STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:	)	
	)	
UNITY OIL & GAS, a/k/a UNITY OIL & GAS	)	
LLC; and DAVID E. ROPER,	)	Case No.: AP-17-26
	)	
Respondents.	)	

FINAL ORDER TO CEASE AND DESIST AND ORDER AWARDING RESTITUTION, CIVIL PENALTIES, AND COSTS

Now on the 31st day of January, 2018, the Commissioner, having reviewed this matter, issues the following findings and order:

I. PROCEDURAL BACKGROUND

1. On October 3, 2017, the Enforcement Section of the Missouri Securities Division of the Office of Secretary of State ("Enforcement Section"), through Director of Enforcement Saundra J. McDowell, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed.

2. On October 10, 2017, the Missouri Commissioner of Securities (the "Commissioner") issued an Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed (the "Order"). On that same day, a copy of the Order and Notice of Right to Request a Hearing were sent, via U.S. Certified mail, return receipt requested, to Respondents' last known addresses.

3. On or around October 10, 2017, a copy of the Order was made available to the general public on the Missouri Secretary of State's website.[1]

4. On December 6, 2017, the Respondents were served pursuant to Section 409.6-611(b), RSMo. (2016),[2] by providing a copy of the process to the Office of the Commissioner.

5. On December 6, 2017, the Office of the Commissioner sent, via U.S Certified Mail, return receipt requested, a copy of the Order and Notice of the Service to Respondents'

[1] https://www.sos.mo.gov/CMSImages/Securities/AP-17-26.pdf.
[2] Unless otherwise noted, all statutory references are to the 2016 Revised Statutes of Missouri.

last known addresses., and via email to untoil@ymail.com. A delivery confirmation email notice was received, which indicates the email was at least received by the email address listed.

6. On December 6, 2017, the Enforcement Section filed an Affidavit of Compliance with Section 409.6-611 demonstrating that the Enforcement Section had exercised reasonable steps to give notice to the Respondents and that substitute service on the Commissioner was justified.

7. On December 13, 2017, the Office of the Commissioner received the envelope containing a copy of the Order and Notice of the Service sent to Respondent Unity at 5724 Forest Bend Drive, Suite C3, Arlington, Texas 76017. The envelope was marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward."

8. On January 23, 2018, the Enforcement Section submitted a Motion for Final Order.

9. Respondents have failed to request a hearing within the time allowed by Section 409.6-604

10. The Commissioner has not ordered a hearing in this matter pursuant to Section 409.6-604.

11. To date, the Respondents have failed to respond to the Motion for Final Order.

II. FINDINGS OF FACT

A. Summary

12. In July 2012, Phillip M. Hudnall ("Hudnall") and/or Pharyn Resources, Inc. ("Pharyn") began soliciting an investment in oil and gas wells from an elderly Ballwin, Missouri resident ("MR"). On or about September 1, 2012, MR decided to invest $40,000 with Hudnall. At that time, Hudnall told MR to make the check out to Unity Oil & Gas, a/k/a Unity Oil & Gas LLC ("Unity"). Hudnall told MR that David E. Roper ("Roper"), the owner of Unity, handles the "finances" for Pharyn. MR was promised a monthly return on the investment via payments from Roper and/or Unity. MR received approximately nine payments in the 12 months following the investment, after which the payments ceased. The nine payments received totaled only half of the promised monthly amount. Roper and Hudnall were not registered to sell securities in Missouri, and the security they sold was also not registered.

B. Respondents

13. Unity is an alleged Texas company with a last known address of 5724 Forest Bend Drive, Suite C3, Arlington, Texas 76017. A search of the Texas Secretary of State's business organization registration database found no record of Unity.

14. Roper is 43 years-old with a last known address of 416 Holly Park Drive, Apt. 1117, Arlington, Texas 76014. Roper is the purported owner of Unity.

15. Pharyn is a Colorado corporation, formed on November 1, 2005, with a registered agent mailing address of P.O. Box 1435, Colorado Springs, Colorado 80901. Pharyn registered to do business as a Foreign for Profit corporation in Kansas on December 20, 2007, with a registered agent mailing address of 13970 Santa Fe Trail Drive, Lenexa, Kansas 66215. Hudnall is the president and director on Pharyn's Kansas registration with a mailing address of 15621 West 87th Street, Suite 262, Lenexa, Kansas 66219.

16. Hudnall is 47 years-old with a last known address of 9706 Wild Rose Lane, Lenexa, Kansas 66227. Hudnall was the only member and owner of Pharyn.

17. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, Roper was not registered as a broker-dealer agent, investment adviser representative or issuer agent in the state of Missouri.

18. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, there was no registration, granted exemption, or notice filing indicating status as a "federal covered security" for the securities offered and sold by Respondents.

19. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, Unity was not registered as a broker-dealer firm or investment adviser in the state of Missouri.

C. Enforcement Section's Investigation

Missouri Resident

20. In September 2013, the Enforcement Section opened an investigation on Roper and Hudnall after receiving a complaint from MR, a 75 year-old Ballwin, Missouri resident.

21. From September 2013, through August 2017, the Enforcement Section was in contact with and received information from MR. Information received from MR revealed the following:

    a. in or around July 2012, Hudnall and/or Pharyn solicited an investment in oil and gas wells from MR;

    b. MR received a brochure from Hudnall regarding the investment with charts showing the amount of oil being produced from these wells located in Kansas;

    c. prior to investing, MR drove to Lenexa, Kansas to meet with Hudnall. MR wanted to see the leased oil fields in person and discuss the investment being offered by

Hudnall. Hudnall told MR the investment was not risky because the oil field was already producing oil;

d. when MR decided to invest, MR contacted Hudnall who instructed MR to make the investment check out to Unity;

e. Hudnall told MR that Roper and Unity "handle[] Pharyn's finances" and act like "the bank" for Hudnall and Pharyn;

f. on or about September 1, 2012, MR invested $40,000, with Hudnall via Roper and/or Unity;

g. MR was to receive monthly revenue payments from the investment with Hudnall via Roper and Unity;

h. Hudnall told MR that Pharyn would send the appropriate percentage of profit from the oil wells to Roper/Unity, who would then send MR's portion of the monthly revenue distribution to MR;

i. Hudnall told MR the $40,000 would purchase 1/6 of a leased oil field that was already producing oil and would supply MR with monthly payments of approximately $1,100;

j. in the 12 months after MR invested, MR received approximately nine monthly payments, averaging $428 a month;

k. after the payments stopped, MR began contacting Roper to ask why the monthly payments had stopped. Roper told MR that Hudnall had stopped sending the oil revenue distribution and to contact Hudnall about the stoppage of payments;

l. in January 2013, MR contacted Hudnall regarding MR's Schedule K-1 tax statement ("K-1") for the investment and Hudnall told MR that the K-1 had been sent to Roper;

m. in an attempt to get more information, MR traveled to Texas and met with Roper in July 2013. During that meeting, Roper said the reason he stopped sending payments to MR was because Hudnall stopped sending the money to Roper. Roper also stated that MR's K-1 would be sent "any day";

n. MR received one more monthly payment this time from Hudnall/Pharyn, dated October 5, 2013, for $475.52, but MR was unable to cash the check due to insufficient funds in Pharyn's bank account; and

o. MR has not received any payments since October 2013.

D. Enforcement Section's Letter to Respondents

22. On February 1, 2017, the Enforcement Section sent, via regular and U.S. Certified Mail to 416 Holly Park Drive, Apt. 1117, Arlington, TX 76014, a written request for information to Roper. The response to the written request from Roper was due on February 21, 2017.

23. The Enforcement Section's written request for information asked Roper for among other things the following information:

    a. a detailed explanation, in narrative form, of the business in which Roper and Unity engaged in from January 1, 2012, to the present;

    b. a detailed explanation, in narrative form, of the relationship Roper and Unity had with Hudnall and Pharyn;

    c. a list of all Missouri residents and/or entities who are investors with, or have supplied funds to Roper and/or Unity;

    d. a detailed narrative of how funds received from any Missouri individuals and/or entities were/are used; and

    e. any claim of exemption from registration or exception from definition of a security upon which Roper and Unity are relying to sell securities in and/or from Missouri.

24. On or about February 1, 2017, the Enforcement Section attempted to contact Roper via two different phone numbers regarding the written request for information. A voicemail was left at one of the phone numbers, and an elderly women answered at the second phone number who stated that Roper was not currently at that location, but Roper would be back later. The women took the Enforcement Section member's name and contact information, but the Enforcement Section never received a call back from Roper.

25. On or about February 22, 2017, since a response from Roper had not been received, the Enforcement Section sent Roper an email at untoil@ymail.com asking for the status of his response to the Enforcement Section. This email address is known to the Enforcement Section to have been used by Hudnall and Roper for communications. The email also contained a copy of the February 1, 2017, written request for information.

26. On February 28, 2017, the written request for information sent to Roper via certified US Mail was returned to the Enforcement Section marked "Unclaimed/Unable to Forward."

27. On August 10, 2017, the Missouri Commissioner of Securities issued a Consent Order; AP-17-17, ordering Hudnall among other things, to pay MR $33,000 in restitution.

28. As of September 20, 2017, a response from Roper to the written request for information has not been received by the Enforcement Section.

III. CONCLUSIONS OF LAW

29. Because Respondents failed to request a hearing within the time allowed by Section 409.6-604, and because the Commissioner never ordered such a hearing, the Order issued on October 10, 2017, against Respondents became **FINAL** by operation of law.

Multiple Violations of Offering and Selling Unregistered, Non-Exempt Securities

30. **THE COMMISSIONER CONCLUDES** that Respondents violated Section 409.3-301 when Respondents offered and sold an unregistered, nonexempt security and/or materially aided the offer or sale of an unregistered, nonexempt security in the state of Missouri by, among other things:

    a. mailing documents to MR to invest in oil and gas wells;

    b. receiving a $40,000 investment in oil and gas wells from MR;

    c. promising a monthly return on MR's investment that was dependent upon the efforts of others and not on the efforts of MR; and

    d. sending MR approximately nine monthly payments averaging $428.

31. These activities constitute an offer and sale as those terms are defined in Section 409.1-102(26).

32. The investment that Respondents offered and sold constitute a security as that term is defined in Section 409.1-102(28).

33. At all times relevant to this matter, there was no registration, granted exemption, or notice filing indicating status as a "federal covered security" for the security offered and sold by Respondents.

34. Respondents offered and sold a security in Missouri without the security being (1) a federal covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-203, or (3) registered under the Missouri Securities Act of 2003.

35. At the time Respondents engaged in the conduct set forth above, MR was more than 60 years-old and was considered an elderly person as that term is defined under Section 409.6-604(d)(3)(B).

36. Respondents' conduct in violation of Section 409.3-301 constitutes an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

Violation of Transacting Business as an Unregistered Agent

37. **THE COMMISSIONER FURTHER CONCLUDES** that Roper violated Section 409.4-402(a) when Roper transacted business as an unregistered agent in the state of Missouri.

38. Roper was a purported owner of Unity.

39. Roper offered and/or sold a security to an investor on behalf of Unity by, among other things, offering and/or selling an investment in oil and gas wells to MR.

40. This activity constitutes transacting business in the state of Missouri under Section 409.1-102(1).

41. At all times relevant to this matter, Roper was not registered as a securities agent in the state of Missouri.

42. At the time Roper engaged in this conduct, MR was more than 60 years-old and was considered an elderly person as that term is defined under Section 409.6-604(d)(3)(B).

43. Roper transacted business in Missouri by offering and/or selling a security without being registered or exempt from registration as an agent in violation of Section 409.4-402(a).

44. Roper's conduct in violation of Section 409.4-402(a) constitutes an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

Violation of Employing an Unregistered Agent

45. **THE COMMISSIONER FURTHER CONCLUDES** that Unity violated Section 409.4-402(d) when Unity employed and/or associated with an unregistered agent in the state of Missouri.

46. Unity employed Roper, who offered and sold a security on behalf of Unity.

47. Unity's activities constitute employing and/or associating with an agent in the state of Missouri under Section 409.4-402(d).

48. At all times relevant to this matter, Unity had no registration or granted exemption for any agents of Unity to transact business in the state of Missouri.

49. Unity employed and/or associated with Roper, who transacted business in Missouri as an agent without being registered or exempt from registration as an agent, in violation of Section 409.4-402(d).

50. At the time Unity engaged in this conduct, MR was more than 60 years-old and was considered an elderly person as that term is defined under Section 409.6-604(d)(3)(B).

51. Unity's conduct in violation of Section 409.4-402(d) constitutes an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

Multiple Violations of Making an Untrue Statement, Omitting to State Material Facts or Engaging in an Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit Upon Another Person in Connection with the Offer or Sale of a Security

52. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents violated Section 409.5-501, when, in connection with the offer, sale or purchase of a security, Roper, on behalf of Unity, made untrue statements or omitted to state to MR 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, the following material facts that could impact the return and the viability of MR's investment:

a. the investment was risky;

b. MR would not receive the full promised return on the investment;

c. monthly payments would average $428;

d. monthly payments would stop after 12 months;

e. MR would not receive a K-1;

f. Unity was operating without a business registration;

g. Roper and Unity were not registered to offer and/or sell securities in Missouri; and

h. the investment offered and sold to MR was not registered or exempt from registration in Missouri.

53. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents violated Section 409.5-501, when, in connection with the offer, sale or purchase of a security as described above, Roper, on behalf of Unity, engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person by, among other things:

a. receiving investment funds from MR to invest;

b. operating Unity without a business registration;

c. lulling MR in order to avoid or delay detection when MR began contacting Roper to ask why the monthly payments had stopped; and

d. telling MR that MR's K-1 would be sent any day.

54. MR invested a total of approximately $40,000 in Pharyn and/or Unity with MR receiving minimal return on the investment.

55. At the time Respondents engaged in this conduct, MR was more than 60 years-old and was considered an elderly person as that term is defined under Section 409.6-604(d)(3)(B).

56. Respondents made untrue statements of material fact, 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 or engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person in violation of Section 409.5-501, and engaged in an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

57. This Order is in the public interest and is consistent with the purposes of the Missouri Securities Act of 2003. See Section 409.6-605(b).

IV. ORDER

NOW, THEREFORE, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order be prohibited from violating or materially aiding in any violation of:

A. Section 409.3-301, by offering or selling any securities as defined by Section 409.1-102(28), in the state of Missouri unless those securities are registered with the Securities Division of the Office of the Secretary of State in accordance with the provisions of Section 409.3-301;

B. Section 409.4-402(a), by transacting business as an unregistered agent;

C. Section 409.4-402(d), by employing an unregistered agent; and

D. Section 409.5-501, by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), each Respondent shall pay a civil penalty in the amount of $15,000 for multiple violations of Section 409.3-301 when at

least one of these violations were committed against an elderly person. This amount shall be made payable to the state of Missouri and paid within 30 days of the date of this Final Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondent Roper shall pay a civil penalty in the amount of $6,000 for violating Section 409.4-402(a) when the violation was committed against an elderly person. This amount shall be made payable to the state of Missouri and paid within 30 days of the date of this Final Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondent Unity shall pay a civil penalty in the amount of $6,000 for violating Section 409.4-402(d) when the violation was committed against an elderly person. This amount shall be made payable to the state of Missouri and paid within 30 days of the date of this Final Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), each Respondent shall pay a civil penalty in the amount of $15,000 for multiple violations of Section 409.5-501 when at least one of these violations were committed against an elderly person. This amount shall be made payable to the state of Missouri and paid within 30 days of the date of this Final Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondents shall pay, jointly and severally, restitution and interest in the amount of $3,150 for violations of Sections 409.3-301, 409.4-402, and 409.5-501. This amount shall be made payable to the Missouri Secretary of State's Investor Restitution Fund, and the Commissioner will take reasonable and necessary actions to distribute such funds to MR. This amount shall be sent to the Missouri Securities Division at 600 West Main, P.O. Box 1276, Jefferson City, Missouri, 65102, within 30 days from the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(e), Respondents shall pay, jointly and severally, $2,985 in actual costs for investigation into, and the proceedings associated with, this matter. This amount shall be made payable to the Investor Education and Protection Fund and shall be sent to the Missouri Securities Division, at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within 30 days of the date of this Final Order.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 31st DAY OF JANUARY, 2018.

JOHN R. ASHCROFT
SECRETARY OF STATE

DAVID M. MINNICK
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2018, a copy of the foregoing Final Order to Cease and Desist and Order Awarding Restitution, Civil Penalties, and Costs in the above styled case was **mailed by regular U.S. mail and Certified U.S. mail, Return Receipt Requested, to:**

Unity Oil & Gas, a/k/a Unity Oil & Gas LLC
5724 Forest Bend Drive, Suite C3
Arlington, Texas 76017

David E. Roper
416 Holly Park Drive, Apt. 1117
Arlington, Texas 76014-2060

And via email:

untoil@ymail.com

and by hand-delivery and email to:

Saundra J. McDowell
Director of Enforcement
Missouri Securities Division
Saundra.McDowell@sos.mo.gov

Laurie Dawson
Securities Office Manager