IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
BOWLING GREEN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	Case No.: 1:07cv156-M
	§	Electronically Filed
vs.	§	
	§	
GARY M. MILBY; and	§	
MID-AMERICA ENERGY, INC.;	§	
	§	
Defendants.	§	
	§	

COMPLAINT

The United States Securities and Exchange Commission ("Commission") files this *Complaint* against Defendants Gary M. Milby and Mid-America Energy, Inc. (collectively "Defendants") and would respectfully show the Court as follows:

I. Summary

1. This matter involves a fraudulent oil-and-gas investment scheme. Between February 2005 and September 2006, Mid-America Energy, Inc., a private Nevada corporation owned and controlled by Gary M. Milby, raised over $19 million from approximately 375 investors throughout the United States by selling interests in at least 30 oil-and-gas investment programs.

2. When soliciting investors, Milby and Mid-America misrepresented facts concerning, among other things, Milby's disciplinary history with the Texas Railroad Commission, state cease-and-desist orders relating to the programs, the registration status of the programs, and Milby's past bankruptcy.

3. In addition, Milby misappropriated and misapplied approximately $12 million of investors' funds raised in the offering.

4. By reason of these activities, Milby and Mid-America 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. §§ 77e(a), 77e(c) and77q(a)], and Sections 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 thereunder [17 C.F.R. § 240.10b-5]. The Commission, in the interest of protecting the public from any further fraudulent activity, brings this action against Defendants seeking permanent injunctive relief, disgorgement of illicit profits, plus accrued prejudgment interest, and civil monetary penalties.

II. Jurisdiction

5. The Commission brings this action pursuant to the authority conferred upon it by 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)]. The Commission seeks the imposition of civil penalties 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)].

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78(aa)] and Title 28 U.S.C. § 1331. Defendants, directly and indirectly, made use of the mails and of the means and instrumentalities of interstate commerce in connection with the acts, practices, and courses of business described in this *Complaint*. Venue is proper because many of the transactions, acts, practices, and courses of business described below occurred within the jurisdiction of the Western District of Kentucky.

III. Defendants

7. Gary M. Milby, a 53-year-old resident of Campbellsville, Kentucky, owns Mid-America and serves as its president and CEO. Along with Mid-America, Milby has been the subject of cease-and-desist orders brought by state regulatory agencies in Alabama, Arizona, California, and Pennsylvania since December 2005.

8. Mid-America is a privately held Nevada corporation based in Portland, Tennessee. Since December 2005, Mid-America has been the subject of cease-and-desist orders brought by state regulatory agencies in Alabama, Arizona, California, and Pennsylvania finding the company to be offering and selling investment programs in violation of state registration and anti-fraud statutes.

IV. Statement of Facts

A. Mid-America's Oil-and-Gas Program

9. Between February 2005 and September 2006, Mid-America raised approximately $19.25 million selling interests in at least 30 oil-and-gas programs, each formed as a separate Tennessee limited-liability partnership ("LLP").

10. According to program private-placement memoranda ("PPMs"), which Milby reviewed and approved, each LLP was "organized to drill, complete and operate up to three [3] new oil Wells . . . on leased properties" in Adair County and Green County, Kentucky. In nearly all cases, Mid-America offered 25 subscription units per program at prices ranging from $24,000 to $49,000 per unit.

11. Program offering materials included a written guarantee that each unit would provide a stake in three producing wells. If any of the three wells in a program came up dry, Mid-America promised to drill a fourth well for investors at the company's expense.

12. According to the PPMs, Mid-America served as the "Managing Partner" and "Program Manager" for each well program. The PPMs referred to investors as "limited partners" and specified that investors would "have no voice in the day to day management of the Partnership."

B. The Manner of Offering

13. Mid-America filed Form D sales notices with the Commission for 21 of the programs, claiming the private-offering registration exemption under Section 4(2) of the Securities Act.

14. Despite the purported private nature of the offering, Mid-America solicited investors through multiple public channels. The company employed at least four salaried, in-house salespeople and approximately 35 commissioned, outside salespeople. Virtually all of the outside salespeople were Mid-America investors who Milby later recruited to sell the programs.

15. Mid-America used several public outlets to offer and sell the programs. Milby and Mid-America sales agents conducted multiple seminars in at least Tennessee, Ohio, and Pennsylvania. Sales agents engaged in cold calling from lead lists, and Milby mailed prospective investors offering materials and informational videos that he reviewed and approved. In addition, Mid-America posted offering materials on two websites advertised on XM and Sirius Satellite radio, and, through its sales agents, placed newspaper advertisements in *USA Today*, the *Dallas Morning News*, the *Arizona Republic*, and the *Main Line Times*, a Pennsylvania newspaper.

16. Although Mid-America enlisted a sales team, Milby, who owned and controlled the company, was the force behind the sales operation. Indeed, during the Commission's investigation Milby testified, "[w]e have other people there, but I'm the only one that does any

selling—[the other salespeople] may line people up, bring them in, but I'm the one that talks to them and does the selling." Milby encouraged prospective investors to visit Mid-America's offices and oil fields and spent at least an hour or two with any investor who visited.

C. Material Misrepresentations and Omissions

17. To entice investors into the programs, Milby concealed his oil-and-gas disciplinary history, his dismal financial background and misrepresented the registration status of the programs.

18. From the fall of 2005 through the summer of 2006, Milby gave investors a document entitled "Expanded Professional History," which said that Mid-America Oil and Gas, LLC—a Mid-America affiliate that Milby also owned and controlled—was "in good standing" with the Texas Railroad Commission ("TRC").

19. In reality, Mid-America Oil and Gas had been on inactive status with the TRC since August 2005. Indeed, on January 24, 2006, the TRC levied $4,000 in administrative penalties against Mid-America Oil and Gas and forbade Milby, and any company that he owned or controlled, from drilling in Texas for seven years. Milby did not disclose this to investors.

20. Milby falsely touted in offering materials that Mid-America had been engaged in "[o]ver 30 years of successful oil production." Mid-America's website made similar misrepresentations, announcing that Mid-America was "leading the way in domestic oil exploration" with a "proven strategy for success."

21. Contrary to those statements, Milby did not tell investors about cease-and-desist orders filed by securities regulators in Alabama, Arizona, California, or Pennsylvania against him and Mid-America in 2005 and 2006. In these cease-and-desist orders, Milby and Mid-

America were found to be offering and selling investment programs in violation of state registration and anti-fraud statutes.

22. In addition, in sales presentations, offering materials and even discussions with Mid-America's sales staff, Milby routinely stated that the oil-and-gas programs were registered with the Commission. In fact, none of the programs was registered with the Commission.

23. Most importantly, Milby exaggerated the returns that prospective investors would receive if they invested in Mid-America. He promised that, in exchange for the one-time investment, investors would receive as much as $4,800 in monthly income, starting 90 days after the initial investment and lasting 30 to 50 years, and told numerous investors that they would earn a 100% return within 12 months.

24. Milby told other investors that they could "count on 30 barrels [of oil] per day per well over 40 years" and that Mid-America was issuing investors checks totaling over $250,000 every month.

25. According to several investors, Milby told them, "no one who has invested with me has ever lost money."

26. These claims had no basis in fact; no investor has recouped his or her investment in any of the Mid-America programs. Moreover, neither Adair nor Green County, Kentucky, has historically produced quantities of oil to sustain the claimed returns. Indeed, oil production figures for these counties for the years 1998 to 2005 show that wells in those counties rarely yield more than a few hundred barrels of oil per year, far too little to support the levels of return Milby promised investors.

27. Finally, Milby did not tell investors about a recent personal bankruptcy; although he told at least one investor that he always "took care of his bills" and thus "never had the need" to file for bankruptcy.

D. Misappropriation and Misapplication of Investor Funds

28. Milby misappropriated and misapplied most of the offering proceeds obtained from investors.

29. Each PPM included an "Application of Proceeds" section, which provided that the proceeds would be allocated as follows: 32% for well-site acquisition, 22% for drilling, 19% for well completion, 14% for well testing, 10% for selling commissions, 2% for offering expenses, and 1% for due-diligence costs. Accordingly, of the approximately $19.25 million raised, Mid-America should have spent approximately $16.8 million for well-site acquisition, drilling, well completion, and well testing, which combined should have accounted for 87% of the proceeds.

30. In reality, Mid-America spent only $4.6 million in those areas combined. The company paid approximately $2.9 million in sales commissions, approximately $1 million more than allotted. And it spent approximately $750,000 on offering expenses, approximately $360,000 more than allotted.

31. Milby spent the balance in a manner grossly inconsistent with the promised uses. He used at least $7 million to purchase personal vehicles, to pay salaries and other company expenses, and to spend lavishly on himself and his family.

32. In addition, Milby diverted large amounts of investor money to non-Mid-America accounts, including approximately $4.8 million into his attorney's escrow accounts, $582,000 to a used-car shop he owned, and $174,000 to personal trust funds. The attorney escrow-account records show transfers of $1.2 million to unknown offshore accounts, $1.1 million for Milby's

personal expenses, $169,000 directly to Milby or his family, and $145,000 into Milby's personal trust funds.

33. In addition to misappropriating investors' principal, Milby diverted oil-production revenue that should have been paid to investors. Bank records show that, between April 2005 and February 2007, Mid-America received approximately $893,000 in oil-production revenue.

34. According to the PPMs, investors were collectively entitled to receive 37% of oil-production revenue. Milby, however, distributed only $145,000 of this revenue—approximately 16%—to investors, and many investors who qualified for a free stake in a fourth well under the guarantee never received one.

35. When investors eventually complained to Milby that they had not received their promised monthly revenue payments or their stake in a fourth well, he supplied various false explanations.

36. In a newsletter sent to investors dated August 23, 2005, Milby stated that "[t]he EPA is giving [Mid-America] a hard time about digging a sludge pit above [a] pond" near the third well of the Liberty Oil #1 program. In reality, the Environmental Protection Agency did not communicate with Mid-America on the issue and, in any event, does not issue permits for sludge pits.

37. Further, Milby sent a memo to investors in July 2006, saying that the company was experiencing "[d]elays in obtaining the permits for injection wells." Yet, Mid-America had never even applied for such permits.

38. On still other occasions, Milby falsely told investors that the government had frozen and seized his assets and that the SEC had banned him from drilling, releasing well permit numbers or tax forms, and even speaking to investors.

CLAIMS

FIRST CLAIM
Defendants' violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

39. Plaintiff Commission repeats and incorporates paragraphs 1 through 38 of this *Complaint* by reference as if set forth *verbatim*.

40. Defendants, directly or indirectly, singly or in concert with others, in connection with the purchase and 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 material facts and have 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; and (c) engaged in acts, practices, and courses of business which operate as a fraud and deceit upon purchasers, prospective purchasers, and other persons.

41. As a part of and in furtherance of their scheme to defraud, Defendants, directly and indirectly, prepared, disseminated, used, issued, and made oral presentations, offering documents, promotional materials, websites, and advertisements, which contained untrue statements of material facts and misrepresentations of material facts and which 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, including, but not limited to, those set forth above.

42. Defendants made these misrepresentations and omissions knowingly or with severe recklessness.

43. By reason of the foregoing, Defendants have 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 [17 C.F.R. § 240.10b-5] thereunder.

SECOND CLAIM
Defendants' violations of Section 17(a) of the Securities Act

44. Plaintiff Commission repeats and incorporates paragraphs 1 through 38 of this *Complaint* by reference as if set forth *verbatim*.

45. Defendants, directly or indirectly, singly or in concert with others, in the offer and sale of securities, by use of the means and instruments of transportation and communication in interstate commerce and by use of the mails, have (a) employed devices, schemes, or artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state material facts 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, or courses of business which operate or would operate as a fraud or deceit.

46. As part of and in furtherance of this scheme, Defendants, directly and indirectly, prepared, disseminated, used, issued, and made oral presentations, offering documents, promotional materials, websites, and advertisements, which contained untrue statements of material fact and which 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, including, but not limited to, those statements and omissions set forth above.

47. Defendants made the above-referenced misrepresentations and omissions knowingly or with severe recklessness. Defendants, in addition, were negligent in connection with their offer and sale of the securities alleged in this *Complaint*.

48. By reason of the foregoing, the Defendants have violated and, unless enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

THIRD CLAIM
Defendants' violations of Sections 5(a) and 5(c) of the Securities Act

49. Plaintiff Commission repeats and incorporates paragraphs 1 through 38 of this *Complaint* by reference as if set forth *verbatim*.

50. Defendants, directly or indirectly, singly or in concert with others, have offered to sell, sold, and delivered after sale, certain securities and have (a) made 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) carried and caused 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) made use of the means or instruments of transportation and communication in interstate commerce and of the mails to offer to sell such securities.

51. No registration statement has been filed with the Commission or is otherwise in effect with respect to the offer and sale of any securities described herein.

52. By reason of the foregoing, Defendants have 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 77e (c)].

FOURTH CLAIM
Defendants' violations of Section 15(a) of the Exchange Act

53. Plaintiff Commission repeats and incorporates paragraphs 1 through 38 of this *Complaint* by reference as if set forth *verbatim*.

54. Defendants are in the business of effecting transactions in securities for the accounts of others.

55. Defendants made use of the mails and of the means and instrumentalities of interstate commerce to effect transactions in and to induce or attempt to induce the purchase of those securities.

56. Defendants were not and are not registered with the Commission as broker or dealer, as required by section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]. By reason of the foregoing, Defendants have violated and, unless enjoined, will continue to violate section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

I.

Permanently enjoin the Defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e(a), 77e(c) and77q(a)], and Sections 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 thereunder [17 C.F.R. § 240.10b-5].

II.

Order each Defendant to disgorge an amount equal to the funds and benefits obtained as a result of the violations alleged, plus prejudgment interest on that amount.

III.

Order civil penalties against each Defendant pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act for violations of the federal securities laws as alleged herein; and

IV.

Such other and further relief as the Commission may show itself entitled.

Dated: September 13, 2007

Respectfully submitted,

s/ *Marshall Gandy*
MARSHALL GANDY
Texas Bar No. 07616500
SECURITIES AND EXCHANGE COMMISSION
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
(817) 978-6464
(817) 978-4927 (fax)
gandym@sec.gov