



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
 )  
JEFFREY A. ROBERTSON )  
 )  
Respondent. ) Case No. AP-04-71  
 )  
Serve at: )  
 )  
169 Gerding Road )  
Hawk Point, Missouri 63349 )

**ORDER TO CEASE AND DESIST**

On the 9<sup>th</sup> day of August 2004, Omar D. Davis, Enforcement Counsel for the Securities Division, 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. Jeffrey A. Robertson ("Robertson") is an attorney and has a business address of 169 Gerding Road, Hawk Point, Missouri 63349.
2. Nekekim Corporation ("Nekekim") is purportedly a Nevada Corporation in the business of mining for gold and has an address of 11240 N. Hwy 41, Madera, California 93638.
3. As used in this Cease and Desist Order, the term "Respondent" refers to Robertson.
4. In the Spring of 2002, Robertson told a Missouri resident ("MR1") about Nekekim. Robertson, among other things, conveyed the following information to MR1:
  - a. Robertson invested in Nekekim, a gold mining operation in Nevada. The company was opening up to new investors for a short period of time, but would stop taking new investors shortly. MR1 could invest in a share of stock in Nekekim for just \$10,000. "This was a great deal!";
  - b. The company was just 6 months away from making a return. The return was expected to be \$3,000-\$6,000 a month. MR1 would get the investment back

within 3 months; and

- c. MR1 could expect the return in the form of dividends.
5. Throughout the months of June through fall 2002, Robertson repeatedly approached MR1 about investing in Nekekim. MR1 did not want to invest the full \$10,000 in Nekekim so MR1 spoke with two additional friends about sharing in the \$10,000 investment.
  6. Robertson gave MR1 a brochure about the company but did not give MR1 a Private Placement Memorandum, did not mention any risk with the investment and did not talk to MR1 about MR1's assets or whether MR1 was an accredited investor. MR1 is not an accredited investor. Robertson asked MR1 to return the brochure, which MR1 did.
  7. In the Fall of 2002, MR1 and two friends agreed to invest with Robertson. Robertson asked that the investment be in cash. MR1's group gave Robertson a total of \$10,000 cash. MR1 asked repeatedly Robertson for a stock certificate, but did not receive one.
  8. In the first half of 2003, Robertson gave MR1 a stock certificate. The stock certificate was for two shares of stock, dated August 9, 2002, and was in the name of Robertson and Robertson's wife. When MR1 questioned Robertson why the stock certificate was not in the name of the members of MR1's investment group, Robertson sent MR1 a note which stated, "As I told you, the share was issued to me, but a copy is enclosed...I won't be able to transfer that to you until after the permitting process is complete and the project is public knowledge. " MR1 asked Robertson for a corrected stock certificate.
  9. In the Spring of 2003, Robertson sent MR1 a stockholder newsletter dated January 28, 2003, about the ongoing progress of Nekekim. This newsletter stated, among other things, that:
    - a. Nekekim retained Jack McPartland with McClelland Laboratories, Inc, a metallurgist and vice-president of operations at one of the top six labs in the nation. McClelland Laboratories, Inc. will carry on research for Nekekim;
    - b. BioLab, a subsidiary of Great Lakes Chemical has a product, DP 7007, which has been found to be effective in the extraction of gold from certain types of ores. The DP 7007 recovered twice the gold in half the time when compared to a standard cyanide leaching process on a supplied sample from the gold bearing ore. Researchers from BioLab have offered their complete cooperation and assistance to McClelland Laboratories; and
    - c. The first new group of 504 twenty-acre lode-mining claims, including maps and location documents, was duly filed with the respective governmental offices on January 6<sup>th</sup> and 7<sup>th</sup>, 2003. The 141 final claims will be filed in late February to make a total of 777 claims. We now feel confident that the preferred mineralized geology is now totally controlled by the company. It is our opinion that no additional claims need to be established and are at last unencumbered by the

threat of territorial circumvention by hostile entities.

10. Throughout the remainder of 2003 MR1 asked Robertson for an update on the progress of Nekekim and when MR1 and friends could expect a return. Robertson told MR1 that things were delayed. MR1 asked for the corrected stock certificate at the same time. Robertson told MR1 it was coming.
11. In early 2004 Robertson sent MR1 a Disclosure Statement and Offering Memorandum dated October 26, 2001. The Memorandum stated, among other things:
  - a. The minimum investment is \$5,000 a share;
  - b. The Securities of the company may not be transferred, sold or otherwise disposed of except as permitted under applicable securities laws; and
  - c. The securities of the company have not been registered under the Securities Act of 1933 and have not been registered in any state. The securities are being offered and sold in reliance on exemptions from the registration of the Securities Act.
12. In early 2004, Robertson sent a corrected stock certificate for one share of stock dated July 24, 2003 made out to MR1 and the two friends, tenants in common.
13. On March 16, 2004, MR1 received a Nekekim newsletter dated 3-3-04 that stated, among other things, the following:
  - a. The development of our gold recovery method has taken a sharp, but very positive turn since the last mailing. The year looks very exciting and very eventful;
  - b. We have entered into an agreement with Lewis Blackham to conduct critical testing of a new system developed by him. We have secured a lifetime license for commercial use of his system, once it is fully approved by our board of Directors. This system is not yet patented, and as a result must be given to you in very general terms;
  - c. We agreed to fund the purchase and deliver of a factory-built prototype and to fund new lab research pertaining specifically to our ore and the newly developed Blackham recovery system. Preliminary testing, over the past three months, has produced highly significant results. The overall processing time needed to extract gold, compared to the bromine recover process, is much, much shorter. The projected cost of construction of a pilot facility is also much lower. The permit work necessary to start up operation of the pilot plant is simpler and permitting should be granted easier and in less time. Most of all, the gold recovery levels have been consistently much higher; and
  - d. If the new system is approved, a two-week period of time will be reserved for additional purchases of corporate shares by existing stockholders only.

14. On March 15, 2004, the Missouri Securities Division received information, which indicated that the Respondent was not registered to sell securities in the State of Missouri.
15. On April 1, 2004, a representative from the Securities Division telephoned Respondent who stated, among other things:
  - a. He is a friend with one of the Nekekim Board members and purchased two shares of stock for himself and Respondent's wife through this Board member;
  - b. Respondent received a stock certificate for the two shares of stock in both Respondent and his wife's names. The stock certificate is dated August 9, 2002; and
  - c. Respondent sent another \$10,000 to this board member, either by cashier's check or certified check for a second purchase.
16. On April 5, 2004, the Securities Division sent a letter of inquiry to Respondent that requested a claim of exemption from registration or exception from definition as an agent upon which Respondent relied in offering securities. The letter also requested additional information about the offers to Missouri residents and advised Respondent 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. A response to this letter was due April 26, 2004.
17. On April 21, 2004, the Division received a response from Respondent that stated, among other things:
  - a. Respondent was not familiar with the exemption or exception to which the letter referred, so he presumed that he was not claiming an exemption;
  - b. Respondent was not familiar with the term "unregistered security" or "federal covered security" and had no information or documentary evidence, of which he was aware, of the unregistered security's status or qualification as a federal covered security;
  - c. Respondent was not familiar with "Regulation" or "private placement" and did not know if the Nekekim stock was a private placement offered pursuant to that regulation;
  - d. The persons who acquired a share of Nekekim stock from Respondent were professional acquaintances, "one of which asked [Respondent] for more information as a result of some casual conversation about investments..." Respondent was not seeking a sale nor was a sale solicited;
  - e. "[Respondent] has no documentation that reflects whether those persons who acquired a share of Nekekim stock were accredited or sophisticated investors";

- f. Respondent was unfamiliar with what claims of exclusions or exception from the definition of an agent were available, so Respondent presumed that he was not relying on any;
  - g. Respondent received no commission on the sale of the stock. He was paid \$10,000 by MR1's group for one share of Nekekim stock, which was to be issued to Respondent and then transferred to MR1's group; and
  - h. Respondent is not, nor has he ever been a, "securities dealer, licensed or unlicensed in the State of Missouri or any other state." He is not, nor has ever been "in the business of offering or selling securities and [Respondent has] never represented [himself] as a securities dealer."
18. Included with the April 21, 2004 response was a copy of an addendum, that stated, among other things:

AMENDMENT TO SUBSCRIPTION AGREEMENT

(Letter addressed to Nekekim Corporation)

Gentlemen:

The undersigned hereby amends the Subscription entered the 2<sup>nd</sup> day of August 2002 and applied for the purchase of three (3) additional shares of Common Stock at a price of five thousand dollars.

The undersigned states that the information attested to on the original Subscription remains valid and unchanged.

Executed this 10<sup>th</sup> day of July 2003, at Lincoln County, Missouri.

The undersigned subscribes for shares of common stock as follows:

Two (2) shares as Joint Tenants with Right of Survivorship  
issued to:

Jeffrey A Robertson and Michel L. Robertson

One (1) share as Tenants in common issued to:  
[MR1 and friends]

Total Additional Subscription Fifteen Thousand Dollars  
(\$15,000)

(Signatures by Robertson and wife follow)

19. The April 21, 2004 letter included a copy of a check to Nekekim Corporation for \$15,000 signed by Robertson and dated 7/15/03 noting "shares"-3 additional.
20. The April 21, 2004 letter also included copies of two stock certificates: the first certificate stated that Robertson and his wife were the holders of two shares of Nekekim stock and was dated July 24, 2003; the second certificate stated that Robertson and his wife were the holders of two shares of Nekekim stock and was dated August 2, 2002.
21. On May 13, 2004, the Division sent Robertson a letter, which requested that Robertson explain the \$10,000 price per share that MR1's group paid Respondent for their one share of stock in Nekekim.
22. On May 18, 2004, Robertson sent the Division a letter that stated, among other things, the following:

"[MR1's group] understood that they were purchasing one of my shares of Nekekim stock for \$10,000. It was my understanding that I could convey one of my two shares to them. When I learned that I would be unable to convey the share to them in the near future, I sent a copy of my share certificate to them to assure them that I had a share to transfer. When I was told later that I could purchase additional shares, I purchased three for \$15,000, putting one share in their name in order to avoid the difficulty of trying to transfer the original share."
23. Respondent was not registered to offer and sell securities in the State of Missouri.
24. Respondent made untrue statements of material fact, in connection with the offer, sale or purchase of a security to Missouri residents by:
  - a. Stating that a share of stock in Nekekim cost \$10,000, when in fact, Nekekim offered its shares at a price of \$5,000 per share;
  - b. The return on the investment would be between \$3,000 and \$6,000 a month and would occur in about 6 months when, in fact, those were purely speculative projections and the investors have not received any return to date; and
  - c. Investors would receive returns through dividends when, in fact, no dividends have been paid to date.
25. In connection with the offer, sale or purchase of a security to Missouri residents, Respondent omitted to state the material fact that Respondent was not registered to sell securities in the State of Missouri.
26. In connection with the offer, sale or purchase of a security in the state of Missouri, Respondent engaged in an act, practice or course of business that operated as a fraud or deceit upon another person by:

- a. Selling MR1 and friends a share of stock for \$10,000, when in fact, Nekekim offered it's shares at a price of \$5,000 per share;

27. This Order is in the public interest.

### CONCLUSIONS OF LAW

1. §409.401(o), RSMo, Cumulative Supp. 2002, includes "stock" within the definition of a security. The interests offered and/or sold by Respondent as described in the above findings of fact constitute 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 registered under Sections 409.101 to 409.419. The conduct described in the above findings of fact constitutes a violation of this section.
4. §409.402(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.
5. §409.408(b), RSMo 2000 provides, in part, that:

[I]f 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.

6. 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.
7. 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.

8. Engaging in an act, practice or course of business that operates or would operate as a fraud or deceit upon any person, 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 Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.408(b), RSMo 2000.

## **ORDER**

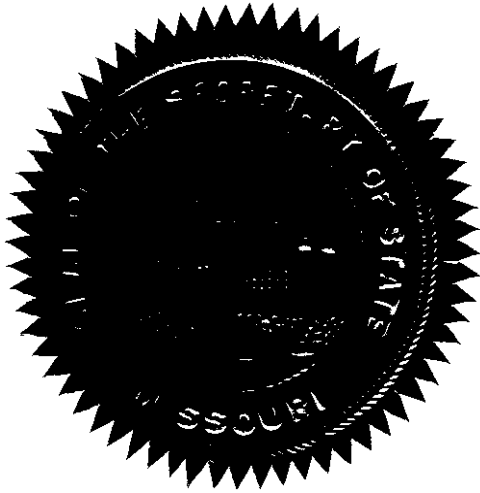
**NOW, THEREFORE**, it is hereby ordered that Respondent, his agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order are prohibited from:

- A. Violating §409.101(2), RSMo 2000 or §409.5-501(2), RSMo Cumulative Supp. 2003 by omitting, in connection with the offer or sale of securities in or from the state of Missouri, any material facts, that would make statements made in light of the circumstances under which they are made, not misleading, including the fact that Respondent is not registered to sell securities in the State of Missouri;
- B. Violating §409.101(2), RSMo 2000 or §409.5-501(2), RSMo Cumulative Supp. 2003 by making, in connection with the offer or sale of securities in or from the state of Missouri, any untrue statements of material fact, including the following:
  1. Stating that a share of stock in Nekekim cost \$10,000 each, when, in fact, one share of stock cost \$5,000;
  2. The return on the investment would be between \$3,000 and \$6,000 a month, when, in fact, those were purely speculative projections and the investors have not received any return to date; and
  3. Investors would receive returns through dividends when, in fact, no dividends had been paid to date.
- C. Violating §409.101(3), RSMo 2000 or §409.5-501(3), RSMo Cumulative Supp. 2003, in connection with the offer or sale of securities in or from the state of Missouri by engaging in an act, practice or course of business that operates or would operate as a fraud or deceit upon any person by reselling to investors a share of stock for \$10,000, when the issuer was offering the shares at a price of \$5,000 per share .
- D. Violating §409.201(a), RSMo 2000 or §409.4-402(a), RSMo Cumulative Supp. 2003 by transacting business as an agent without an effective registration;



**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 2<sup>nd</sup> DAY OF November, 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