Securities and Exchange Commission v. Helms et al Doc. 1 Att. 3


FILED
2013 DEC -3 AM 11:38
CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY ________ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

| | |
|---|---|
| **SECURITIES AND EXCHANGE COMMISSION,** | § |
| | § |
| **Plaintiff,** | § |
| | § |
| **vs.** | § |
| | § |
| **ROBERT A. HELMS,** | § |
| **JANNIECE S. KAELIN,** | § |
| **DEVEN SELLERS,** | § |
| **ROLAND BARRERA,** | § |
| **VENDETTA ROYALTY PARTNERS, LTD.,** | § |
| **VENDETTA ROYALTY MANAGEMENT, LLC,** | § |
| **VESTA ROYALTY PARTNERS, LP,** | § |
| **VESTA ROYALTY MANAGEMENT, LLC,** | § **A13CV1036 LY** |
| **IRON ROCK ROYALTY PARTNERS, LP,** | § **Civil Action No.:** |
| **IRON ROCK ROYALTY MANAGEMENT, LLC,** | § |
| **ARCADY RESOURCES, LLC,** | § |
| **BAREFOOT MINERALS, G.P.,** | § |
| **G3 MINERALS, LLC,** | § |
| **HALEY OIL COMPANY, INC.,** | § |
| **LAKE ROCK, LLC ,** | § |
| **SEBUD MINERALS, LLC, and** | § |
| **TECHNICOLOR MINERALS, G.P.,** | § |
| | § |
| **Defendants,** | § |
| | § |
| **and** | § |
| | § |
| **WILLIAM L. BARLOW, and** | § |
| **GLOBAL CAPITAL VENTURES, LLC,** | § |
| | § |
| **Relief Defendants, solely for the purposes of equitable relief.** | § |
| | § |

**COMPLAINT**

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For its Complaint, Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

## I. Summary

1. Defendants Robert A. Helms and Janniece S. Kaelin are engaged in fraudulent securities offerings from an office in Austin, Texas. Since at least July 2011, they have offered investors securities issued by Defendant Vendetta Royalty Partners, Ltd. ("Vendetta Partners"), a limited partnership they control. Through December 31, 2012, they have raised at least $17.9 million from at least 80 investors in at least 13 states, promising them that Vendetta Partners would use more than 99% of the investment proceeds to acquire a lucrative portfolio of oil-and-gas royalty interests.

2. In reality, Helms and Kaelin misappropriated the vast majority of the Vendetta Partners offering proceeds, using the funds to cover personal expenses, payments to Relief Defendants William L. Barlow and Global Capital Ventures, LLC ("Global Capital"), payments to other entities they control—Haley Oil Company, Inc. ("Haley Oil"), Technicolor Minerals, G.P., ("Technicolor Minerals"), and Barefoot Minerals, G.P. ("Barefoot")—and payments to investors of approximately $5.9 million in so-called "Partnership income." They derived the so-called Partnership income, however, primarily from offering proceeds. In other words, Helms and Kaelin operated a Ponzi scheme through Vendetta Partners.

3. In the course of the scheme, Helms and Kaelin misrepresented and omitted to disclose material facts to investors. They grossly understated bank-loan payments made with offering proceeds. They concealed Vendetta Partners' imminent bank-loan default. And they represented that there were no material legal proceedings pending against them or Vendetta Partners when, in fact, they and Vendetta Partners were defendants in a civil case alleging they

defrauded the plaintiff of $1.2 million, and were subject to other legal proceedings.

4. In addition, Helms and Kaelin paid combined commissions totaling $423,500 to Defendants David Sellers and Roland Barrera, who sold Vendetta Partnership securities to an investor for $3,050,000. Sellers and Barrera falsely represented to the investor that they would receive only "small" commissions—in keeping with Vendetta Partners offering documents stating that promotional expenses would not exceed $50,000—when their actual commission was nearly 14% of the purchase price.

5. After Vendetta Partners, Helms and Kaelin launched two more fraudulent offerings, Vesta Royalty Partners, LP ("Vesta Partners") in 2012 and Iron Rock Royalty Partners LP ("Iron Rock Partners") in 2013. For each of these limited partnerships, they control the general partner, Vesta Royalty Management, LLC ("Vesta Management") and Iron Rock Royalty Management, LLC ("Iron Rock Management"), respectively. In the Vesta Partners offering, they have touted potential investment returns ranging from 300% to 500% to be achieved in just five to seven years. In reality, their return projections are baseless.

6. They are promoting the Iron Rock Partners offering through Iron Rock Management and other companies they control, specifically Defendants SeBud Minerals, LLC ("SeBud Minerals"), Lake Rock, LLC ("Lake Rock"), G3 Minerals, LLC (G3 Minerals), and Arcady Resources, LLC ("Arcady Resources"). In the Iron Rock Partners offering, they describe their intent to raise $300 million by April 2014 and tout their "honesty and trustworthiness" and Vendetta Partners' "successful performance." In reality, Vendetta Partners is a Ponzi scheme, and they are dishonest and untrustworthy.

7. By committing the acts alleged in this Complaint, the Defendants directly and indirectly engaged in, and unless restrained and enjoined by the Court will continue to engage in,

acts, transactions, practices, and courses of business that violate the anti-fraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. Defendants Sellers and Barrera also violated Exchange Act Section 15(a) [15 U.S.C. § 78o(a)] by being unregistered brokers in the offerings described herein.

8. The Commission brings this action seeking permanent injunctions, disgorgement plus prejudgment interest, and civil penalties, as to each Defendant and disgorgement as to each Relief Defendant and all other equitable and ancillary relief to which the Court determines the Commission is entitled.

## II. Jurisdiction and Venue

9. The Court has jurisdiction over this action under Section 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78(aa)]. Venue is proper because the Defendants and Relief Defendants reside in, and a substantial part of the events and omissions giving rise to the claims occurred in, the Western District of Texas.

## III. The Parties

10. Plaintiff Commission is an agency of the United States government.

11. Defendant Robert A. Helms is a natural person residing in Austin, Texas.

12. Defendant Janniece S. Kaelin is a natural person residing in Austin, Texas.

13. Defendant Deven Sellers is a natural person residing in Arvada, Colorado.

14. Roland Barrera is a natural person residing in Costa Mesa, California.

15. Defendant Vendetta Partners is a Texas limited partnership in Austin, Texas.

16. Defendant Vendetta Management is a Texas limited liability company in Austin, Texas.

17. Defendant Vesta Partners is a Texas limited partnership in Austin, Texas.

18. Defendant Vesta Management is a Texas limited liability company in Austin, Texas.

19. Defendant Iron Rock Partners is a Delaware limited partnership principally operating in Austin, Texas.

20. Defendant Iron Rock Management is a Delaware limited liability company principally operating in Austin, Texas.

21. Defendant Arcady Resources is a Texas limited liability company in Austin, Texas.

22. Defendant Barefoot Minerals is a Texas general partnership in Austin, Texas.

23. Defendant G3 Minerals is a Texas limited liability company in Austin, Texas.

24. Defendant Haley Oil is an Illinois corporation principally operating in Austin, Texas.

25. Defendant Lake Rock is a Texas limited liability company in Austin, Texas.

26. Defendant SeBud Minerals is a Texas limited liability company in Austin, Texas.

27. Defendant Technicolor Minerals is a Texas general partnership in Austin, Texas.

28. Relief Defendant William Barlow is a natural person residing in Austin, Texas.

29. Relief Defendant Global Capital is a Texas limited liability company in Austin, Texas.

## V. Facts

### A. Background

30. Helms and Kaelin, through entities they control, have offered and sold and continue to offer and sell securities in the form of limited-partnership interests issued by Defendants Vendetta Partners, Vesta Partners, and Iron Rock Partners. Helms and Kaelin control each entity through its general partner—Defendants Vendetta Management, Vesta Management, and Iron Rock Management, respectively.

31. Helms and Kaelin operate each limited partnership from an office at 8101 Cameron Rd. Suite 109, in Austin, Texas. They utilize a sales team, including Sellers and Barrera, to offer the securities for sale to investors by telephone, by email, and by in-person presentations. Helms and Kaelin also directly offer and sell the securities to investors in person at the Austin office and through emails and phone calls.

**B. The Vendetta Partners Offering**

32. Helms and Kaelin formed Vendetta Partners in 2009. At or about that time, Vendetta Partners acquired certain oil-and-gas royalty interests, along with limited partners, from another limited partnership associated with Helms and Kaelin. From January 1, 2011, through December 31, 2012, Vendetta Partners' royalty interests generated income totaling approximately $1.4 million.

33. On August 15, 2011, Vendetta Partners filed with the Commission a securities-offering notice on Form D, signed by Helms, stating that Vendetta Partners sought to raise $50 million by selling limited-partnership interests. The Form D falsely stated that Vendetta Partners had not yet sold any securities in the offering. In reality, Vendetta Partners sold securities to two investors on July 29 and 30, 2011, in exchange for $275,000 combined. Moreover, the Form D listed Vendetta Management, Helms, and Kaelin as the offering's only "promoters" and falsely stated that no promoter had received, or would receive, any offering proceeds. In fact, at the

time of filing Helms and Kaelin had already misappropriated nearly half of the $275,000 received on July 29 and 30, 2011. Upon receipt, they transferred $135,000 of these funds to Vendetta Management and, from there, withdrew $19,450 in cash and transferred an additional $18,000 to Helms.

34. In the Vendetta Partners offering, Helms and Kaelin distributed to prospective investors a private-placement memorandum ("PPM"), which purported to explain the Vendetta Partners investment. The PPM represented that Vendetta Partners had two "principal objectives": (1) to purchase oil-and-gas "Royalty Interests" and (2) "to generate Partnership income from such Royalty Interests." It also represented that the "Partnership will distribute Partnership income quarterly."

35. The PPM contained several false and misleading statements. It touted Helms' oil-and-gas experience, representing that he had "worked with various mineral companies over the last 10 years advising management on issues involving the acquisition and management of royalty interests, mineral properties and related legal and financial issues." This statement was misleading because it did not disclose that Helms the oil-and-gas experience came almost entirely from operating Vendetta Partners and its affiliated or predecessor companies.

36. Under the heading, "Accounting," the PPM also falsely stated that Vendetta Management would furnish investors periodic reports on Vendetta Partners' property acquisitions and operational results. In fact, it never furnished investors such reports.

37. Finally, under the heading "Litigation," the PPM falsely stated: "There are no material pending legal proceedings against the Partnership, the General Partner or its Affiliates." In reality, Vendetta Partners, Vendetta Management, Technicolor Minerals, Helms, Kaelin, and other entities affiliated with them were engaged in material litigation during the Vendetta

Partners offering. A private party sued them in December 2011, alleging that they committed fraud by purporting to sell mineral interests that they did not even own in exchange for $1.2 million. The Illinois EPA initiated action against Haley Oil in May 2012, alleging illegal "release incidents." And the IRS initiated action against Kaelin in October 2012, relating to a tax liability.

38. The PPM further represented that Vendetta Partners would use the anticipated $50 million offering proceeds solely for three purposes: (i) to purchase royalty interests; (ii) to pay 10% of Vendetta Partners' $3,795,000 credit facility; and (iii) to pay promotional expenses. The PPM contained a summary of the "estimated application and use of the proceeds," which stated that Vendetta Partners would apply and use the $50 million as follows:

| | Application of Maximum Proceeds | Percent of Subscriptions |
|---|---|---|
| Purchase Costs of Royalty Interests | $49,570,500 | 99.14% |
| Loan Repayment | $ 379,500 | .76% |
| Promotional Expenses | $ 50,000 | .10% |

39. From July 29, 2011, through December 31, 2012, Helms and Kaelin raised at least $17.9 million through the Vendetta Partners offering from at least 80 investors in at least 13 states. Apart from the offering proceeds and the $1.4 million in cash generated from legitimate royalty interests, which combined totaled approximately $19.3 million, Vendetta had no significant cash assets. Rather than honor the PPM representations regarding the use of proceeds, Helms and Kaelin, through a number of entities under their control, misappropriated the vast majority of the funds.

40. Helms and Kaelin controlled and oversaw the use of all funds that came into Vendetta Partners. They shared signatory authority on its bank accounts and on the bank accounts of Vendetta Management. From January 1, 2011, through December 31, 2012, Vendetta Partners, at the direction of Helms and Kaelin, transferred approximately $4.4 million to Vendetta Management. Because this was far in excess of the $1.4 million generated from legitimate royalty interest income, at least $3 million was misappropriated investor funds. Out of the $4.4 million transferred to Vendetta Management, they transferred approximately $1.4 million to Helms and an additional $102,000 to Barefoot Minerals.

41. In addition to the $4.4 million transferred to Vendetta Management, Helms and Kaelin transferred approximately $702,000 directly to Helms' bank account. They transferred an additional $193,000 to Technicolor Minerals. They paid approximately $1.6 million to cover promotional expenses, approximately 32 times the amount promised in the PPM. They used approximately $1.1 million for loan repayment, approximately four times the amount promised in the PPM. And they spent approximately $1.6 million to purchase royalty interests, more than 90% less than promised in the PPM.

42. Vendetta Partners, at the direction of Helms and Kaelin, also used approximately $5.9 million to make so-called partnership-income distributions to investors. They used money from later investors to pay these distributions to earlier investors. In this fashion, Helms and Kaelin created the illusion that Vendetta Partners was a profitable enterprise when, in fact, it was a fraudulent Ponzi scheme.

43. Vendetta Partners, at the direction of Helms and Kaelin, transferred approximately $86,737 combined to Relief Defendant Barlow and his company, Relief Defendant Global Venture. Neither Barlow nor Global Venture had any legitimate claim to the

proceeds. Barlow and Global Venture acquired at least some of these proceeds in round-trip transactions with companies that Helms and Kaelin controlled. Helms orchestrated these transactions was to create fictitious income to support the fraudulent partnership-income distributions.

44. For example, on November 17, 2011, Helms and Kaelin transferred $2,208,800 from Vendetta Partners to Barlow. The next day, Barlow transferred $2,200,300 to Defendant Haley Oil, a company that Helms controlled, retaining $8,500. On December 5, 2011, Helms transferred $1.4 million from Haley Oil to Vendetta Partners and falsely recorded it as royalty income in Vendetta Partners' accounting system. On February 1, 2012, Helms transferred $550,000 from Haley Oil to Vendetta Partners and falsely recorded it as "lease bonus" income on Vendetta Partners' accounting system. Helms and Kaelin distributed the nearly $2 million from the roundtrip transactions to Vendetta Partners investors, falsely characterizing these payments as partnership-income distributions. Haley Oil retained investor funds totaling $245,300 that it received in the roundtrip transactions.

45. On several occasions, Helms and Kaelin provided investors tours of their Austin office to promote their securities offerings. On at least one such tour in August 2012, they falsely represented to two investors that Vendetta Partners paid its operating expenses, including Helms and Kaelin's salaries, from the ongoing revenue stream generated by Vendetta Partners' royalty interest portfolio. They falsely represented that the investors would earn a return of 150% to 200% on the investment within several months. And they represented that they would use the proceeds from the investors' limited-partnership purchase—$3,050,000—to buy out another investor's limited-partnership interest. In reality, Helms and Kaelin misappropriated part of the investors' money, using it to cover undisclosed expenses and to pay commissions to

Sellers and Barrera, rather than buying out another investor.

46. During office tours, Helms and Kaelin introduced potential investors to Vendetta Management's financial analyst, who was a student at the University of Texas and who had not yet attained a degree. Helms and Kaelin falsely stated to potential investors that the financial analyst had a degree from the University of Texas. Helms and Kaelin prohibited the financial analyst, under threat of demotion, from telling investors that he did not actually have a degree.

47. Vendetta Partners, at the direction of Helms and Kaelin, paid Defendants Sellers and Barrera approximately $400,000 in commissions, which they split almost evenly, for the $3,050,000 investment described in **paragraph 45**, above. When offering the investment, Sellers and Barrera represented to the investors that they would split a "small" commission. In reality, their combined commission was more than 13% of the investment and more than eight times the PPM's $50,000 limit for promotional expenses. Because they did not disclose the actual size of their commission, their statement that it would be "small" was misleading. Sellers and Barrera never corrected this misstatement, even as they continued to promote other offerings—including Vesta Partners and Iron Rock partners—to the same investors.

### C. The Vesta Partners Offering

48. Since at least, July 2012, Helms, Kaelin, Sellers, and Barrera have offered to sell investors securities issued by Defendant Vesta Partners. At Helms and Kaelin's direction through Vesta Management, Defendants Sellers and Barrera emailed two prospective investors a Vesta Partners presentation, describing the company and its offering. According to the presentation, Vesta Partners would provide investors "predictable quarterly cash distributions with attractive yields (targeted 15% - 20% gross annual yields)" and a 300% to 500% return within five to seven years. It described Vesta Partners management—including Helms and

Kaelin—as having a "Proven track record of consistent investor cash-flows and overall market performance." And it said that Helms and Kaelin had experience "managing and successfully exiting royalty . . . interest investments, including . . . Vendetta Royalty Partners, Ltd."

49. These statements in the Vesta Partners presentation were false. Helms and Kaelin had no reasonable basis to expect that Vesta Partners would provide attractive cash-distribution yields or a 300% to 500% return within seven years. Indeed, their track record included the Vendetta Partners Ponzi scheme—promoted as a business model virtually identical to that of Vesta Partners—in which they had never earned a legitimate profit for investors. And Vendetta Partners was not a successful investment by any reasonable standard.

### D. The Iron Rock Partners Offering

50. On April 25, 2013, Iron Rock Partners filed with the Commission a Form D, signed by Helms as manager for Iron Rock Partners' general partner, Iron Rock Management. The Form D indicates that Iron Rock Partners seeks to raise $300 million over a period not to exceed one year. In addition to Helms, it lists the following affiliate entities as the offering promoters: Defendants Iron Rock Management, SeBud Minerals, Lake Rock, G3 Minerals, and Arcady Resources. It further says that the offering will only be solicited in Florida, New York, North Carolina, and Pennsylvania.

51. The Iron Rock Form D is false and misleading. Kaelin and Sellers have actively promoted the Iron Rock Partners offering, but they are not disclosed as promoters on the Form D. And Iron Rock Partners, through Helms, Kaelin, Sellers, and other affiliated promoters is offering the securities in states beyond the four states listed—including in California.

52. On March 1, 2013, Sellers emailed an investor located in California, attaching a "Proposal" in which Sellers offered for sale Iron Rock Partners securities. The Proposal falsely

stated that investors could expect a 300% to 500% return in five to seven years. As is evident in Helms and Kaelin's disastrous Vendetta Partners oil-and-gas project, these earnings projections were baseless. It further said the Iron Rock Partners management team—including Helms and Kaelin—has an "industry reputation of honesty and trustworthiness." In fact, Helms and Kaelin were dishonest and untrustworthy, a fact their industry reputation reflected. Indeed others in the industry sued them for fraud and conspiracy.

**FIRST CLAIM**
**Violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5thereunder [17 C.F.R. § 240.10b-5]**

53. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth verbatim.

54. Each Defendant, by engaging in the conduct described above, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, knowingly or severely recklessly:

a. employed a device, scheme, or artifice to defraud;

b. made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

c. engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit upon a person.

55. By engaging in the conduct described above, each Defendant violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5thereunder [17 C.F.R. § 240.10b-5].

**SECOND CLAIM**
**Violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)]**

56. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth verbatim.

57. Each Defendant, by engaging in the conduct above, singly or in concert with others, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

a. knowingly or severely recklessly employed a device, scheme, or artifice to defraud, or

b. (b) knowingly, recklessly, or negligently obtained money or property by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

c. (c) knowingly, recklessly, or negligently engaged in a transaction, practice, or course of business which operated or would operate as a fraud or deceit upon the purchaser.

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

**THIRD CLAIM**
**Violations of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]**

59. Plaintiff Commission realleges and incorporates by reference paragraphs 1 through 54 of this Complaint as if set forth verbatim.

60. Defendants Sellers and Barrera, by engaging in the conduct described above, directly or indirectly made use of the mails or means or instrumentalities of interstate commerce

to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities, without being registered as a broker or dealer, or being associated with a registered broker or dealer in accordance with Section 15(a) (1) of the Exchange Act [15 U.S.C. § 78o(a) (1)].

61. Accordingly, Defendants Sellers and Barrera were brokers within the definition of that term in Section 3(a)(4) of the Exchange Act which defines "broker" as any person "engaged in the business of effecting transactions in securities for the account of others." Defendants Sellers and Barrera were never so registered and, acted as brokers which included: (1) solicitation of investors to purchase securities; (2) involvement in negotiations between the issuer and the investor; and (3) receipt of transaction-related compensation.

62. By reason of the foregoing, Defendants Rizvi and Strategy Partners violated and, unless enjoined, will continue to violate Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a) (1)].

**REQUEST FOR RELIEF**

Plaintiff respectfully requests that this Court:

I.

Permanently enjoin each Defendant from violating Section 17(a) of the Securities Act [15 U.S.C. § 77e(a)] and 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.

II.

Permanently enjoin Defendants Sellers and Barrera from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

III.

Order each Defendant and Relief Defendant to disgorge an amount equal to the funds and

benefits obtained illegally, or to which that Defendant or Relief Defendant otherwise has no legitimate claim, as a result of the violations alleged, plus prejudgment interest on that amount.

IV.

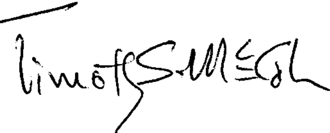
Order each Defendant to pay a civil penalty in an amount determined by the Court pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] for the violations alleged herein.

V.

Order such other relief as this Court may deem just and proper.

December 3, 2103

Respectfully submitted,
**/s/Timothy S. McCole**



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