash used the alias David Wells;
- v) New Gold Investors were misled as to the true ownership and control of Global Energy;
- vi) New Gold Investors were informed or led to believe, by persons including Rash, that the Global Energy sales offices were in Kentucky when in fact they were in Toronto;
- vii) the New Gold Investors were informed by the Global Energy Agents that their funds were being used to fund drilling operations in Kentucky that would yield significant profits from oil and gas wells. This information was grossly exaggerated and fraudulent. **Although** the information was false and overstated, Rash was not aware of the extent of the falsehoods until the execution of the search warrants and until reading the allegations set out on the Commission website; and

- viii) The oil wells in Kentucky that were actually drilled produced little or no oil at all, contrary to the estimates and representations made by Global Energy Agents, Rash became aware of the falsehoods regarding these wells after Global Energy closed; that is, after the execution of the search warrants and the posting of the allegations on the Commission website.

C. Contraventions of the Act by Rash

Fraud

20. From approximately September 2007 up to approximately June 2008, Rash, a resident of Ontario, sold New Gold securities to members of the public from the Ontario Offices under the direction and supervision of Tsatskin and Harper.
21. Rash telephoned members of the public across Canada, from the Ontario Offices, for the purpose of selling the New Gold Securities. During these sales calls, Rash used the alias "David Wells" and represented that he was calling from Lexington, Kentucky.
22. By using an alias and lying about where he was calling from, Rash prevented any member of the public from ascertaining his registration status from the Commission. Rash used an alias because using his real name would have resulted in the discovery of his inability to trade in securities as the result of an existing Commission order. He had been diagnosed with cancer, believed that he did not have long to live and wanted to provide for his family.

23. Subject to the facts set out in paragraphs 13-17, Rash used deceit, falsehood and other fraudulent means when selling New Gold securities to members of the public by, among other things, misrepresenting Global Energy's prior business history, the experience and qualifications of Global Energy's management, the oil production of the wells purportedly underlying the New Gold Securities and the use of proceeds from the sale of the New Gold Securities.

24. Subject to the facts set out in paragraphs 13-17, as part of his solicitations, Rash also forwarded brochures and other promotional materials containing false, inaccurate and misleading information to members of the public for the purpose of convincing them to invest in the New Gold Securities. These materials were provided to Rash by Harper and Tsatskin.

25. Further, on at least one occasion, Rash contacted a New Gold Investor, using the alias "Ray Lewis", and under the pretense of being an investment banker from New York City who had purchased several units of the New Gold Securities. In this call, Rash (aka "Ray Lewis"), attempted to convince the investor about the legitimacy of the Global Energy operation to assist another salesman, Elliot Feder ("Feder") that was attempting to sell the investor additional New Gold Securities.

26. Rash received a commission of approximately 9.5 to 19% of his net sales of the New Gold securities. Some of these Commissions were split with Feder. Investors were not informed of this commission structure.

27. Rash received approximately \$313,461 in sales commissions from his sales of New Gold Securities to members of the public.

28. These actions of Rash in relation to the sale of the New Gold Securities constituted fraud contrary to section 126.1 of the Act.

Breach of Cease Trade Order

29. On July 23, 2007, the Commission made an order pursuant to subsection 127(1) of the Act that, *inter alia*, Rash permanently cease trading in securities (the "Cease Trade Order").

30. Subsection 1(1) of the Act defines "trade" or "trading" as including "any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, installment or otherwise, [...]" and "Ontario securities law" as, *inter alia*, "in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject".

31. As outlined above, from approximately September 2007 to June 2008, Rash traded in New Gold Securities at a time he was subject to the Cease Trade Order and thereby contravened Ontario securities law by trading in securities at a time when he was prohibited from doing so contrary to section 122(1)(c) of the Act.