

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

SECURITIES AND EXCHANGE COMMISSION, §
 Plaintiff, §
 v. §
 ROCKWELL ENERGY OF TEXAS, LLC §
 ROCKWELL ENERGY MANAGEMENT, LLC §
 GREGORY S. SHINDLER, §
 BRADLEY M. JAMES, §
 W. TODD SMITH, §
 STUART E. RAWITT, and §
 BRIAN W. WALSH §
 Defendants. §

Civil Action No.: 4:09-cv-4080

JURY DEMANDED

ORIGINAL ANSWER TO COMPLAINT

Defendants Rockwell Energy of Texas, LLC (“REOT”), Rockwell Energy Management, LLC (“REM”), Gregory S. Shindler, and Bradley M. James file this Answer to Plaintiff’s Complaint:

FIRST DEFENSE

In response to the specific allegations of plaintiff’s complaint, defendants state the following:

1. In response to paragraph 1, Defendants admit only that Greg Shindler, along with REOT, created and managed Rockwell Energy Production & Acquisition Fund, L.P. (“Fund I”), which raised 3.5 million dollars from approximately 77 limited partners, the great majority of whom are accredited investors; that Greg Shindler, along with REM, created and managed Rockwell Energy Acquisition Fund, L.P. (“Fund II”), which raised approximately 2 million

dollars from approximately 58 limited partners, the great majority of whom are accredited investors; that Bradley James for a period of about four months was a co-operator of Fund II; and that neither fund was registered with Commission. Defendants deny that either fund was fraudulent and further deny that either fund was not exempt from registration.

2. Defendants deny all the allegations of paragraph 2 and specifically point out that the offering materials advised limited partners that they could earn up to 1.5%, but explained that there were significant risk factors that could affect the general partner's ability to distribute 1.5% per month.

3. Defendants deny all the allegations of paragraph 3.

4. Defendants admit only that the Commission has brought this action; though defendants deny that plaintiff is entitled to the relief it seeks.

5. Defendants admit the allegations of paragraph 5.

6. Paragraph 6 requires no response from these defendants, though defendants deny that plaintiff is entitled to the relief it seeks.

7. Defendants admit that the Court has jurisdiction over this matter.

8. Defendants admit that they used the mail in connection with the transactions described in plaintiff's complaint.

9. Defendants admit that venue is proper in this court.

10. Defendants admit the allegations of paragraph 10.

11. Defendants admit the allegations of paragraph 11

12. Defendants admit the allegations of paragraph 12, with the exception of the allegation of Mr. Shindler's age.

13. Defendants admit the allegations of paragraph 13.

14. Paragraph 14 does not require a response from defendants, as it does not relate to them.

15. Paragraph 15 does not require a response from defendants, as it does not relate to them.

16. Paragraph 16 does not require a response from defendants, as it does not relate to them.

17. Defendants admit only that the Rockwell Energy funds were structured as limited partnerships, each with 35 \$100,000 units and that the funds raised approximately 3.5 million and 2 million respectively. Defendants deny that they offered and sold interests in the Rockwell Energy funds to the public through general solicitations of interest.

18. Defendants admit that the PDS unit was a feature of Fund I, but that the fund was generally created to own oil and gas production that would generate a monthly income. Defendants admit the remaining allegations of paragraph 18.

19. Defendants only admit that some of the quoted language appears in the offering materials but point out that the quotations have been taken out of context. Defendants deny the remaining allegations of paragraph 19.

20. Defendants admit the allegations of paragraph 20.

21. Defendants deny the allegations of paragraph 21, except to state that Mr. Shindler did not ultimately transfer to Fund I his interest in the non-performing well—which had been pledged to Fund I—because of its non-performance.

22. In response to paragraph 22, defendants admit only that the offering materials include a “case study” that describes the benefits of PDS technology. Defendants deny the remaining allegations of paragraph 22.

23. Defendants deny the allegations of paragraph 23.

24. Defendants deny the implied meaning of the first sentence of paragraph 24; defendants admit the remaining allegations of paragraph 24.

25. In response to paragraph 25, defendants admit only that the Fund I offering materials contain some of the quoted language, along with explanations that the anticipated payout was dependent upon certain minimum prices of oil & gas (which prices have not been reached since mid-2008) and additionally advised investors of significant risks that could affect the Fund's ability to make those payments. Defendants deny the remaining allegations of paragraph 25.

26. Defendants admit that limited partners began receiving monthly returns—consisting of production revenue and/or other income (authorized by the PPM and/or the Limited Partnership Agreement) soon after they invested in Fund I. Defendants deny the remaining allegations of paragraph 26.

27. In response to paragraph 27, defendants admit that the Fund needed \$52,500 in monthly production revenue to distribute 1.5% to all subscribers after the fund was fully subscribed, but deny that this was a distribution “commitment.” Defendants deny the remaining allegations of paragraph 27.

28. In response to paragraph 28, defendants admit only that limited partners received monthly distribution payments based upon revenue received. Defendants deny the remaining allegations of paragraph 28.

29. Defendants deny the allegations of paragraph 29.

30. In response to paragraph 30, defendants admit only that Fund I made a loan of \$130,000 to James Gray, an entity co-owned by James's brother, which agreed to pay interest on the loan.

31. Defendants deny the allegations of paragraph 31.

32. Defendants admit only that Fund I invested in the Winsome Investment Trust for the purpose of generating income for the Fund in a time of declining gas prices. Defendants deny the remaining allegations of paragraph 32.

33. Defendants admit that the general partner of Fund I is entitled to management fees equal to 10% of the gross monthly revenue generated by the Fund. Defendants deny the remaining allegations of paragraph 33.

34. Defendants deny that investor funds were used for questionable or improper purposes.

35. In response to the allegations of paragraph 35, defendants admit only that on one occasion, after determining what the monthly income would be through communications with the operators of the wells in which Fund I owned an interest, the acquisition account for Fund I made a short-term loan to Fund I's distribution account in the amount of those anticipated payments, so that a distribution payment could be made by the 15th of the month. REOT and Mr. Shindler thereafter advised the limited partners that distributions would be made after REOT received revenue from the Fund I's investments rather than on the 15th of the month. Defendants deny the remaining allegations of paragraph 35 and specifically deny that any Ponzi payment was ever made in connection with either fund.

36. In response to paragraph 36, defendants admit only that Shindler agreed to place remaining funds in escrow. Defendants deny the remaining allegations of paragraph 36.

37. Defendants admit only that Fund II was created for the purpose of acquiring oil & gas properties. The PPM for Fund II is distinct from that for Fund I.

38. Defendants admit only that the PPM for Fund II described the investment purposes of the Fund and that the General Partner had discretion in substituting one “target acquisition” for another. Defendants deny that the PPM contained material misrepresentations.

39. In response to paragraph 39, defendants admit only that Mr. Shindler and Mr. James reviewed and approved the offering materials for Fund II, and that the materials stated that, while the general partner anticipated distributing, and hoped to distribute, 1.5% per month to limited partners, there were significant risk factors that could affect the general partner’s ability to do so. Defendants deny the remaining allegations of paragraph 39.

40. Defendants admit only that the property Fund II was able to acquire prior to the SEC’s halting further acquisitions was an interest in an oil and gas lease on which no well had yet been drilled. Defendants deny the remaining allegations of paragraph 40.

41. In response to the allegations of paragraph 41, defendants admit only that Fund II entered into an agreement under which it would, with TOEI-3 LLC and Redstone Oil & Gas, acquire oil and gas leases and royalty interests in the Sealy prospect in Grimes County, Texas, and that James—among other reasons, to avoid any conflicts of interest—resigned from Fund II.

42. In response to the allegations contained in paragraph 42, defendants admit only that Fund II entered into an agreement under which it would, along with TOEI-3 LLC and Redstone Oil & Gas, acquire oil and gas leases and royalty interests in the Sealy Prospect in Grimes County, Texas; that Fund II made a \$500,000 payment directly to TOEI, and that TOEI used \$375,000 of the payment to purchase a 1500 acre lease.

43. Defendants admit that the agreement with TOEI contained these and other provisions and that such payments were distributed to the limited partners of Fund II.

44. In response to paragraph 44, defendants refer to the specific terms of the agreement with TOEI and deny the characterizations of defendants' communications with limited partners.

45. In response to paragraph 45, defendants admit that the transaction was structured to generate monthly returns on the amount Fund II invested with TOEI, but deny the remaining allegations of paragraph 45.

46. Defendants deny the allegations of paragraph 46.

47. In response to the allegations of paragraph 47, defendants admit only that Shindler agreed to place the remaining funds in escrow. Defendants deny the remaining allegations of paragraph 47.

48. In response to paragraph 48, defendants admit that the PPMs for the two funds stated that only registered broker-dealers would sell limited partnership interests; that defendants later learned, when the SEC began to take action against one of these dealers, that that dealer was not registered with the SEC and immediately ceased any further business dealings with that dealer; that, still later, when the SEC began its inquiry of these defendants, defendants learned that the other dealers were not registered; and that defendants thereafter had no further business dealings with those dealers. Defendants deny the remaining allegations of paragraph 48 and deny that the entirety of the payments to these dealers was for commissions or promotional fees.

49. In response to paragraph 49, defendants admit only that fees were paid to limited partner representatives, but defendants deny that the entirety of the payments were for commissions or sales related fees. Defendants deny knowledge of the remaining allegations.

50. Defendants deny the allegations of paragraph 50.

51. Defendants deny the allegations of paragraph 51.

52. Defendants deny the allegations of paragraph 52.

53. In response to paragraph 53, defendants admit that Shindler met with Walsh, who gave him input on putting together offering materials and structuring the limited partnerships, and that he advised Mr. Shindler that he had a database of clients whom he knew, with whom he had done business, who were accredited investors, and who were interested in participating in oil and gas investment opportunities. Defendants deny the remaining allegations of paragraph 53.

54. In response to paragraph 54, defendants repeat their responses to paragraphs 1-53 of this Answer and incorporate them by reference as if set forth verbatim.

55. Defendants deny the allegations of paragraph 55.

56. Defendants deny the allegations of paragraph 56.

57. Defendants deny the allegations of paragraph 57.

58. Defendants deny the allegations of paragraph 58.

59. In response to paragraph 59, defendants repeat their answers to paragraphs 1-53 of this Answer and incorporate them by reference as if set forth verbatim.

60. Defendants deny the allegations of paragraph 60.

61. Defendants deny the allegations of paragraph 61.

62. Defendants deny the allegations of paragraph 62.

63. Defendants deny the allegations of paragraph 63.

64. In response to paragraph 64, defendants repeat their answers to paragraphs 1-53 and incorporate them by reference as if set forth verbatim.

65. In response to paragraph 65, defendants admit only that they used the mail in connection with the limited partnership interests at issue in this case.

66. In response to paragraph 66, defendants admit that no registration statement has been filed with the Commission with respect to the limited partnership interests at issue in this case. Defendants deny remaining allegations of paragraph 66.

67. In response to paragraph 67, defendants admit that defendant Shindler approved the offering documents and approved engaging dealers as client-representatives.

68. The allegations of paragraph 68 do not relate to these defendants.

69. Defendants deny the allegations of paragraph 69.

70. The allegations contained in paragraph 70 do not relate to these defendants and, therefore, no answer is required.

71. The allegations contained in paragraph 71 do not relate to these defendants and, therefore, no answer is required.

72. The allegations contained in paragraph 72 do not relate to these defendants and, therefore, no answer is required.

73. The allegations contained in paragraph 73 do not relate to these defendants and, therefore, no answer is required.

74. The allegations contained in paragraph 74 do not relate to these defendants and, therefore, no answer is required.

75. Defendants deny that the plaintiff is entitled to any of the relief for which it prays.

SECOND DEFENSE: FAILURE TO STATE A CLAIM

76. Plaintiff's complaint fails to state a claim on which relief can be granted. FED. R. Civ. P. 12(b)(6).

THIRD DEFENSE

77. Plaintiff's complaint fails to meet the requirements of FED. R. CIV. P. 9(b).

FOURTH DEFENSE


78. The securities at issue in this case are exempt from registration under Regulation D, 17 C.F.R. § 230.501 – 508, as they were sold to accredited investors.

FIFTH DEFENSE

79. Defendants at all times acted in good faith in connection with the transactions at issue in this case.

WHEREFORE, defendants Rockwell Energy of Texas, LLC, Rockwell Energy Management, LLC, Gregory S. Shindler, and Bradley M. James respectfully pray that the Court dismiss all claims against them and for such other and further relief to which they may show themselves entitled.

Respectfully submitted,

By: 

Linda Broocks
Fed. Bar No. 931

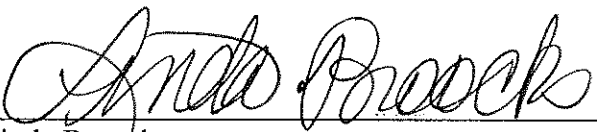
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Answer was forwarded to counsel electronically, and/or fax, this 2th day of February, 2010, as follows:

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Linda Broocks