



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
 )  
H & R MOTORS, INC.; ) Case No. AP-04-69  
SMART CASH, INC.; and )  
JOHNNY J. SUDDUTH, )  
 )  
Respondents. )

Serve H & R Motors, Inc. at:  
John J. Sudduth, Registered Agent  
301 E. Young Street  
Warrensburg, MO 64093

Serve Smart Cash, Inc. and Johnny J. Sudduth at:  
Johnny J. Sudduth  
655 NW 50 Hwy  
Centerview, MO 64019

**SUMMARY ORDER TO CEASE AND DESIST  
AND ORDER TO SHOW CAUSE WHY CIVIL PENALTIES AND COSTS  
SHOULD NOT BE IMPOSED**

On the 22<sup>nd</sup> day of July, 2004, the Enforcement Section of the Securities Division, by and through Assistant Commissioner for Enforcement Mary S. Hosmer, submitted a petition requesting a cease and desist order and other administrative relief. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

**FINDINGS OF FACT**

1. H & R Motors, Inc. ("H&R"), is a Missouri corporation formed September 18, 1996 and has a principal business address of 301 E. Young, Warrensburg, MO, 64093.
2. Smart Cash, Inc. ("Smart Cash"), is a Missouri corporation formed September 5, 2001 and has a principal business address of 655 NW 50 Highway, Centerview, MO, 64019.
3. John J. Sudduth ("Sudduth") is an individual with an address of 655 NW 50 Highway, Centerview, MO, 64019. Sudduth is the President, Secretary and a Director of H&R. Sudduth is also President and a Director of Smart Cash.

4. As used in this Cease and Desist Order, the term "Respondents" refers to Sudduth, H&R and Smart Cash.
5. On February 3, 2004, the Missouri Secretary of State, Securities Division (hereinafter "the Division") received information that Sudduth had solicited investments in H&R in the state of Missouri. That information alleged that Sudduth had placed an advertisement in a local Warrensburg newspaper. The advertisement placed by Sudduth contained, among other things, the following information:
  - a. "Investors, tired of not making money on your money?"
  - b. "Invest \$25,000.00, your return in a year will be \$32,500.00, monthly return: \$2,800.00"
  - c. "Invest \$10,000.00, your return in a year will be \$13,500.00, monthly return: \$1,125.00"
  - d. "Call Johnny Sudduth at 660-864-3158"
6. During the week prior to April 12, 2004, a Missouri resident (hereinafter "MR") placed a telephone call in response to the advertisement described in the preceding paragraph, using the number listed in the ad. MR left a message for Sudduth.
7. During the week prior to April 12, 2004, Sudduth returned the call and left a message for MR that indicated Sudduth was "returning a call about H&R Motors and Smart Cash Payday Loans." Sudduth left a callback number of 660-747-8309.
8. On April 12, 2004, MR spoke with Sudduth, during that telephone conversation, Sudduth related, among other things, the following information:
  - a. Sudduth placed the ad in the Warrensburg, Missouri newspaper.
  - b. Sudduth owned businesses in Warrensburg located at 1117 S. McGuire and 204 West Young.
  - c. Sudduth provided financing for car loans as well as other types of loans.
  - d. Sudduth borrowed money from individuals in the form of loans.
  - e. For every loan extended to him, Sudduth would provide a notarized contract that guarantees the repayment of interest monthly, at the rate promised in the ad, for 12 months and then repayment of the principal.

- f. Sudduth stated that his actions regarding the investment loans, as described above, are legal.
  - g. Sudduth could provide the names of individuals as references who could verify the repayment of the loans with interest by Sudduth.
9. Respondents offered an evidence of indebtedness to Missouri residents by offering to borrow money from investors and promising that the investor would receive a guaranteed return on the invested amount in one year.
10. 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.
11. A check of the records maintained by the Commissioner confirmed no registration for Respondents to sell securities in the State of Missouri.
12. On April 20, 2004, the Securities Division sent a letter of inquiry to Sudduth that requested a claim of exemption from registration or exception from definition upon which Sudduth relied in offering unregistered securities or any claim that the securities were federal covered securities. The letter also requested additional information about the offers to Missouri residents and advised Sudduth that failure to respond within a reasonable time as set 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.
13. On May 5, 2004, Sudduth contacted an investigator with the Division. During the telephone conversation, Sudduth related, in part, the following:
- a. Sudduth was in the process of preparing a response to the Division’s letter of inquiry;
  - b. Sudduth owns an automobile company and a payday loan company;
  - c. Sudduth does solicit loans with promised returns;
  - d. Sudduth stated “we have investors”;
  - e. Sudduth was not aware that his behavior, in regards to the solicited loans, could be deemed to be soliciting a security under the Missouri securities laws;
  - f. Sudduth didn’t want to break any securities laws;
  - g. Sudduth would mail his response to the Division’s inquiry to our office within the response time as specified in the Division’s letter.

14. Respondent Sudduth failed to respond to the Division's letter of inquiry.
15. Respondents were not registered to offer and sell securities in the State of Missouri.
16. Respondents offered unregistered, non-exempt securities, in the form of evidence of indebtedness, in the State of Missouri.
17. These securities were not federal covered securities.
18. 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.
19. 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.
20. This Order is in the public interest.

#### **CONCLUSIONS OF LAW**

1. §409.1-102, RSMo Cumulative Supp. 2003 (hereafter "the 2003 Act") includes "evidence of indebtedness" within the definition of a security. The interests offered by Respondents as described in the above findings of fact constitute securities.
2. §409.3-301 of the 2003 Act provides that it is unlawful for any person to offer or sell any security in this state unless (1) The security is a federal covered security; (2) the security, transaction, or offer is exempted from registration under sections 409.2-201 to 409.2-203; or (3) The security is registered under this act. The conduct described in the above findings of fact constitutes a violation of this section.
3. §409.4-402(a) of the 2003 Act provides that it is unlawful for any person to transact business in this state as an agent unless the person is registered under the act or exempt from registration, as set forth at §409.4-402(b). The conduct described in the above findings of fact constitutes a violation of this section.
4. §409.5-501 of the 2003 Act provides that it is unlawful for a person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ a 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 an act, practice or course of business that operates or would operate as a fraud or deceit upon another person. The conduct described in the above findings of fact constitutes a violation of this section.

5. §409.5-503 of the 2003 Act provides that the person claiming an exemption, exception, preemption or exclusion has the burden of proving its applicability. As described in the above findings of fact, Respondents failed to prove any exemptions, exceptions, preemption or exclusions.

6. §409.6-604(a) of the 2003 Act provides:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary and appropriate to comply with this act...

7. §409.6-604(d) of the 2003 Act provides:

In a final order...the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.

8. §409.6-604(e) of the 2003 Act provides:

In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

9. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.6-604(a) of the 2003 Act.

### **ORDER**

**NOW, THEREFORE**, it is hereby ordered that Respondents, their agents, employees and servants, with knowledge of this order are immediately prohibited from:

- A. Offering or selling investments in the form of evidence of indebtedness to Missouri residents;

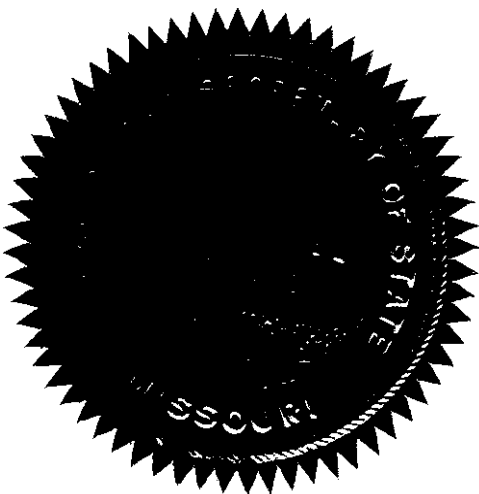
- B. Violating or materially aiding in the violation of §409.3-301 of the 2003 Act by offering or selling any security that is not registered, unless the security is a federal covered security or has an effective exemption from registration;
- C. Violating or materially aiding in the violation of §409.5-501 of the 2003 Act by omitting to state, in connection with the offer, sale or purchase of these securities to Missouri residents, the material fact that:
  - 1. Respondents are not registered to sell securities in the State of Missouri;
  - 2. The securities offered and sold by Respondents are not registered in the State of Missouri;
- D. Violating or materially aiding in the violation of §409.4-402(a) of the 2003 Act by transacting business as an agent without an effective registration.

**IT IS FURTHER ORDERED** that the Enforcement Section has petitioned for civil penalties, and specifically, the award of \$10,000, jointly and severally, against each Respondent in this proceeding, as a civil penalty. The commissioner will issue a final order awarding this penalty, unless Respondents request a hearing and show cause why the penalty should not be imposed.

**IT IS FURTHER ORDERED** that the Enforcement Section has petitioned for an award for costs of the investigation, jointly and severally, against each Respondent in this proceeding. The commissioner will issue a final order awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and show cause why an award should not be made to the agency.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 17<sup>th</sup> DAY OF September, 2004.



MATT BLUNT  
SECRETARY OF STATE

A handwritten signature in black ink, appearing to read 'Douglas M. Ommen', written over a horizontal line.

DOUGLAS M. OMMEN  
COMMISSIONER OF SECURITIES