



**STATE OF NEW MEXICO
REGULATION AND LICENSING DEPARTMENT
SECURITIES DIVISION**

In the Matter of)
)
BLACK GOLD RESOURCES, INC.)
DAVID TUTI)
DENNIS GEE (CRD # 1394172))
SCOTT RAUTBORD (CRD # 1690018))

Respondents.

**SUMMARY ORDER TO CEASE AND DESIST AND
NOTICE OF INTENT TO IMPOSE SANCTIONS**

The Director of the New Mexico Securities Division ("Director") after investigation has good reason to believe, and therefore alleges the following:

I. PROPOSED FACTS

A. Persons

1. Black Gold Resources, Inc. ("Black Gold") is a Tennessee corporation with its principal place of business at 103 Hazel Path Court, Suite 5, Hendersonville, TN 37075. Black Gold also maintains a second office at 275 Commercial Boulevard, Lauderdale by the Sea, FL 33308. Black Gold describes itself as an oil and gas exploration company.
2. Jared Forrester ("Forrester") is President and Chief Executive Officer of Black Gold Resources, Inc. based at the Tennessee office. Forrester is also listed as the registered agent for service of process. Forrester is registered with Financial Industry Regulatory Authority ("FINRA") but not affiliated with any firm.
3. David Tuti ("Tuti") is Vice President of Black Gold Resources, Inc. based at the Tennessee office. Tuti is not registered with FINRA.
4. Dennis Gee ("Gee") is Vice President of Client Services for Black Gold Resources, Inc. based at the Florida office. Gee is registered with FINRA but has been permanently barred from the National Futures Association effective March 23, 2009.

5. Scott Rautbord ("Rautbord") is Vice President of Client Services and Corporate Development for Black Gold Resources, Inc. based at the Florida office. Rautbord is registered with FINRA but not affiliated with any firm.
6. None of the above Black Gold agents are registered to sell securities in New Mexico.
7. Juan R., James S., Lon P., Asis S., Simon R., Norman T., and Bruce B. are all residents of the State of New Mexico from whom various agents of Black Gold solicited investments (collectively, "New Mexico investors").

B. Contact between Black Gold agents and New Mexico investors

8. On or before December 14, 2014, Black Gold was engaged in a publicity campaign aimed at generating interest in the purchase of units of joint ventures involving oil and gas exploration. Black Gold paid for ads to air on various radio stations throughout the nation. These ads were subsequently broadcast to New Mexico listeners.
9. Documents produced in response to an administrative subpoena issued to Black Gold by the Director on March 10, 2015, revealed that Black Gold and its agents solicited the following investments for the purchase of units of Black Gold joint ventures:
 - a. On or about October 27, 2014, Gee solicited an investment from 67 year old Moriarty, NM resident James S. The prospective investor heard a radio advertisement for Black Gold on Albuquerque station KKOB 770 AM and called to inquire. James S. reported that Gee called him multiple times even after he expressed no interest in investing.
 - b. On or about October 29, 2014, Rautbord solicited an investment from 52 year old Corrales, NM resident Lon P. via cold call. The prospective investor received offering documents through email but was unaware how Rautbord obtained his contact information.
 - c. On or about November 20, 2014, Gee solicited an investment from 64 year old Albuquerque, NM resident Asis S. via cold call. The prospective investor received offering documents through email but was unaware how Gee obtained his contact information.
 - d. On or about December 22, 2014, Tuti spoke with 60 year old Roswell, NM resident Simon R. The prospective investor called in response to a radio ad he had heard on a Carlsbad, NM station and received offering documents from Black Gold through US mail.
 - e. On or about December 22, 2014, Rautbord solicited an investment from 89 year old Rio Rancho, NM resident Norman T. via cold call. The prospective investor did not recall if he was ever sent offering documents.

- f. On or about December 25, 2014, Tuti sought an investment from 31 year old Artesia, NM resident Juan R. The prospective investor responded to a radio advertisement his father, Simon R. (above), had heard on a Carlsbad, NM station.
- g. On or about March 3, 2015, Rautbord solicited an investment from 94 year old Rio Rancho, NM resident Bruce B.

10. Of all the above solicitations, only Juan R. agreed to invest with Black Gold.

C. Black Gold and Juan R.'s investment

- 11. On April 23, 2015, Juan R. and Simon R. participated in an interview with NM Securities Division Senior Special Agent Shawn Beck wherein they described the sequence of events leading up to Juan's investment.
- 12. Juan has been unemployed since 2009 and resides in Artesia, NM in a home owned by his father, Simon. Aside from his participation in Delta Day Trading Academy in December 2014, Juan has no investment-related experience. Prior to 2009, Juan worked in retail. He has a high school diploma.
- 13. Simon likewise has no investment-related experience, whether in oil and gas ventures or in more traditional investment vehicles.
- 14. Despite his unemployment, Juan stood to inherit \$60,000 from his father and began looking for opportunities to invest it. Juan spoke with Tuti and as a result of their conversations Juan believed that Black Gold's drilling operations for the Roaring Fork joint venture in Graham County, KS were poised to commence.
- 15. Tuti made several statements that were designed to encourage Juan's investment in Black Gold, including:
 - a. That "everything looked promising";
 - b. That "it's gonna be a great investment";
 - c. That Black Gold was "seeing" oil under the ground; and
 - d. That the investment was "a sure thing."
- 16. Tuti provided Juan with the following documents: an Executive Summary for the Roaring Fork Joint Venture, a Subscription Agreement, and a Confidential Information Memorandum. Also included were instructions on how to wire money to Black Gold.
- 17. According to paragraph one of the Subscription Agreement, in exchange for his \$60,000 investment Juan was to acquire one unit representing a 3.33% interest of the Roaring Fork joint venture with an equivalent 1.75% working interest and 1.3125% net revenue interest in each of the two wells to be drilled on the property.
- 18. The Subscription Agreement contained a "confidential participant information sheet" that had fields for, *inter alia*, current employment, net worth, and family income. Juan stated

that he left these fields blank because he did not possess any of the items listed. He confirmed that no representative from Black Gold ever contacted him about the discrepancies until after the Securities Division had begun its investigation. When a Black Gold representative did finally contact Juan, the representative did not request updated or complete information but rather told Juan they would "just leave it be."

19. It is clear from the confidential participant information sheet and Juan's own remarks that he would not qualify as either an accredited or sophisticated investor. However, in response to the Director's administrative subpoena, the Division received a Black Gold "prospect record," an internal document which contained the following header and footer in boldface type:

[Header] "ALL POTENTIAL CLIENTS MUST BE CONFIRMED AS ACCREDITED INVESTORS BEFORE SENDING ANY COMPANY INFORMATION."

[Footer] "BLACK GOLD RESOURCES ONLY ENGAGES ACCREDITED INVESTORS AS DEFINED BY SEC RULE 501 OF REGULATION D."

20. The Confidential Information Memorandum noted above provides that "Participants in this joint venture are provided extensive and significant management powers. Participants are and will be expected to exercise such powers and are prohibited from relying on the managing venturer (Black Gold) for the success or profitability of the venture."
21. However, paragraph two of the Subscription Agreement appoints Black Gold as Juan's agent and attorney-in-fact with regards to all aspects of the joint venture, thereby requiring Juan to permanently cede any authority he might have possessed over to Black Gold. It states in relevant part:
- "[...] This power of attorney, which is coupled with an interest, shall survive the death or disability of the Participant and shall be irrevocable for as long as Participant has a right, title and/or interest in, to or under the Joint Venture Agreement."
22. During his interview, Juan stated that he relied on Tuti's statements that he would be a passive investor with no role in the operation of the joint venture, but would simply collect the profits from the investment. Even after his investment, Juan noted that Tuti would not provide him with the names of the other joint venturers.
23. When asked if any Black Gold agent had discussed with him the issue of risk pertaining to loss of principal, Juan replied that he understood some risk was involved but had never had a conversation with anyone from Black Gold regarding his specific risk tolerance or his investment objectives.
24. Juan stated that his initial inclination was to wait until 2015 to invest in order to avoid certain tax implications. However, Tuti convinced Juan that the matter was time-

sensitive; in response Juan relented and wired Black Gold his investment on the last day of 2014.

25. On February 12, 2015, Black Gold notified Juan that the joint venture into which he had invested consisted of two unproductive wells, thereby occasioning the total loss of his principal.
26. Without requesting any further authorization or approval, Black Gold entered Juan into a "recovery program" to share in the profits from other minimally-producing Texas wells. However, so far Juan has received only \$32 from that initiative.

II. PROPOSED CONCLUSIONS OF LAW

1. Section I is incorporated.
2. The Joint Venture Subscription Agreement is an investment contract under NMSA 1978, § 58-13C-102(DD). Furthermore, Juan R.'s understanding of the Agreement and the terms of the same provide that he was investing in a common enterprise with the expectation of profits derived *primarily* from the efforts of someone other than himself, thereby making it consistent with the definition of a security as set forth in NMSA 1978, § 58-13C-102(DD)(5) (emphasis added). Accordingly, the Joint Venture Subscription Agreement is a security and must be registered with the New Mexico Securities Division absent an exemption.
3. The Director has jurisdiction over this matter pursuant to NMSA 1978, §§ 58-13C-601 and 58-13C-610.
4. Black Gold violated Rule 12.11.4.10 NMAC, Supervision, by failing to adequately supervise Tuti, Gee, and Rautbord's sales activities in New Mexico without first ensuring that they met New Mexico's corresponding registration requirements. This constitutes one violation for each of the three unregistered agents.
5. Black Gold and Tuti violated Rule 12.11.4.15(C) NMAC, Suitability, by recommending a security to Juan R. without taking due regard for his investment objectives, experience, risk profile, income, age, tax status, liquidity needs or time horizon.
6. Black Gold and Tuti violated Rule 12.11.4.15(F) NMAC, Unauthorized Use of Discretionary Power, by transferring Juan R.'s interest in the two non-producing wells to the "Recovery Program" without first securing his written authorization.
7. Black Gold and Tuti violated Rule 12.11.4.15(Q) NMAC, with respect to FINRA Rule 2010, by failing to confirm that Juan R. was an accredited investor before sending company information as required by Black Gold's own procedures.

8. Black Gold and Tuti violated Rule 12.11.4.15(Q) NMAC, with respect to FINRA Rule 2010, by accepting an investment from Juan R. without properly inquiring or verifying the information contained in his "confidential participant information sheet."
9. Black Gold and Tuti violated Rule 12.11.4.15(Q) NMAC, with respect to FINRA Rule 2010, by employing high pressure sales tactics to induce Juan R. to invest during 2014 as opposed to waiting until 2015.
10. Black Gold violated NMSA 1978, § 58-13C-402(D), Employment of an Unregistered Agent, by being an issuer engaged in offering or selling securities in New Mexico and employing or associating with agents who transact business in New Mexico on its behalf without being registered. This constitutes one violation for each of the three unregistered agents.
11. Black Gold, Tuti, Gee, and Rautbord violated NMSA 1978, § 58-13C-402(A), Sale or Offer to Sell Securities by an Unregistered Agent, by attempting to sell interests in the above referenced joint venture to New Mexico residents without first being licensed to do business in New Mexico. This constitutes one violation for Tuti; two for Gee; three for Rautbord; and six for Black Gold.
12. Black Gold, Tuti, Gee, and Rautbord violated NMSA 1978, § 58-13C-301, Sale or Offer to Sell an Unregistered Security, by attempting to sell or selling the above referenced securities without first registering them with the New Mexico Securities Division. This constitutes one violation for Tuti; two for Gee; three for Rautbord; and six for Black Gold.
13. Black Gold and Tuti violated NMSA 1978, § 58-13C-501(C), Securities Fraud, by misrepresenting to Juan R. the viability of the joint venture as referenced in Proposed Fact #15.

III. ORDER

Due to the preliminary nature of the relief required and pursuant to NMSA 1978, § 58-13C-604(A)(1), all Respondents are hereby ORDERED to immediately cease and desist from all investment solicitation and sales activities in the State of New Mexico.

IV. PROPOSED ORDER

After an administrative hearing or waiver of such hearing by Respondents, the Director proposes to issue a Final Order declaring that:

1. Pursuant to NMSA 1978, § 58-13C-412(B), Black Gold, David Tuti, Dennis Gee, and Scott Rautbord are permanently barred from transacting securities in New Mexico.
2. Pursuant to NMSA 1978, § 58-13C-604(C), the Director will assess a fine of up to \$10,000 against Black Gold, Tuti, Gee, and Rautbord for each violation of the New

Mexico Uniform Securities Act or its Rules, taking into consideration the extent of Respondents' conduct and the resources of the Respondents committing such violations. The Director will consider each discrete instance of conduct in determining an appropriate fine.

3. In accordance with NMSA 1978, § 58-13C-604(D), the Director will assess an additional fine of up to \$10,000 against Black Gold, Tuti, Gee, and Rautbord for each violation of the New Mexico Uniform Securities Act where such violations are directed towards, target or are committed against a person who, at the time of the violation, is sixty-two years of age or older.
4. In this matter Black Gold faces twenty-four (24) counts; Tuti faces eight (8) counts; Gee faces four (4) counts; and Rautford faces six (6) counts. The total number of counts subject to enhancement based on the age of the targeted prospective investor are: four (4) for Gee; four (4) for Rautford; and eight (8) for Black Gold.

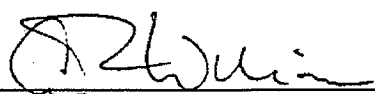
NOTICE OF ADMINISTRATIVE HEARING RIGHTS

Each Respondent is hereby notified of its statutory right to request an administrative hearing on the Notice of Contemplated Action in the above referenced matter. Administrative hearings are governed by NMSA 1978, § 58-13C-604(b)(4)-(11). Respondents have fifteen (15) days from receipt of this notice to file a written request for a hearing. The request may be sent by U.S. Mail RRR or via e-mail to the Clerk at feliz.sandoval@state.nm.us. The Director will set the matter for hearing no more than sixty days (60) nor less than fifteen (15) days from receipt of the hearing request. The Director will promptly notify the Respondent of the time and place for hearing. The Director or an appointee will conduct the hearing. The Director or his appointee will pass upon the admissibility of evidence and may exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious.

As discussed more fully in NMSA 1978, § 58-13C-604(b), any Respondent requesting a hearing is entitled to: appear on its own behalf or may be represented by an attorney; present all relevant evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and request and obtain discovery, including the names and addresses of witnesses.

ENTERED AT Santa Fe, New Mexico this 4th day of September 2015.





Alan R. Wilson, Director
New Mexico Securities Division