



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
MOBILE BILLBOARDS OF AMERICA;) Case No. AP-04-76
OUTDOOR MEDIA INDUSTRIES;)
MICHAEL L. YOUNG;)
MICHAEL A. LOMAS;)
LAURINDA HOLOHAN; and)
BARBARA L. PLATTENBURG,)
)
Serve above at:)
)
11520 St. Charles Rock Rd.)
Suite #212)
Bridgeton, Missouri 63044)
)

Respondents.

ORDER TO CEASE AND DESIST

On the 19th day of September 2004, Mary Hosmer, Assistant Commissioner for Enforcement, 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. Mobile Billboards of America, Inc. ("MBA") is purportedly in the business of offering and selling to investors a mobile billboard sale/lease/buyback program. MBA is a Delaware corporation with an address of 11520 St. Charles Rock Road, Suite 212, Bridgeton, Missouri 63044.
2. Outdoor Media Industries ("OMI") is an entity with an address of 11520 St. Charles Rock Road, Suite 212, Bridgeton, Missouri 36044. OMI is an affiliate of MBA and serves as the leasing company for MBA.
3. Michael L. Young ("Young") purports to be the President of MBA with a business address of 11520 St. Charles Rock Road, Suite 212, Bridgeton, Missouri 63044.

4. Michael A. Lomas (“Lomas”) was the President of MBA from January 2001 to May 2003, and was Chairman of the Board of MBA and Chairman of the Board of OMI until December 31, 2001. Mr. Lomas is currently the sole beneficiary of First Century Trust, the owner of a majority of the shares of MBA and International Payphone Corporation and Tiger Media, Inc. OMI is a Division of International Payphone Corporation. Lomas has a business address of 11520 St. Charles Rock Road, Suite 212, Bridgeton, Missouri 63044.
5. Laurinda Holohan (“Holohan”) is the Secretary/Treasurer and a director of MBA since January 2001 with a business address of 11520 St. Charles Rock Road, Suite 212, Bridgeton, Missouri 63044.
6. Barbara Plattenburg (“Plattenburg”) is an Administrator for MBA and OMI with a business address of 11520 St. Charles Rock Road, Suite 212, Bridgeton, Missouri 63044.
7. As used in this Cease and Desist Order, the term “Respondents” refers to MBA, OMI, Young, Lomas, Holohan, and Plattenburg.
8. On March 29, 2003, the Missouri Securities Division received information, which indicated that the Respondents offered and/or sold unregistered securities in the State of Missouri.
9. 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.
10. On April 20, 2004 the Division sent letters of inquiry via certified mail to Respondents MBA, OMI, and Young requesting a claim of exemption from registration or exception from definition of a security upon which Respondents relied in offering and/or selling unregistered securities in or from the State of Missouri. The letter also requested additional information about the offers, and advised Respondent that failure to respond constituted proper ground for the entry of an order by the Commissioner.
11. On April 27, 2004, counsel for Respondents MBA, Lomas, Young and Holohan spoke with a representative of the Division and stated, among other things, that:
 - a. MBA was not offering or selling securities in the state of Missouri;
 - b. Counsel for Respondents MBA, Lomas, Young and Holohan filed a Uniform Franchising Offering Circular with the SEC for MBA;
 - c. The MBA office located in Bridgeton, Missouri houses 3 or so employees and is used as a training facility; and
 - d. A packet of information should be arriving at the Division’s office shortly.

12. On April 29, 2004, the Division received a response from counsel for Respondents MBA, Lomas, Young and Holohan that included a copy of the multi-state offering circular. This offering circular included, among other things, the following:
 - a. Two cover sheets for the circular with one listing the State of Missouri among the states in which the offering may be made and the second omitting the State of Missouri. However, both were dated April 12, 2004;
 - b. "Mobile Billboards of America, Inc. (hereinafter the "Seller"), sells mobile billboard systems to unaffiliated Purchasers for the purpose of generating revenues from businesses in advertising their products and services. The Purchaser buys a mobile billboard system which consists of a flexible frame that mounts on the sides of trucks and carries advertising copy that is stretched like a vinyl canvas over the frame adjusting to the truck size. The Flex Frame is installed on a truck with a satellite global positioning system ("G.P.S.") to monitor the truck circulation and measure gross advertising impressions. Purchaser receives revenues by securing truck operators to carry the advertising and /or selling advertising space. The Seller will also locate companies to operate the mobile billboard and pay the Purchaser fixed monthly fees. The initial business opportunity fee is \$20,000 for a two-sided Flex Frame or \$10,500 for a one-sided Flex Frame. The estimated purchase price including the initial two-side Flex Frame business opportunity fee ranges from/\$20,000 to \$21,000, including optional legal and/or accounting review at \$1,000."
 - c. A Purchase Agreement;
 - d. A Bill of Sale;
 - e. An Equipment Resale Option Agreement;
 - f. A form of Equipment Operating Agreement;
 - g. A List of Outlets by Carrier and Market Location; and
 - h. A List of 840 Purchasers as of March 31, 2004.
 - i. The offering circular indicated that MBA had sold over 2,600 mobile billboards.
13. Purchasers invested at least \$26 million dollars in MBA. (2,600 X 10,000-- if all investors purchased a one-sided unit)
14. The Equipment Resale Option Agreement provided that the investor at the end of the operating agreement (7 years) may sell the billboard equipment back to MBA for the investors' purchase price. The Trust issues "Trust Secured Certificates" to purchasers providing for liquidation of the equipment at the original purchase price. The Trust is funded by payments made by MBA from each billboard it sells (\$2,500 for one-sided unit)

and \$5,000 for a two-sided unit.) In order to achieve the higher yields needed for redemption of the billboard equipment, up to 90% of the assets of the Trust are invested in payphones, mobile billboards or other non-standard trust investments.

15. Once an investor has purchased a mobile billboard from MBA. Investors are referred to MBA's affiliate OMI which enters into an Equipment Lease Agreement with the investor. In this document the investor agrees to lease the mobile billboard to OMI in exchange for monthly lease payments. OMI agrees to select the location and install the billboard and to pay all expenses of replacement, repair, service and maintenance of the equipment.
16. On May 5, 2004, the Division received information that included, among other things, the following:
 - a. Letters to investors from Plattenburg, Administrator for MBA, that served as receipts for the number of units the investor purchased. The letter went on to state: "Thank you and welcome again to the Mobile Billboards of America Lease Program." The address for Plattenburg and MBA was the Bridgeton, Missouri address; and
 - b. Letters to investors from Plattenburg, Administrator for OMI from the same Bridgeton, Missouri address that stated, among other things:

"Enclosed are your new Lease, Certificate of Title, and your Reserve Guaranty Trust Certificate.

Please contact your agent if you have any questions. We are very appreciative of your business and thank you for your participation in our lease program."
17. On May 12, 2004 the Division requested additional information from counsel for the Respondents MBA, Lomas, Young and Holohan. On May 18, 2004, counsel for Respondents MBA, Lomas, Young and Holohan spoke with a representative of the Division and stated that MBA had not solicited anyone from the State of Missouri, but counsel would respond to the Division's May 12, 2004 letter.
18. On May 19, 2004, counsel for Respondents MBA, Lomas, Young and Holohan sent a response to the Division's letter that stated, among other things, that
 - a. All contracts were sent to MBA's administrative offices in Ohio for processing and acceptance. A signature was applied by Ohio personnel, Linda Holohan, Secretary/ Treasurer of Mobile Billboards of MBA who accepted contracts in the name of the President of MBA.
 - b. Young worked out of the Bridgeton, Missouri offices.

- c. No offers or sales were made out of the Bridgeton, Missouri office.
 - d. None of the MBA purchasers were located in Missouri.
 - e. Samples of the Purchase Agreement and Bill of Sale were enclosed.
 - f. All of the Purchasers received monthly lease payments.
19. On June 25, 2004, the Division sent counsel for Respondents MBA, Lomas, Young and Holohan a letter requesting additional information.
20. On July 21, 2004, counsel for Respondents MBA, Lomas, Young and Holohan sent the Division a letter that stated that OMI was the leasing company for MBA.
21. On August 19, 2004, counsel for Respondents MBA, Lomas, Young and Holohan sent the Division a facsimile stating, among other things, the following:
- a. There were no offers or sales of the MBA Business Opportunities in the State of Missouri;
 - b. The President was the only person authorized to accept the contracts;
 - c. The sales in Pennsylvania were inadvertent. There were only eleven transactions, and the paperwork was submitted from South Carolina and erroneously accepted before the error was caught;
 - d. At one time, the State of Missouri was listed on the cover page of the multi-state Uniform Franchise Offering Circular. It was subsequently removed, when an inquiry was made as to whether sales could take place in Missouri. We are unaware of the exact date of the removal but we believe it occurred sometime in 2003;
 - e. The list of Purchasers requested in the May 12, 2004 letter were all located outside of the State of Missouri, and MBA therefore declines to provide such information;
 - f. All of the Purchasers of Business Opportunities had retained the services of OMI;
 - g. There were no Purchasers of Business Opportunities in the State of Missouri; therefore MBA declined to supply copies of all Purchase Agreements and Bills of Sales signed by Purchasers outside of Missouri;
 - h. There had been no offers or sales of Business Opportunities in the State of Missouri; therefore, MBA declines to provide promotional material used in connections with its offering or sales outside of Missouri; and

- i. MBA maintained executive offices in Bridgeton, Missouri, where Michael Young, the President was located. The Missouri offices were also used for training of sales persons and administration of the outside sales force.
 - j. Counsel stated, among other things that: "There were no offers or sales of the Mobile Billboards Business Opportunities in the State of Missouri at any time... They [MBA] are, however, not offering or selling Business Opportunities from the State of Missouri."
22. On August 25, 2004, counsel for Respondents MBA, Young, Lomas and Holohan telephoned a representative of the Division and stated that counsel overlooked one sale in Missouri and gave the Missouri resident's name and address.
23. On August 25, 2004, the representative of the Division spoke with the Missouri resident ("MR"). MR stated, among other things, the following:
- a. MR purchased one unit in MBA for \$15,000 in 2001, from someone either in Florida or Michigan. MR was not certain which person made the sale as MR spoke to both;
 - b. MR was getting 15% interest on MR's investment;
 - c. MR could get MR's original investment back in seven years; and
 - d. MR and MR's wife wanted to become sales representatives for MBA but could not participate as sales agents because MBA had some kind of problem selling in Missouri at this time.
24. The sale/lease/buyback program offered and sold by Respondents are investment contracts for the following reasons:
- a. Investment of money: Investors pay between \$10,000 to \$21,000 for the billboard equipment;
 - b. Common enterprise: Once the investor purchases the billboard equipment the investor is then referred to OMI who agrees to lease the billboard from the investor. OMI is to select the location and then install the billboard and pay the investor between 13-15% interest per month. In addition, OMI is responsible to pay all expenses of replacement, repair, service and maintenance of the billboard equipment. Any potential investment returns are interwoven with the profits of OMI. MBA is engaged in a common enterprise with the investor through its affiliation with OMI and through its promise to repurchase the billboard equipment at the end of 7 years. MBA states that to fund this repurchase agreement it established a Trust that is funded by payments made by MBA from each billboard it sells (\$2,500 for one-sided unit and \$5,000 for a two-sided unit.) In order to achieve the higher yields needed for redemption of the billboard

equipment, up to 90% of the assets of the Trust are invested in payphones, mobile billboards or other non-standard trust investments. The investors' returns including the repurchase agreement depend on the ability of MBA, the Trust and OMI to generate sufficient funds to meet these obligations.

- c. Expectation of profit: The investors are told to expect profits of 13%-15% a year from the investment and at the end of 7 years they can sale the equipment back to MBA for the original purchase price.
 - d. From the significant managerial or entrepreneurial efforts of others: The investors will rely on the unique entrepreneurial abilities of the promoters/managers. OMI is responsible to pay all expenses of replacement, repair, service and maintenance and for selecting the location and the installation of the equipment and any profits from the investment would be derived from the significant managerial or entrepreneurial efforts of OMI.
 - e. Respondents offered and sold unregistered, non-exempt securities, in the form of investment contracts to a Missouri resident.
25. The securities offered and/or sold by Respondents were not federal covered securities.
26. On April 2, 2004, the State of North Carolina ordered Respondents MBA and any other person or persons occupying the position of partner, officer, director or other similar function or position, or directly or indirectly controlling Mobile Billboards of America, Inc. to immediately cease and desist the offer and sale of securities of Mobile Billboards of America, Inc. in the form of a "sale-and-leaseback program. Respondents have requested a hearing.
27. On April 7, 2004, the State of Pennsylvania ordered Respondents MBA, OMI, Young and Holohan to cease and desist the offer and sales of unregistered securities in the State of Pennsylvania. Respondents have requested a hearing.
28. The April 12, 2004 offering circular included a section about the Pennsylvania Cease and Desist Order that stated, among other things, that the Respondents did not know that sales were taking place in Pennsylvania.
29. Information received by the division, however, indicated that Respondent Holohand named in that Pennsylvania Order had signed letters to these Pennsylvania investors welcoming them to the MBA leasing program.
30. In connection with the offer, sale or purchase of a security to or from the state of Missouri, Respondents misrepresented the material fact that the sales in Pennsylvania were made without the knowledge of the Respondents when in fact this was not true.

31. In connection with the offer, sale or purchase of a security to or from the state of Missouri, Respondents omitted to state the material fact that the agent that sold to the Missouri resident was not registered to sell securities in the State of Missouri.
32. In connection with the offer, sale or purchase of a security to or from the state of Missouri, Respondents omitted to state:
 - a. The securities offered and sold by Respondents were securities requiring registration in the State of Missouri.
 - b. Financial information generated by each billboard;
 - c. Financial information about the costs of operating each billboard;
 - d. Financial information regarding the profits generated by the reserve fund and how that reserve fund would generate sufficient capital to repay investors at the end of the contract period, and
 - d. Historical financial information regarding the profits generated from leases of these billboards and if these leases had generated sufficient capital to pay the purported interest to the investors.
33. This Order is in the public interest.

CONCLUSIONS OF LAW

1. §409.401(o), RSMo., Cumulative Supp. 2002, includes within the definition of a security an "investment contract." "Investment contract" 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*, 845 (Mo.App.E.D. 1991). A customer-owned, coin-operated telephone lease with a management or servicing contract, which together satisfy the elements of an investment contract, is a security under Missouri law. *In the Matter of Kurt Barwick*, 2001 WL 274522 (Mo.Div.Sec.); *In the Matter of Stanley Helvey*, 2001 WL 1193031 (Mo.Div.Sec.); *S.E.C. v. Edwards*, 540 U.S. 389, 124 S.Ct. 892, 157 L.Ed.2nd 813 (2004). A customer-owned internet access kiosk leaseback program, which satisfies the elements of an investment contract, is a security under Missouri law. *In the Matter of Network Services Depot, Inc., et al.*, 2002 WL 31654847 (Mo.Div.Sec.) The sale of customer-owned mobile billboard equipment and associated management contracts offered and sold by Respondents as described in the above findings of fact constitute investment contracts and are securities.
2. §409.101(2), RSMo 2000, provides that it is unlawful, in connection with the offer, sale or purchase of any security for any person 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. The conduct described in the above findings of fact constitutes a violation of this section.

3. §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.
4. §409.402(f), RSMo Cumulative Supp. 2003, 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. 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.
7. Omitting to state material facts in connection with the offer and sale of securities as described in the above findings of fact constitutes an illegal practice under section 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. 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 Respondents, 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 mobile billboard investments in Mobile Billboards of America with associated contracts of Outdoor Media Industries;

B. Violating §409.101(2), RSMo 2000, in connection with the offer or sale of any security by omitting to state the following material facts:

1. The securities offered and sold by Respondents were securities requiring registration in the State of Missouri.
2. Financial information generated by each billboard;
3. Financial information about the costs of operating each billboard;
4. Financial information regarding the profits generated by the reserve fund and how that reserve fund would generate sufficient capital to repay investors at the end of the contract period, and
5. Historical financial information regarding the profits generated from leases of these billboards and if these leases had generated sufficient capital to pay the purported interest to the investors.

C. Violating §409.101, RSMo 2000, in connection with the offer, sale or purchase of a security to or from the state of Missouri, Respondents misrepresented the material fact that the sales in Pennsylvania were made without the knowledge of the Respondents when in fact this was not true.

D. Violating §409.301, RSMo 2000 by offering or selling any unregistered security, unless the security is a federal covered security or exempt from registration.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 28th DAY OF September, 2004.



MATT BLUNT
SECRETARY OF STATE

A handwritten signature in black ink, appearing to read "Douglas M. Ommen".

DOUGLAS M. OMMEN
COMMISSIONER OF SECURITIES