

State of Vermont  
Department of Financial Regulation  
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STATE OF VERMONT  
DEPARTMENT OF FINANCIAL REGULATION  
SECURITIES DIVISION

IN RE: SURETY SERVICES, LLC; )  
LUTHER H. GUTKNECHT; AND ) DOCKET NO. 13-022-S  
KENNETH P. SMITH )  
)

STIPULATION AND CONSENT ORDER

This Stipulation and Consent Order is entered this 6<sup>th</sup> day of November, 2013 by and among Surety Services, LLC; Luther H. Gutknecht; and Kenneth P. Smith (collectively, “Respondents”), and the State of Vermont Department of Financial Regulation (“Department”).

WHEREAS, the Commissioner of the Department (“Commissioner”) is responsible for administering and enforcing the Vermont Uniform Securities Act (“Securities Act”), Title 9, Chapter 150 of the Vermont Statutes Annotated, pursuant to which the Department has conducted an investigation of the circumstances involving certain transactions and related matters involving Respondents during the years 2007 through 2009; and

WHEREAS, as a result of the Department’s investigation, the Department has concluded that Respondents violated the Securities Act as a result of offering to sell and selling unregistered securities to Vermont residents, and failing to register as agents under the Securities Act; and

WHEREAS, the Department has sought, and Respondents, by and through counsel, without the necessity of further formal proceedings, have agreed to take the measures specifically described in the Consent Order, dated 11/6/13; and

WHEREAS, Respondents, by and through counsel, elect to permanently waive any right to a hearing and appeal under the Vermont Administrative Procedure Act, Title 3, Chapter 25 of the Vermont Statutes Annotated; the rules, regulations, and orders of the Commissioner; and any right they may have to judicial review by any court with respect to this Consent Order.



NOW THEREFORE, Respondents, without admitting to the facts or legal conclusions of the Department or the Commissioner, agree not to contest in any administrative or civil judicial proceeding the Findings and Conclusions as set forth herein.:

### **FINDINGS OF FACT**

Respondents, without admitting to the alleged facts or legal conclusions, admit and subject themselves to the jurisdiction of the Commissioner and the Department and consent to the entry of this Order by the Commissioner.

1. Respondent Surety Services, LLC (“Surety”) was a limited liability company registered in the State of Delaware with its primary place of business in South Burlington, Vermont.
2. Respondent Luther H. Gutknecht (“Gutknecht”) and Kenneth P. Smith (“Smith”) were members of Surety.
3. Respondents, and each of them, arranged a meeting at Surety’s offices in South Burlington, Vermont between William W. Shook (“Shook”), the president of A.O.E. Operators, Inc. (“AOE”), and several Vermont residents.
4. On November 28, 2007, Gutknecht and Smith composed a letter on Surety letterhead to Shook that proposed the following two methods of compensation for identifying investors for AOE’s oil and gas exploration project (the “project”): (1) receiving an interest in the project, or (2) receiving an upfront payment.
5. On December 5, 2007, Shook, on behalf of AOE, agreed in writing to the second method of compensation.
6. In or around June 2008, Smith invited several Vermont residents to Surety’s offices in South Burlington to attend a presentation by Shook, acting on behalf of AOE, about the project.
7. Smith and Gutknecht both attended the June 2008 meeting.
8. Following the South Burlington meeting, several Vermont residents purchased fractional undivided interests in oil and gas rights (the “securities”) from AOE.
9. None of the Respondents are registered and permitted to sell securities in the State of Vermont.
10. The securities were not registered in the State of Vermont.



11. A letter of understanding between AOE and Surety, dated January 5, 2009, stated that Surety would receive an upfront payment from AOE. The letter provided that AOE would pay Surety 12% of the amount received from investors identified by Surety.

12. On February 5, 2009, Defendants Surety, Gutknecht, and Smith received a payment of \$50,478.79 from AOE. This amount represents 12% of \$420,656.57, the total amount invested by Vermont residents up until that point.

13. After the initial investments, AOE continued to charge Vermont residents for various costs associated with the project. As of April 21, 2009, Vermont residents had collectively invested \$630,885.29 in the project.

### **CONCLUSIONS OF LAW**

1. A “fractional undivided interest in oil, gas, or other mineral rights” is a security under § 5102(28) of the Securities Act.

2. Under 9 V.S.A. § 5301, the Securities Act prohibits a person from offering or selling a security in Vermont unless: (1) the security is a federal covered security; (2) the security, transaction, or offer is exempted from registration; or (3) the security is registered.

3. Under 9 V.S.A. § 5403(a), the Securities Act prohibits a person from transacting business in Vermont as an agent unless the individual is registered as an agent under the Securities Act or exempt from registration. 9 V.S.A. § 5101(1) defines “agent” as “an individual, other than a broker-dealer, who . . . represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities.”

4. Respondents, and each of them, by engaging in the conduct set forth in the foregoing Findings of Fact, have violated 9 V.S.A. § 5301 and § 5403(a).

5. Under 9 V.S.A. § 5604, the Commissioner, after determining that a person has engaged in an act that constitutes a violation of the Securities Act, may issue a final order directing the person to cease and desist from engaging in the act, to pay a civil penalty, to make restitution, and to pay the cost of an investigation.

6. Pursuant to 9 V.S.A. § 5604, the Commissioner issues the following Consent Order.

### **CONSENT ORDER**

NOW, THEREFORE, based on Respondents’ stipulation, and on the basis of the Findings of Fact and Conclusions of Law, the Commissioner issues the following Order, to be fully complied with following receipt by the Commissioner of the duly executed Consent to Entry of Administrative Order:



1. The Department bars Respondents from any and all registrations with the Department to offer and sell securities for an infinite period, effective beginning the date of receipt by the Commissioner of the duly executed Consent to Entry of Administrative Order.

2. Respondents shall provide the Department with separate checks, totaling \$100,000.00, made out to each of the Vermont investors within 20 days of the execution of this Stipulation and Consent Order, in the amounts that follow:

- (i) Respondents shall pay restitution to Investor 1 in the amount of \$27,488.60;
- (ii) Respondents shall pay restitution to Investor 2 in the amount of \$8,741.31;
- (iii) Respondents shall pay restitution to Investor 3 in the amount of \$8,741.31;
- (iv) Respondents shall pay restitution to Investor 4 in the amount of \$35,977.28;
- (v) Respondents shall pay restitution to Investor 5 in the amount of \$19,051.50.

3. Respondents shall provide the Department with separate checks, totaling \$50,000.00, made out to each of the Vermont investors and the Department within 1 year of the execution of this Stipulation and Consent Order, in the amounts that follow:

- (i) Respondents shall pay restitution to Investor 1 in the amount of \$8,246.58;
- (ii) Respondents shall pay restitution to Investor 2 in the amount of \$2,622.39;
- (iii) Respondents shall pay restitution to Investor 3 in the amount of \$2,622.39;
- (iv) Respondents shall pay restitution to Investor 4 in the amount of \$10,793.18;
- (v) Respondents shall pay restitution to Investor 5 in the amount of \$5,715.46;
- (vi) Respondents shall pay an administrative penalty in the amount of \$10,000.00;
- (vii) Respondents shall reimburse the Department for its costs in this investigation in the amount of \$5,000.00;
- (viii) Respondents shall donate \$5,000.00 to the Vermont financial services education and training special fund, pursuant to 9 V.S.A. § 5601(d)-(e).

4. All checks referenced in paragraphs 2 and 3 shall be bank checks or checks issued by Langrock, Sperry, and Wool, LLP.



5. If Respondents fail or neglect to comply with any of the terms, conditions or undertakings set forth in this Stipulation and Consent Order, the Department may, upon written notice to Respondents, institute any legal or administrative proceedings it deems appropriate to enforce same and to seek such other appropriate sanctions, and Respondents shall consent to the entry of judgment for any unpaid balance.

6. Upon satisfaction of paragraphs 2 through 4 of this Consent Order, this Stipulation and Consent Order will be deemed to have documented the resolution of all matters arising from the Department's above-referenced investigation and will not be a basis for action against Respondents by the Department arising out of these same events in regards to the business of securities except in determining any action or penalty that may be imposed by the Department for any future violations of law by Respondents.

7. This Stipulation and Consent Order shall not be deemed to have released the Department's claims against Respondents for fraud under the Securities Act until Respondents satisfy paragraphs 2 through 4 of this Consent Order.

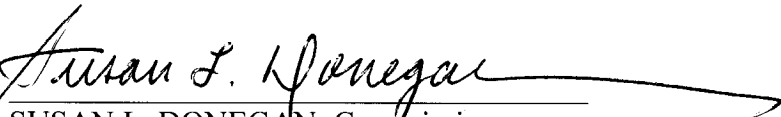
8. Upon satisfaction of paragraphs 2 through 4 of this Consent Order, the Department shall DISMISS WITH PREJUDICE the civil action entitled Vermont Department of Financial Regulation v. Surety Services, LLC, Luther H. Gutknecht, and Kenneth P. Smith, filed in the Superior Court of Vermont, Washington Unit, Civil Division, Docket No. 131-2-13 Wncv.

9. All Respondents are jointly and severally liable for all obligations under this Consent Order.

This ORDER shall become effective immediately upon the date set forth below.

**BY ORDER OF THE COMMISSIONER**

Entered at Montpelier, Vermont, this 6<sup>th</sup> day of November, 2013.

  
SUSAN L. DONEGAN, Commissioner  
Vermont Department of Financial Regulation



**CONSENT BY SURETY SERVICES, LLC; LUTHER H. GUTKNECHT; AND  
KENNETH P. SMITH TO THE ENTRY OF AN ORDER BY THE COMMISSIONER  
IMPOSING TERMS, CONDITIONS AND UNDERTAKINGS UNDER THE  
VERMONT UNIFORM SECURITIES ACT**

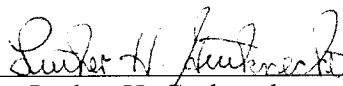
1. Surety Services, LLC; Luther H. Gutknecht; and Kenneth P. Smith (“Respondents”), hereby admit the jurisdiction of the Commissioner over the subject matter of this proceeding, and solely, with respect to this matter, knowingly and voluntarily waive any and all rights to a hearing before the Commissioner or her designee and all other procedures otherwise available under the Vermont Uniform Securities Act (“Securities Act”), Title 9, Chapter 150 of the Vermont Statutes Annotated, and any successor act, or the rules, regulations, and orders of the Commissioner. Respondents also waive compliance with the provisions of 3 V.S.A., Chapter 25 regarding contested cases. Respondents acknowledge that this Consent Order constitutes a valid order duly rendered by the Commissioner.

2. Respondents voluntarily and knowingly waive any rights they may have to judicial review by any court by way of suit, appeal, or extraordinary remedy resulting from the issuance of the Consent Order.


3. Respondents acknowledge and agree that the Consent Order is entered into freely and voluntarily and that no promise was made, nor was any coercion used, to induce the Respondents to enter into the Consent Order.

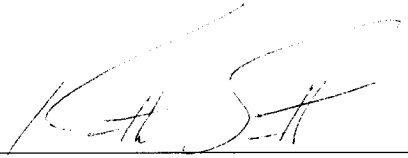
4. Respondents acknowledge their understanding of all terms, conditions, and obligations contained in the Consent Order and further acknowledge that should they fail to comply with any and all provisions of the Consent Order, the Commissioner may impose additional sanctions and seek other appropriate relief subject to the Respondents’ rights to a hearing pursuant to the Securities Act and any successor act.

Dated this 8<sup>th</sup> day of October, 2013.

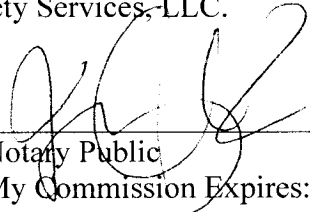
By:   
Luther H. Gutknecht

BEFORE ME this 8<sup>th</sup> day of October, 2013, personally appeared Luther H. Gutknecht who acknowledged that he, as being authorized so to do, executed the foregoing for the purposes therein contained, and that such act of execution is his free act and deed on behalf of himself and Surety Services, LLC.

  
Notary Public  
My Commission Expires: 2/10/15

By:   
Kenneth P. Smith

BEFORE ME this 11 day of October, 2013, personally appeared Kenneth P. Smith who acknowledged that he, as being authorized so to do, executed the foregoing for the purposes therein contained, and that such act of execution is his free act and deed on behalf of himself and Surety Services, LLC.

  
Notary Public  
My Commission Expires: 2/10/15