



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
)  
Merchant Bankcard Network )  
d/b/a ATMmachine.com ) Case No. AP-04-06  
d/b/a Mastercard-Visa.com )  
and )  
)  
Howard Padratzik )  
a/k/a Howard Paddy, )  
)  
Respondents. )

Serve at:  
1910 Marconi Avenue  
St. Louis, MO 63110

**ORDER TO CEASE AND DESIST**

On the 30<sup>th</sup> day of December 2003, Omar D. Davis, Securities Enforcement Counsel, submitted a petition for a cease and desist order. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

**FINDINGS OF FACT**

1. Merchant Bankcard Network, d/b/a/ ATMmachine.com and d/b/a Mastercard-Visa.com (hereinafter "Merchant Bankcard") is a Missouri business with an address of 1910 Marconi Avenue, St. Louis, Missouri, 63110. Merchant Bankcard is registered with the Missouri Secretary of State as a fictitious name and the business owner is listed as Howard S. Padratzik.
2. Howard S. Padratzik ("Padratzik") is an individual with an address of 1910 Marconi Avenue, St. Louis, MO 63110. Padratzik also identifies himself as "Howard Paddy", and purports to be the owner of Merchant Bankcard.
3. As used in this Cease and Desist Order, the term "Respondents" refers to Merchant Bankcard and Padratzik.

4. On December 31, 2002, the Missouri Securities Division (“the Division”) received information that indicated that the Respondents offered and/or sold unregistered securities in the State of Missouri.
5. On September 9, 2002, a North Carolina resident (“NCR1”) found information on the Internet concerning a company by the name of Merchant Bankcard Network (“Merchant Bankcard”). NCR1 contacted, by telephone, the Merchant Bankcard office in St. Louis, Missouri, to discuss the purchase of an Automated Teller Machine (“ATM”) franchise. During the telephone conversation, NCR1 spoke with Howard Paddy (“Padratzik”), an individual who represented himself as the owner of Merchant Bankcard.
6. During the September 9, 2002, telephone conversation, and telephone conversations over the following week, Padratzik told NCR1 the following, among other things:
  - a. Padratzik had 10 prospects who needed ATMs placed in their respective businesses and that NCR1 could purchase the machines that were being placed in the businesses.
  - b. NCR1 could profit from the transaction fees generated by the ATMs at a cost of approximately 2/3 of the cost of a franchise opportunity.
  - c. NCR1 would not have to fill the machine with money, as the business owners at the ATM locations would take responsibility for the cash in the machines.
  - d. The manner in which the investment would work was that NCR1 would purchase the ATM from Padratzik and Merchant Bankcard, Merchant Bankcard would install the machine and provide maintenance, the business where the ATM was located would supply the cash necessary to establish the ATM, a processing company would distribute to NCR1, via wire transfer, the full amount of transaction fees, and NCR1 would pay the specified percentage of the fees to the business where the ATM was located.
  - e. NCR1 would split the ATM transaction fees with the business housing the ATM.
  - f. All ATMs purchased by NCR1 from Respondents would be installed and the wire transfer of fees would begin by October 1, 2002.
  - g. 10 ATMs would provide a net profit of at least \$2,500 each month, and the transaction fees were to be transferred on a daily basis.
  - h. Each ATM investment would cost \$4,995, for a total of \$49,950.
  - i. NCR1 would make a deposit payment with Merchant Bankcard and/or Padratzik and the balance would be due when all machines were installed and operating.

7. Padratzik supplied NCR1 with at least one reference regarding Merchant Bankcard's ATM program. NCR1 made contact with that reference and was told by the reference that there were no problems with the ATMs located at the reference's place of business.
8. NCR1 decided to invest in 10 ATMs and on September 10, 2002, wired a deposit of \$32,000 into Merchant Bankcard's bank account at Lindell Bank & Trust Company.
9. On September 11, 2002, NCR1 wired an additional \$3,000 payment into Merchant Bankcard's bank account at Lindell Bank & Trust Company.
10. On September 13, 2002, NCR1 received a facsimile from Merchant Bankcard that reflected NCR1's purchase of 10 ATMs and the two payments described above. The facsimile stated that a balance of \$14,950. was due from NCR1 by September 14, 2002.
11. On September 11, 2002, NCR1 received written contracts on 3 ATMs, and on September 19, 2002, received contracts on an additional 3 ATMs.
12. NCR1 placed the verbal agreements between NCR1 and Padratzik / Merchant Bankcard concerning the purchase and installed up of the 10 ATMS into a written agreement. The first draft was incomplete regarding the location information on the machines. The draft of the agreement was signed by Padratzik and faxed back to NCR1 on September 18, 2002.
13. Although NCR1 requested information regarding the specific location of each ATM, he received only partial information concerning the machines.
14. On or shortly after September 19, 2002, Padratzik requested NCR1 pay the balance of the purchase. After discussion, NCR1 agreed to send payment of \$8,970 to cover the costs on the 6 machines for which NCR1 had received written contracts from Padratzik. On September 19, 2002, NCR1 sent \$8,970 by means of a Teller's Check drawn on the Central Carolina Bank. The Teller's Check was made payable to Merchant Bankcard Network.
15. On October 5, 2002, NCR1 learned that 3 additional ATMs had been installed and were operating but NCR1 did not receive written contracts for those machines.
16. NCR1 obtained software from Padratzik that would allow NCR1 to monitor the daily performance of each ATM. NCR1 could only obtain information for 3 ATMs.
17. NCR1 received approximately \$282 in total transaction fees from 5 of the 9 ATMs that were operating.
18. On October 23, 2002, after negotiation between the two parties, Respondents agreed to issue a full refund of NCR1's investment.
19. On November 6, 2002, NCR1 received from Respondents a letter confirming that Padratzik would either mail a cashiers check or wire \$43,970, less any fees received by NCR1 on the ATMs, by the end of the business day on November 7, 2002.

20. On or about November 26, 2002, after NCR1 filed a complaint with the Better Business Bureau, Respondents wired \$8,970 into NCR1's account.
21. As of November 7, 2003, NCR1 has not received the remaining \$35,000 of the refund as promised by Padratzik.
22. The purchase agreement offered by Respondents is an investment contract for the following reasons:
  - a. Investment of money: NCR1 paid \$4,995 for each ATM.
  - b. Common enterprise: NCR1 was told that he would purchase the machines from Padratzik/Merchant Bankcard, and then split the proceeds derived from transaction fees with the business that housed the respective ATM.
  - c. Expectation of profit: NCR1 expected to receive a net profit of \$2,500 from 10 ATMs. These profits were expected from transaction fees generated from the use of the ATMs.
  - d. From the significant managerial or entrepreneurial efforts of others: Padratzik promoted the sale of the ATMs to NCR1 by promising that Merchant Bankcard would locate a business that desired to utilize an ATM; install and service the ATMs, the processing company would automatically send the transaction fees to NCR1, and the business where each ATM was located would bear the responsibility for stocking the ATM with cash. NCR1 only needed to purchase the ATM, and share the fees with the location business.
23. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration, granted exemption or notice filing indicating status as a "federal covered security" for any of the securities offered by the Respondents in the State of Missouri.
24. A check of the records maintained by the Commissioner confirmed no registration for Respondents to sell securities in the State of Missouri.
25. On January 28, 2003, an investigator with the Division received a telephone call from a man who identified himself as "Howard Paddy" and stated that he operated the Merchant Bankcard business. The caller stated that he understood the Division was making inquiries regarding Merchant Bankcard. The caller further stated the following:
  - a. If the party who had complained to the Division was a man from North Carolina, the Division should know that the money had been refunded.
  - b. The caller then corrected his statement to say that \$8,000 of the investment made by the North Carolina man had been returned.
  - c. The caller intended to send the remaining refund the following day.

26. To date, NCR1 has yet to receive the remainder of the money invested in the ATM program.
27. On January 31, 2003, the Securities Division sent letters of inquiry to Respondents that requested a claim of exemption from registration or exception from definition upon which Respondents relied in offering unregistered securities in the State of Missouri. The letters also requested additional information about the offers to Missouri residents and advised Respondents that failure to respond within a reasonable time as installed by the Commissioner constituted proper grounds for the entry of an order suspending the right to offer and sell securities in the State of Missouri.
28. On February 24, 2003, the Division received a response from Merchant Bankcard Network, signed by Howard S. Padratzick that stated, in part,
  - a Merchant Bankcard Network is a sole proprietorship owned by Howard S. Padratzick.
  - b "...Merchant Bankcard Network does not offer or sell securities. Merchant Bankcard Network sells, leases or provides Automated Teller Machines".
  - c "Howard Padratzick is the owner and sales person who has sold, leased or provided an Automated Teller machine to any individual or business in the State of Missouri".
  - d Merchant Bankcard Network denied the existence of investors or purchasers of securities in any other state.
  - e Merchant Bankcard Network's response was faxed to the Division with a cover sheet that was signed by "Howard Paddy" on behalf of Merchant Bankcard Network.
28. To date, the Division has received no response from Howard Padratzick to the Division's letter addressed to Padratzick individually.
29. To date the Division has received no further communication from Merchant Bankcard Network or Howard S. Padratzick.
30. Respondents were not registered to offer and sell securities in the State of Missouri.
31. Respondents offered and sold unregistered, non-exempt securities to Missouri residents.
32. These securities were not federal covered securities.
33. In connection with the offer, sale or purchase of a security to Missouri residents, Respondents omitted to state the material fact that Respondents were not registered to sell securities in the State of Missouri.
34. In connection with the offer, sale or purchase of a security to Missouri residents, Respondents omitted to state the material fact that the securities offered and sold by

Respondents were not registered in the State of Missouri.

35. In connection with the offer, sale or purchase of a security to Missouri residents, Respondents made the untrue statement of material fact that all ATMs purchased by NCR1 from Respondents would be installed and the wire transfers of fees would begin by October 1, 2002, when in fact, this was not true.
36. This Order is in the public interest.

### CONCLUSIONS OF LAW

1. §409.401(o), RSMo, Cumulative Supp. 2002, includes “investment contracts” within the definition of a security. “Investment contract” within the definition of a security is an investment of money in a common enterprise with the expectation of profit from the significant managerial efforts of others. *State v. Reber*, 977 S.W.2d 934 (Mo.App.S.D. 1998); *State v. Kramer*, 804 S.W.2d 845 (Mo.App.E.D. 1991). The economic reality of the investments in the automatic teller machine franchises together with the management arrangements as marketed and offered to passive investors by Respondent, and as described in the above findings of fact, in substance are investment contracts and would, therefore, be securities.
2. §409.101, RSMo 2000, provides that it is unlawful, in connection with the offer, sale or purchase of any security (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to 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) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. The conduct described in the above findings of fact constitutes a violation of this section.
3. §409.201(a), RSMo 2000, provides that it is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under Sections 409.101 to 409.419. The conduct described in the above findings of fact constitutes a violation of this section.
4. §409.301, RSMo 2000, provides that it is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this act; (2) the security or transaction is exempted under section 409.402; or (3) it is a federal covered security. The conduct described in the above findings of fact constitutes a violation of this section.
5. §409.402(f) RSMo, Cumulative Supp. 2002, provides that the burden of proving an exemption, qualification as a federal covered security, or an exception from a definition is upon the person claiming it. As described in the above findings of fact, Respondents failed to prove an exemption from registration or an exception from the definition of a security.

6. §409.408(b), RSMo 2000, provides, in part, that:

If the commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof.

7. Omitting to state a material fact necessary to make the statement made not misleading, in connection with the offer or sale of a security, constitutes an illegal practice under §409.408(b), RSMo 2000.
8. Making an untrue statement of material fact, in connection with the offer or sale of a security, constitutes an illegal practice under §409.408(b), RSMo 2000.
9. Transacting business as an unregistered agent as described in the above findings of fact constitutes an illegal practice under §409.408(b), RSMo 2000.
10. The offer or sale of unregistered securities as described in the above findings of fact constitutes an illegal practice under §409.408(b), RSMo 2000.
11. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.408(b), RSMo 2000.

## **ORDER**

**NOW, THEREFORE,** it is hereby ordered that Respondent(s), their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from:

- A. Offering or selling investment contracts in automated teller machines franchises;
- B. Violating §409.101(2), RSMo 2000, by omitting to state, in connection with the offer or sale of these securities to Missouri residents, the material fact that:
- a. Respondents were not registered to sell securities in the State of Missouri; and
  - b. The securities offered and sold by Respondents were not registered in the State of Missouri;
- C. Violating §409.101(2), RSMo 2000, by making untrue statements of material fact, including but not limited to, stating to Missouri residents that all ATMs purchased by

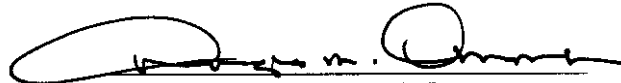
NCR1 from Respondents would be installed and wire transfers of fees would begin by October 1, 2002, when in fact, this was not true;

- D. Violating §409.201(a), RSMo 2000, by transacting business as an agent without an effective registration;
- E. Violating §409.301, RSMo 2000 by offering or selling investment contracts in automated teller machine franchises or any other security that is not registered, unless the security is a federal covered security or has an effective exemption from registration.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 26<sup>th</sup> DAY OF January, 2004.

MATT BLUNT  
SECRETARY OF STATE



DOUGLAS M. OMMEN  
COMMISSIONER OF SECURITIES

