



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
SURGIOSCOPY, LLC, and)
STONE Y DAVIN SHAW,) Case No. AP-19-04
)
Respondents.)

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION’S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through Director of Enforcement Steven Reed, has alleged that Surgioscopy, LLC and Stoney Davin Shaw (“Respondents” hereafter) offered and sold unregistered, non-exempt securities; transacted business as an unregistered, non-exempt broker-dealer; employed an unregistered agent who transacted business; employed an unregistered agent; and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and in engaging in an act, practice, or course of business that would operate as a fraud or deceit in violation of Section 409.3-301, 409.4-402, and 409.5-501, RSMo. (Cum. Supp. 2013)¹, and that this constitutes grounds to issue an order pursuant to Section 409.6-604.
2. Respondents and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Respondents’ alleged violations of Section 409.3-301, 409.4-402, and 409.5-501.

CONSENT TO JURISDICTION

3. Respondents and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities (“Commissioner”) has jurisdiction over the Respondents and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondents and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), which provides:

¹ Unless otherwise noted, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”

WAIVER AND EXCEPTION

5. Respondents waive Respondents’ right to a hearing with respect to this matter.
6. Respondents waive any right that Respondents may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Enforcement Section that, should the facts contained herein prove to be false or incomplete in a material way, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER’S ORDER

8. Respondents and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondents’ (a) testimonial obligations; (b) right to take legal or factual positions in connection with litigation, arbitration, or other legal proceeding in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondents agree that Respondents are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents neither admit nor deny the allegations made by the Enforcement Section, but consents to the Commissioner’s Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

COMMISSIONER’S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

12. Surgioscopy, LLC (“Surgioscopy”) is a limited liability company organized in the State of Missouri on February 10, 2009. Its registered agent is Stoney Davin Shaw (“Shaw”) with a last known address of 4727 Crosshaven Drive, Saint Louis, Missouri 63304. A check of the records maintained by the Missouri Securities Division indicates that at all times

relevant, there was no registration, granted exemption, or notice filing indicating status as a “federal covered security” for any securities issued by Surgioscopy.

13. Shaw is a 52 year-old Chesterfield, Missouri resident with a last known address of 17626 Lisa Valley Court, Chesterfield, Missouri 63005. A check of the Central Registration Depository (“CRD”) indicates that Shaw has never been registered as a broker-dealer, broker-dealer agent, investment advisor, investment advisor representative, and/or issuer agent.
14. Surgioscopy operated as a medical device distribution and sales company with a website of <http://www.surgioscopy.com/>.
15. Shaw represented to investors that he was the president and founder of Surgioscopy, which operated since 2009.
16. Shaw stated in an on-the-record proceeding that Surgioscopy has a board of directors and members but he is uncertain who they are or how many.
17. Surgioscopy had other employees in the past but Shaw refused to share financial and other company records with other officers.
18. The investigation revealed that Surgioscopy offered and sold securities in the form of promissory notes and stock to at least 47 investors, eighteen of whom were elderly.
19. Since 2015, Shaw and Surgioscopy raised at least \$2.6 million from investors to support the production and distribution of a new medical product.
20. The Enforcement section reviewed multiple Surgioscopy bank accounts from January 2013 through May 2018 held at the following banks:
 - a. BMO Harris Account XXX7940;
 - b. BMO Harris Account XXX1212;
 - c. Fifth Third Bank Account XXX1332;
 - d. Regions Bank Accounts XXX6382; XXX6757; XXX8639; and
 - e. Sterling Bank Account XXX3990.
21. In review of Surgioscopy’s bank accounts referenced above, it appeared:
 - a. approximately \$2.6 million was deposited from approximately 40 investors and that some invested multiple times;
 - b. approximately \$889,000 was deposited from medical affiliations;
 - c. \$70,000 was deposited as a vendor payment;

- d. approximately \$67,000 was deposited from various on-line business loans;
- e. approximately \$200,000 was deposited as NSF Returned Checks or ACH payments;
- f. approximately \$300,000 was returned to investors with \$27,694 returned as NSF;
- g. approximately \$60,000 transferred to Freedom III LLC account;
- h. approximately \$200,000 transferred to Shaw's personal accounts;
- i. approximately \$1.2 million in various ATM, cash, and personal withdrawals;
- j. approximately \$54,000 in payments to on-line business loans;
- k. approximately \$790,000 in what appeared to be business expenses which include: rentals; law firms; accounting firms; FedEx; Medical Affiliations; phone bills; etc.;
- l. approximately \$246,000 in what appeared to be personal expenses which included: doctor visits; purchases at golf clubs; hockey tickets; gun stores; car care; loan payments; restaurants; convenience stores; airline tickets; debt recovery services; etc.; and
- m. approximately \$1.2 million in checks to unknown individuals for commissions; payroll; interest bonus; lawn care; etc.

II. CONCLUSIONS OF LAW

- 22. The Commissioner finds Respondents offered and sold unregistered, non-exempt securities, employed an unregistered agent who transacted business in the state of Missouri and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and in engaging in an act, practice, or course of business that would operate as a fraud or deceit and that this conduct constitutes grounds to issue an order pursuant to Section 409.6-604.
- 23. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409.

III. ORDER

NOW, THEREFORE, it is hereby ordered that:

- 1. Respondents Surgioscopy, LLC and Stoney Davin Shaw, its agents, employees and servants, and all other persons participating in the above-described violations with

knowledge of this order are permanently enjoined and restrained from engaging in violations of Sections 409.3-301, 409.4-402, and 409.5-501.

2. Respondents shall pay civil penalties in the amount of \$45,000 for more than one violation of Sections 409.3-301, 409.4-402, and 409.5-501. This amount shall be made payable to the State of Missouri. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101. This amount will be suspended upon a showing that Respondents, have made offers of rescission to investors and that the investors have been paid in full as described herein.
3. Respondents shall pay, jointly and severally, restitution in the amount of **\$2,629,511.46 which sum includes interest, calculated at the rate of eight percent (8%) per annum from the date of sale of each security as of August 26, 2019. This amount shall be made payable to the Missouri Secretary of State's Investor Restitution Fund**, and the Commissioner will take reasonable and necessary actions to distribute such funds to the investors listed in Exhibit A. This amount shall be sent to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101. This amount shall be suspended upon a showing that Surgioscopy, LLC, has made offers of rescission to investors and that the investors have been paid in full as described herein. These rescission payments shall be made by **November 30, 2023**. Any investor opting not to rescind their investment shall be removed from this order of restitution.
4. Respondents shall each pay to the Missouri Secretary of State's Investor Education and Protection Fund the sum of \$5,000. This shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. This amount shall be sent to the Missouri Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101. This amount will be suspended upon a showing that Surgioscopy, LLC, has made offers of rescission to investors and that the investors have been paid in full as described herein.
5. No later than **December 31, 2019**, Respondent Surgioscopy, LLC shall complete a comprehensive review of all transactions involving the sale of securities in the form of notes, stock, shares, or interests in Surgioscopy and provide the Missouri Securities Division with a list of all investors including contact information and copies of all final contracts and documents.
6. Surgioscopy, LLC, shall offer to repurchase all securities sold to investors and shall pay restitution where the investor elects to rescind the sale. **The repurchase price or restitution amount shall be determined by the sale price plus interest at 8% from the date of sale.**
7. Surgioscopy, LLC, shall memorialize each offer in a letter (the "Offer Letter") explaining to investors that the sale of securities was made without being properly registered or exempt from registration and that pursuant to an Order from the Commissioner of the Missouri Securities Division an offer to rescind the sale is being made and an offer to

repurchase is being made. The purchase price shall be set forth in each letter. The final template for the Offer Letter must be approved by the Missouri Securities Division.

8. Each Offer Letter shall be delivered to the offeree's last known mailing address as maintained in Surgioscopy's records in a way that enables confirmation of delivery.
9. Each Offer Letter shall clearly state the terms of the offer and shall provide 1. The steps required to accept the offer, 2. The deadline for acceptance, and 3. Contact information at Surgioscopy where additional information can be obtained.
10. The Offer Letter shall state the offer will remain open for a period of sixty (60) days from the date it is sent to the offeree.
11. In the event an offeree cannot be located in order to confirm delivery of the Offer Letter, Surgioscopy may request the Missouri Securities Division to locate a mailing address for the undeliverable Offer Letter.
12. The Offer Letter shall be delivered to each investor no later than December 31, 2019.
13. Upon Respondents' failure to comply with the terms of this Consent Order, all remaining payments shall become immediately due and payable upon operation of law, and such immediately due payments shall be in addition to all other penalties then available under the law.
14. Respondents shall pay their own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 11th DAY OF DECEMBER, 2019.



JOHN R. ASHCROFT
SECRETARY OF STATE

DAVID M. MINNICK
COMMISSIONER OF SECURITIES

Consented to by:
THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION

Steven C. Reed
Director of Enforcement

SURGIOSCOPY, LLC, RESPONDENT

BY: Daniel Dwyer

NAME: Daniel Dwyer

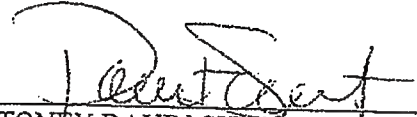
TITLE: CEO

Approved as to Form:



6506 #36473

CHRISTOPHER J. DOCKOCIL
Attorney for Respondent Surgioscopy, LLC



STONEY DAVIN SHAW, RESPONDENT