

**BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE  
OF THE STATE OF TENNESSEE AT NASHVILLE**

<b>TENNESSEE SECURITIES DIVISION,</b>	)	
<b>Petitioner</b>	)	
	)	<b>Order No. 05-013</b>
<b>vs.</b>	)	
	)	
<b>PHILLIP SHARP,</b>	)	
<b>Respondent</b>	)	

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**CONSENT ORDER**

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The Tennessee Securities Division ("Division"), and Phillip Sharp, Respondent herein, agree to the entry of this Consent Order in accordance with Tenn. Code Ann. § 48-2-116 of the Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. ("Act"), which states that the Commissioner of Commerce and Insurance ("Commissioner") from time to time may make such orders as are necessary to carry out the provisions of the Act.

**GENERAL STIPULATIONS**

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.

2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and

consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. The Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner for the Department of Commerce and Insurance or any other state government representative against the Respondent for violations of law under other statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondent.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

#### **FINDINGS OF FACT**

1. The Tennessee Securities Act of 1980, as amended, Tenn. Code Ann. § 48-2-101, et seq. (the "Act"), places the responsibility for the administration of the Act on the Commissioner of Commerce and Insurance ("Commissioner"). The Division is the lawful

agent through which the Commissioner discharges this responsibility. Tenn. Code Ann. §48-2-115.

2. Respondent, Phillip Sharp ("Sharp") was an employee, agent, officer, director, owner or other affiliated person of Buckeye Energy Corporation ("Buckeye"). Sharp maintains an address at 21 Camelia Place, Newman, GA 30263. Sharp is not registered with the Division in any capacity pursuant to the Act.

3. In July of 1999, the Kansas Securities Commission ("KSC") sent the Division a referral letter concerning Buckeye. KSC stated that representatives of Buckeye had solicited a securities investigator for the KSC to invest in an oil and gas program. The Division commenced investigation of Buckeye and Sharp by Order of Investigation dated March 9, 2000.

4. The Division also received a complaint involving Buckeye from Chris Somers ("Somers"). Somers was a vice-president for sales for Buckeye. His duties as vice president of Buckeye included supervising two shifts of telemarketers who would cold-call persons who were on a purchased lead list. Somers indicated that while at Buckeye, he discovered that Sharp was spending investor money for his personal benefit.

5. In or about January of 2000, Wallace Harmon ("Harmon") a resident of North Carolina invested \$8,000.00 with Buckeye for a five percent investment in an oil and gas limited partnership. Harmon received a letter from Buckeye on February 3, 2000 confirming the investment. The letter stated that another \$6,500.00 would be due from Harmon once the oil well had become operational. Harmon had been assured that Buckeye would return Harmon's initial investment with any interest due at any time that Harmon so requested. Harmon requested the return of his principal and interest by an

August 2000 letter. Harmon received a response from Sharp, the President of Buckeye, on August 28, 2000. The letter stated that Harmon's investment would be transferred to new oil wells and that Harmon would need to remit an additional \$4,500.00 in order to secure his investment in the new wells. Harmon did not reinvest and once again requested the return of his initial investment. Buckeye never made any of the interest payments due Harmon under the terms of his investment, nor has Buckeye returned Harmon's initial investment to him.

6. In or about April of 2001, Floyd Kemp ("Kemp") was solicited by Buckeye. Kemp was offered an investment with Buckeye in oil and gas wells. In a letter on Buckeye stationary, which letter was signed by Sharp and dated April 10, 2001, Kemp was informed that Buckeye would underwrite his investment on the initial wells. Buckeye agreed to repurchase his contract on his initial investment if Kemp was not satisfied. On or about April 16, 2001, Kemp issued a check in the amount of \$10,000.00 to Buckeye. In return for this investment, Kemp was to receive a 2 1/2% interest in the proceeds of an oil and gas well. The well that Kemp invested in never went into production. Kemp contacted Sharp on September 4, 2001 and requested his investment principal back. To date, Kemp has neither received the return on his investment promised by Buckeye nor has he received the return of his principal.

7. In the fall of 2001, Paul Cheong ("Cheong") spoke to Sharp on the phone about investing in Buckeye. Cheong and his friend, Abraham Biadgelgne ("Biadgelgne"), visited with Sharp in person regarding investment opportunities in oil and gas wells through Buckeye. On October 2, 2001, Cheong and Biadgelgne wired \$45,000.00 each to Buckeye

for an oil and gas interest investment. Sharp wrote a letter to Biadgelgne and Cheong on October 15, 2001 to formally inform them that the oil and gas property had been locked in, earnest money had been tendered, and that the closing would be on or before November 5, 2001. However, Sharp never closed on the property nor did he refund the investment money. The monies paid by Cheong and Biadgelgne were not used for the stated purpose of the investment.

8. As a result of the Division's investigation, proof of additional investments in Buckeye oil and gas securities was obtained. It is now known to the Division that Sharp, through Buckeye, issued and sold oil and gas investment interests as early as 1999. It is now known to the Division that Sharp, through Buckeye, issued and sold oil and gas investment interests to other individuals, including Joseph Lalli, Clarence York, and Gary Sluser. In total there is evidence of 36 investors in Buckeye. The total investment is approximately \$1.5 million.

9. At no time did Sharp or any other Buckeye sales representatives inform investors that the oil and gas interests being sold were securities and as such were required to be registered with the Division pursuant to the Act. At no time did Sharp or any other Buckeye sales representatives inform investors that Buckeye was required to be registered with the Division as an issuer-dealer pursuant to the Act. At no time did Sharp inform investors that instead of using investor money for the stated investment purpose, he was using a portion of the investor money for his personal expenditures.

10. Neither Buckeye nor Sharp was registered to sell securities by the Division. Neither Sharp nor Buckeye was registered as an issuer-dealer. Sharp and Buckeye are

not and were not ever registered with the Division in any capacity pursuant to the Act.

11. No securities offering related to Buckeye oil and gas interests has been registered with the Division pursuant to the Act.

12. Buckeye and Sharp have been the subject of regulatory action in other states, including the following: 1) a Summary Order to Cease and Desist from the Pennsylvania Securities Commission issued on September 5, 2000; 2) a Final Order with the Pennsylvania Securities Commission issued on November 11, 2002; 3) a Cease and Desist Order with the Texas State Securities Board on December 16, 1999; 3) a Cease and Desist Order from the Ohio Securities Division in April of 2002; and 4) a Cease and Desist Order from the Kansas Securities Commission in August of 2001.

13. The results of the Division's investigation were referred to William E. Gibson, District Attorney General, 13<sup>th</sup> Judicial District, in Cookeville, Tennessee. The Securities Division worked with the District Attorney General's Office. On January 5, 2004, the Grand Jury of Pickett County, Tennessee returned a true bill, indicting Phillip Sharp on numerous counts of the sale of unregistered securities, non-registration as an issuer-dealer, fraud, and theft, all of which counts related to the issuance and sale of Buckeye oil and gas investment interests. On March 9, 2005, Sharp entered a "guilty" plea to eight felony counts of violations of the Tennessee Securities Act and three felony counts of theft. The judgment of the court contained provisions, including, but not limited to the following: 1) a sentence of eight (8) years; 2) an order to pay \$29,500.00 in restitution to the victims named in the counts related to violations of the Tennessee Securities Act; 3) an order barring Sharp from engaging in any securities transactions; 4) an assessment of \$9,500.00

to the Economic Crime Fund; and 5) an order for Sharp to perform 180 hours of community work services.

14. Sharp, through Buckeye, issued, offered to sell, and sold oil and gas investment interests to the above-mentioned investors, which oil and gas investment interests were securities under the Act and were required to be registered under the Act, at a time when the oil and gas investment interests were not registered with the Division pursuant to the Act. Sharp issued, offered to sell, and sold oil and gas investment interests in Buckeye, which investment interests were securities under the Act, at a time when neither Sharp nor Buckeye was registered with the Division pursuant to the Act as an issuer-dealer.

#### **CONCLUSIONS OF LAW**

1. Pursuant to Tenn. Code Ann. §48-2-115(a), the responsibility for administration of the Act is upon the Commissioner. The Division is the lawful agent through which the Commissioner discharges this responsibility.

2. Tennessee Code Annotated §48-2-102 provides that a security includes certificates of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease.

3. Tennessee Code Annotates §48-2-104(a) provides that it is unlawful for any person to sell any security in this state unless (1) it is registered, (2) the security or transaction is exempted under Tenn. Code Ann. §48-2-103, or (3) the security is a covered security.

4. Tennessee Code Annotated §48-2-102(12)(C) provides that an “issuer” means every person who issues any security, except that with respect to a fractional undivided interest in oil, gas, or other mineral rights, “issuer” means the owner of such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of sale.

5. Tenn. Code Ann. § 48-2-110(f) states that it is unlawful for any person to issue any security in this state unless such person is registered as an issuer-dealer.

6. Tennessee Code Annotated §48-2-121 provides that it is unlawful for any person, in connection with the sale or purchase of any security in this state directly or indirectly, (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, and/or (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

7. The averments in paragraphs two – fourteen of the Findings of Fact herein constitute practices by Sharp that would provide grounds under Tenn. Code Ann. § 48-2-104 for the entry of an order of sanctions against Sharp.

8. The averments in paragraphs two - fourteen of the Findings of Fact herein constitute practices by Sharp which would provide grounds under Tenn. Code Ann. § 48-2-110(f) for the entry of an order of sanctions against Sharp.



9. The averments in paragraphs two - fourteen of the Findings of Fact herein constitute practices by Sharp that would provide grounds under Tenn. Code Ann. § 48-2-121 for the entry of an order of sanctions against Sharp.

### **ORDER**

**NOW, THEREFORE**, on the basis of the foregoing, and the Respondent's waiver of right to a hearing and appeal under the Tennessee Securities Act and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., and the Respondent's admission of jurisdiction of the Commissioner, the Commissioner finds that Respondent, Phillip Sharp, for the purpose of settling this matter, admits the matters herein, has agreed to the entry of this Order and that the following Order is appropriate, in the public interest and necessary for the protection of investors.

**IT IS ORDERED**, pursuant to Tennessee Code Annotated §48-2-116(a) of the Tennessee Securities Act that:

1. Respondent is **ORDERED** to fully comply with the Tennessee Securities Act, as amended, and all rules promulgated thereunder.
2. Respondent is **ORDERED** to permanently cease and desist from engaging in practices prohibited by the Tennessee Securities Act of 1980, as amended.
3. Respondent is **ORDERED** to permanently cease and desist in the further conduct as an issuer-dealer from, into, or in the State of Tennessee. Respondent is **ORDERED** to permanently cease and desist from the issuance, sale, or offer to sell any oil and gas interests, including specifically, but not limited to those interests related to

Buckeye, including any predecessor and/or successor entities, or any other security from, in, or into the State of Tennessee.

4. The Respondent agrees and it is **ORDERED** that should Respondent seek securities registration in this State or any other state in any capacity, such Respondent shall state on Form U-4 this action, pursuant to the instructions of said form and as required by the NASD, and file the appropriate Disclosure Reporting Page to disclose the details of this filed regulatory action. Respondent is further **ORDERED** and agrees that disclosure of the existence and terms of this Consent Order shall be disclosed in any offer to sell, private placement memoranda, or other sales tool which in any manner relates to the issuance, sale, or offer to sell a security.

5. Respondent is **ORDERED** and agrees to be permanently prohibited from applying for or seeking registration as a broker-dealer, agent of a broker-dealer, investment adviser, investment adviser representative, or issuer-dealer through the State of Tennessee, Department of Commerce and Insurance, Division of Securities. Respondent is barred from transacting any securities business on behalf of others in, from, or into the State of Tennessee. Respondent is **ORDERED** to be permanently prohibited from applying for or seeking the registration of any securities in the State of Tennessee.

6. Respondent is **ORDERED** to make restitution in accordance with the order of the Court in Pickett County, Tennessee, County Criminal Court Cause No. 834: State of Tennessee vs. Phillip Sharp. Respondent shall abide by the terms of the judgment issued in said cause.

7. Respondent, Phillip Sharp, is further **ORDERED** to be permanently barred from applying for or seeking any registration and/or licensure administered by and/or handled through the State of Tennessee, Department of Commerce and Insurance.

**Execution of this Consent Order is due on or before March 9, 2005.**

**IT IS ORDERED** that this Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Securities Division against Phillip Sharp for violations of the Tennessee Securities Act of 1980, as amended, alleged to have occurred with respect to facts contained herein. Nothing herein may be construed as preventing a separate division or section of the Department of Commerce and Insurance or a separate entity of the State of Tennessee from taking other appropriate action against the Respondent based on the Findings of Fact and Conclusions of Law enumerated herein or the existence of this executed Consent Order.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signature affixed below, Phillip Sharp affirmatively states that he has freely agreed to the entry of this Consent Order, that he waives his right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to

the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

ENTERED this 17<sup>th</sup> day of March, 2005.

*Paula A. Flowers*

Paula A. Flowers, Commissioner  
Department of Commerce and Insurance

**APPROVED FOR ENTRY:**

*Phillip W. Sharp*  
Phillip Sharp  
Respondent

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Daphne D. Smith,  
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