

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 66531 / March 7, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14789

In the Matter of

Brian S. Cherry,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against Brian S. Cherry (“Respondent” or “Cherry”).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. From about September 2006 to January 2009, Cherry worked as a salesperson for Progressive Energy Partners, LLC (“PEP”). Cherry holds no securities licenses and has never been registered with the Commission in any capacity. Cherry, 43 years old, is a resident of Newport Beach, California.

B. ENTRY OF THE INJUNCTION

2. On February 3, 2012, a final judgment was entered against Cherry, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (“Securities Act”), and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Jerry L. Aubrey, et al., Civil Action Number 8:11-cv-01564-JVS-RNB, in the United States District Court for the Central District of California.

3. The Commission’s complaint alleged that PEP conducted an \$11 million boiler room fraud that victimized more than 200 investors from about September 2005 to December 2009. Cherry worked for PEP as a salesperson, and fraudulently offered and sold PEP’s unregistered securities to investors nationwide. Cherry told investors that their money would be used to develop and support oil and gas wells. In fact, the bulk of the investors’ money was used to pay alleged investor returns, the personal expenses of PEP’s principal and manager, and undisclosed sales commissions to PEP salespeople. Cherry received about \$337,450 in total sales commissions from PEP. In carrying out the fraud, Cherry: 1) misrepresented to investors they could expect a greater than 50% annual return on their investment; 2) failed to disclose to investors that up to 35% of their investment would be used to pay sales commissions; 3) falsely represented to investors that PEP used an accounting firm to assist with investor distributions; and 4) falsely represented that PEP’s financial statements were audited. Cherry was not registered as a broker-dealer or associated with a registered broker-dealer at the time Cherry worked for PEP.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission’s Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice, 17 C.F.R. § 201.360(a)(2).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

For the Commission, by its Secretary, pursuant to delegated authority.

Elizabeth M. Murphy
Secretary