

**BEFORE THE COMMISSIONER OF THE TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE**

IN THE MATTER OF:

**TENNESSEE SECURITIES DIVISION,
Petitioner,**

v.

**JOHN G. WESTINE, JR., a/k/a
MICHAEL ROSS, a/k/a
MICHAEL HICKS, and
ROYAL ENERGY OF TENNESSEE,
LLC,
Respondents.**

**DOCKET NO: 12.06-138898J
Order No. 2016-0016**

INITIAL ORDER

This contested case was heard on November 7, 2016, before Administrative Judge Elizabeth D. Cambron, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Commissioner of the Tennessee Department of Commerce and Insurance. The Petitioner was represented by Assistant General Counsel Charles S. Herrell. None of the Respondents were present, nor was an attorney present on their behalf.

PENDING MOTIONS

Respondent John Westine has filed several motions:

- A “Motion to Dismiss for Lack of Subject Matter Jurisdiction” filed on September 26, 2016;
- A pleading entitled “This Action is Under 28 USCS 1331, 1346, 2201 for a Declaratory Judgment, Writ of Prohibition 28 USCS 1651 Motion for Dismissal or Summary Judgment for Respondent” filed on December 29, 2016; and

- A “Motion for Dismissal and Summary Judgment for Respondent ‘Memorandum of Law in Support’ Based on the Law and Facts for Dismissal” filed on December 30, 2016.

The Tennessee Securities Division filed a response on December 29, 2016. All pending motions have been reviewed, considered, and are hereby **DENIED**.

ENTRY OF DEFAULT

Pursuant to TENN. CODE ANN. § 4-5-307, on August 31, 2016, the Petitioner filed a Notice of Hearing and Charges, setting this matter for hearing on November 7, 2016. The named Respondents in the Notice of Hearing and Charges are Domestic Development Company a/k/a Energy Revenue America, LLC, John G. Westine, Jr., a/k/a Michael Ross, a/k/a Michael Hicks (“Westine”), and Royal Energy of Tennessee, LLC (“Royal Energy”). At the hearing, the Petitioner moved for a default against all Respondents pursuant to TENN. CODE ANN. § 4-5-309.

In support of the motion for default, the Petitioner presented evidence demonstrating that the Respondents were on notice of the proceedings against them and were served with copies of the Notice of Hearing and Charges, based on the following exhibits admitted into evidence and representations of counsel for the Petitioner:

1. A copy of the United States Postal Service certified mail return receipt cards for the letter from counsel for the Petitioner and sent to the Respondents notifying Westine (receipt no. 7015 0640 0003 9607 2714) of this administrative action, issued pursuant to Tenn. Code Ann. § 4-5-320(c).
2. A copy of the United States Postal Service certified mail return receipt cards for the Notice of Hearing and Charges sent to Westine (receipt no. 7004 1350 0002 6149 9463).
3. A copy of the United States Postal Service certified mail return receipt cards for the Notice of Affidavits and Witness and Exhibit Disclosures sent to Westine (receipt no. 7013 2630 0001 4740 0093), and to the Business Entities (receipt no. 7013 2630 0001 4740 0062).

Service upon all Respondents was legally sufficient in accordance with TENN. CODE ANN. § 4-5-307 and TENN. COMP. R. & REGS. (“RULE”) 1360-04-01-.06.

It is determined that the Petitioner has properly served the Notice of Hearing and Charges on the Respondents in accordance with RULE 1360-04-01-.06. Based on the failure of these Respondents to appear for the hearing or request to participate telephonically, pursuant to TENN. CODE ANN. § 4-5-309 and RULE 1360-04-01-.15, these Respondents were held in default. Pursuant to RULE 1360-04-01-.15(2)(b), the hearing was held on an uncontested basis.

FINDINGS OF FACT

1. Respondent John Westine, Jr. (“Westine”) is a former resident of Malibu, California. He is currently incarcerated in the federal penitentiary in Victorville, California. His mailing address is John Westine, Jr., Register No. 93555-012, c/o USP Victorville, U.S. Penitentiary, P.O. Box 3900, Adelanto, CA 92301. (Exhibit 1.)

2. There is no evidence that there was ever an entity named Royal Energy of Tennessee, LLC, (“Royal Energy”) in existence at any time relevant to these proceedings.

3. Westine used the aliases of Michael Ross and/or Michael Hicks in the course of the securities related activities. (Tr. p. 13, l. 22-25; p. 24, l. 1-6.)

4. On or about May 6, 2014, the Tennessee Securities Division (“TSD”) received a referral from the federal Securities and Exchange Commission indicating that there was a business related to oil and gas securities named Royal Energy of Tennessee, LLC, whose operations were being conducted at the address of 424 Church Street, Suite 200, Nashville, TN 37219. (Tr. p. 14, l. 8-22; Exhibit 5.)

5. On or about June 13, 2014, the TSD received a complaint from investor Deshaun Evans regarding Royal Energy that alleged fraud and other unlawful activities being conducted at the Nashville address. (Tr. p. 14, l. 8-22; Exhibit 5.)

6. There is no record of Westine having ever registered any security or having made any filings with the Tennessee Securities Division. (Exhibit 9, affidavit of John Conners.)

7. Westine is not now nor has he been registered with the TSD as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative within the last ten years. (Exhibit 10, affidavit of Perry Warden.)

8. The TSD investigation developed information indicating that Westine was the subject of a federal criminal prosecution in the Eastern District for Kentucky, case no. 3:14-cr-00010-GFVT-REW. (Exhibit 8, Judgment.)

9. A certified copy of the judgment of the federal District Court was obtained by department personnel which documented the conviction of Westine on twenty-eight (28) counts of mail fraud, one count of conspiracy to conduct financial transactions involving unlawful activity, and one count of use of manipulative and deceptive devices in connection with sale of securities. (Exhibit 8, Judgment.)

10. As a result of his conviction, Westine has been sentenced to four hundred eighty (480) months of incarceration and was ordered to pay three million, forty-two thousand, six hundred and twenty-one dollars (\$3,042,621.00) in restitution to the victims that he defrauded. (Exhibit 8, Judgment.)

11. The criminal conviction of Westine on mail fraud, conspiracy to conduct financial transactions involving unlawful activity, and use of manipulative and deceptive devices in

connection with sale of securities establishes fraudulent securities related activity within the meaning of the Act.

CONCLUSIONS OF LAW

1. In accordance with RULES 1360-04-01-.02(7) and 1360-04-01-.15(3), the Petitioner has the burden of proving by a preponderance of evidence that the facts alleged in the Notice of Hearing and Charges pertaining to Respondents John Westine, Jr., a/k/a Michel Ross, a/k/a Michael Hicks, and Royal Energy of Tennessee, LLC, are true and that the issues raised therein should be resolved in its favor.

2. The oil and gas investment opportunities offered and sold by Respondent Westine on behalf of Royal Energy of Tennessee, LLC, or their associated companies are investment contracts which meet the definition of “security” pursuant to TENN. CODE ANN. § 48-1-102(17)(a), were not registered with the TSD as required by TENN. CODE ANN. § 48-1-104, and were not subject to any exemption under TENN. CODE ANN. § 48-1-103. (Exhibit 10; *King v. Pope*, 91 S.W. 3d 314, 322 (Tenn. 2002).)

3. It is unlawful for any person to sell any security unless it is registered under the Act, the security or transaction is exempt under the Act, or the security is a covered security. TENN. CODE ANN. §§ 48-1-102(17)(A), 48-1-103, 48-1-104(a).

4. The Petitioner has shown by a preponderance of the evidence that the Respondent sold securities in or from Tennessee that were not registered with the TSD to be sold in Tennessee.

6. TENN. CODE ANN. § 48-1-104(b) provides:

The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in

title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed ten thousand dollars (\$10,000) per violation.

7. It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, in the amount of ten thousand dollars (\$10,000.00) for the sale of unregistered securities in violation of TENN. CODE ANN. § 48-1-104(a).

8. It is unlawful for any person to transact business from or in this state as a broker-dealer or agent unless such person is registered as a broker-dealer or agent under the Act. TENN. CODE ANN. § 48-1-109(a). In addition, it is unlawful for any person to transact business from or in this state as an investment adviser or investment adviser representative unless such person is registered as an investment adviser or investment adviser representative under the Act. TENN. CODE ANN. § 48-1-109(c).

9. The Petitioner has shown by a preponderance of the evidence that Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, recommended for sale, offered to sell, and sold securities in Tennessee without being registered under the Act to recommend, offer to sell, or to sell securities in Tennessee.

10. The Respondent's offers to sell and their sales of securities without being registered in Tennessee to engage in the offering and sale of securities from, in, or into Tennessee, provide adequate grounds for the imposition of a civil penalty on these Respondents not to exceed ten thousand dollars (\$10,000.00) per violation under TENN. CODE ANN. § 48-1-109(e). It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, in the amount of ten thousand dollars (\$10,000.00) for the sale of securities from the

Tennessee office of Royal Energy, LLC, without being registered at the time of the sale in violation of TENN. CODE ANN. § 48-1-109(a), or ten thousand dollars (\$10,000.00) for each violation.

11. TENN. CODE ANN. § 48-1-121(a) provides:

It is unlawful for any person, in connection with the offer, sale or purchase of any security in this state, directly or indirectly, to:

(1) Employ any device, scheme, or artifice to defraud;

(2) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(3) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

12. The Petitioner has shown by a preponderance of the evidence that Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, have engaged in a scheme or artifice to defraud investors in violation of TENN. CODE ANN. § 48-1-121(a)(1) from the base of operations in Tennessee as evidenced by the conviction of Westine on thirty (30) securities related charges, in violation of TENN. CODE ANN. § 48-1-121(a)(2).

13. TENN. CODE ANN. § 48-1-121(d) provides:

The commissioner may, after notice and opportunity for a hearing under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, impose a civil penalty against any person found to be in violation of this section, or any regulation, rule or order adopted or issued under this section, in an amount not to exceed five thousand dollars (\$5,000) per violation.

14. The Petitioner has shown, by a preponderance of the evidence, that there are adequate grounds for the imposition of a civil penalty on these Respondents not to exceed five thousand dollars (\$5,000.00) per violation. It is determined that the proof adduced at trial

provides adequate grounds for the imposition of a civil penalty on Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, in the amount of five thousand dollars thousand dollars (\$5,000.00), for the acts detailed above involving the sale of a security to at least one investor in which they committed securities fraud in violation of Tenn. Code Ann. §§ 48-1-121(a)(1), (2), and (3).

15. The Petitioner has shown, by a preponderance of the evidence, that there are adequate grounds in the form of the conviction on thirty (30) felony counts for the imposition of a civil penalty on John Westine, Jr., not to exceed five thousand dollars (\$5,000.00) per violation of § 48-1-112(a)(2)(C) (2012). It is determined that the proof adduced at trial provides adequate grounds for the imposition of a civil penalty on Respondents John Westine, Jr., in the amount of one hundred fifty thousand dollars thousand dollars (\$150,000.00), for the convictions detailed above in violation of Tenn. Code Ann. § 48-1-112(a)(2)(C) (2012).

JUDGMENT

Wherefore, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, shall fully **COMPLY** with the Act, and all rules promulgated thereunder.

2. Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, shall **BE PERMANENTLY BARRED** from any further conduct as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative from or in the State of Tennessee.

3. Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, shall **BE PERMANENTLY BARRED** from conducting securities transactions on behalf of others from,

in, or into the State of Tennessee.

4. All persons in any way assisting, aiding, or helping the aforementioned Respondents in any of the aforementioned violations of the Act shall **CEASE AND DESIST** all such activities in violation of the Act.

5. Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, jointly and severally, are assessed and shall pay **a total of one hundred seventy thousand dollars (\$175,000.00) in CIVIL PENALTIES** pursuant to TENN. CODE ANN. §§ 48-1-104(b), 48-1-109(e) and 48-1-121(d), calculated as follows:

a) for the sale of an unregistered security to Deshaun Evans in violation of TENN. CODE ANN. § 48-1-104(a), as set forth in Count Three of the Notice of Hearing and Charges, **a civil penalty of ten thousand dollars (\$10,000.00) for each such violation, for a total of ten thousand dollars (\$10,000.00) as to this Count,** pursuant to TENN. CODE ANN. § 48-1-104(b);

b) for the actions in transacting securities business in Tennessee without Respondent being registered, in violation of TENN. CODE ANN. § 48-1-109(a), as set forth in Count Two of the Notice of Hearing and Charges, **a civil penalty of ten thousand dollars (\$10,000.00) for a total of ten thousand dollars (\$10,000.00) as to this Count,** pursuant to TENN. CODE ANN. § 48-1-109(e);

c) for the instance in which Respondent engaged in securities fraud in violation of TENN. CODE ANN. §§ 48-1-121(a)(1), (2), & (3), as set forth in Count Four of the Notice of Hearing and Charges, **a civil penalty of five thousand dollars (\$5,000.00) for a total of five thousand dollars (\$5,000.00) as to this Count,** pursuant to TENN. CODE ANN. § 48-1-121(d);

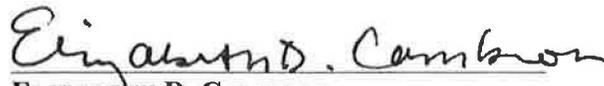
d) for the criminal conviction on thirty (30) felony counts in violation of TENN. CODE ANN. § 48-1-112(a)(2)(C) as set forth in Count One of the Notice of Hearing and Charges, **a civil penalty of five thousand dollars (\$5,000.00) per violation for a total of one hundred fifty thousand dollars (\$150,000.00) as to this Count,** pursuant to TENN. CODE ANN. § 48-1-112(d).

6. All costs associated with the investigation and hearing of this matter shall be assessed against the Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC.

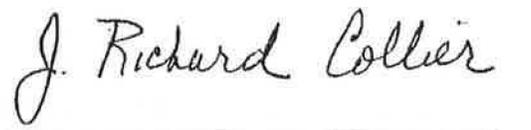
7. This Initial Order, imposing sanctions against Respondents John Westine, Jr., and Royal Energy of Tennessee, LLC, is entered to protect the public and investors in the State of Tennessee, consistent with the purposes fairly intended by policy and provisions of the Act.

It is so ORDERED.

Entered and effective this the 22ND day of FEBRUARY, 2017.


ELIZABETH D. CAMBRON
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 22ND day of FEBRUARY, 2017.


J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

**APPENDIX A TO INITIAL ORDER
NOTICE OF APPEAL PROCEDURES**

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243-1102. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.

