



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:

KURT BARWICK)	Order No. CD-01-07
3042 Brentmoor Drive)	
Arnold, Missouri 63010; and)	
)	
BARWICK CONSULTING SERVICES, INC.)	
3042 Brentmoor Drive)	
Arnold, Missouri 63010,)	
)	
Respondents.)	

ORDER TO CEASE AND DESIST

On the 8th day of March 2001, John Ellis, Chief of Enforcement 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. Kurt Barwick is a Missouri-licensed insurance agent and purports to be the owner of Barwick Consulting Services, Inc. ("BCS"), an entity engaged in the insurance business. Barwick has a last-known business address of 3042 Brentmoor Drive, Arnold, Missouri 63010.
2. National Communications Marketing, Inc. ("NCMI") was engaged in the business of marketing customer-owned, coin-operated telephones and has a last-known address of 20423 State Road 7, Suite 109, Boca Raton, Florida 33498.
3. ETS Payphones, Inc. ("ETS") was engaged in the business of selling interests in customer-owned, coin-operated telephones and has a last-known address of 561 Thornton Road, Suite K, Lithia Springs, Georgia 30057.

4. On or about October 10, 1997, Barwick met with a Missouri resident and solicited an investment in a customer-owned, coin-operated telephone lease through ETS and NCMI.
5. During this solicitation, Barwick explained that the Missouri resident could purchase a telephone for \$6,000, lease the equipment to ETS for a period of five years, and receive a return of \$75 per month from ETS for the term of the lease.
6. During this solicitation, Barwick further explained that at the end of the five-year period, the Missouri resident could enter into another five-year lease, take over the management of the telephone, or ETS would purchase the equipment from the Missouri resident for the initial purchase price.
7. During this October 10, 1997 meeting, Barwick provided, among other things, a "Letter of Introduction" from NCMI that stated, in part, the following:

". . . With a lease agreement in place for 60 months, ETS will locate, install, expertly manage and maintain your phone(s) for 5 years and pay you an excellent lease payment. You purchase your Smart Phone from NCMI and let ETS do the rest. Look at these advantages:

 1. Earn 15% Net Fixed Annual Return on your money. . ."
8. Barwick also provided to the Missouri resident an informational package concerning coin-operated telephones that stated, in part, "Elect to become a payphone owner and let professionals handle the operation. . . . Choice [sic] to own and not have to be involved in day to day operation."
9. On November 6, 1997, the Missouri Securities Division received information that Respondents may have offered unregistered securities to a Missouri resident.
10. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for any securities offered by Respondents in the State of Missouri.
11. A check of the records maintained by the Commissioner revealed that Respondents were not registered to sell securities in the State of Missouri.
12. On September 1, 1999, the Division sent a letter of inquiry to Respondents that requested a claim of exemption or exception from definition upon which Respondents relied in offering unregistered securities in the State of Missouri. The letter also requested additional information about the offers to Missouri residents, and advised Respondents that failure to respond within a reasonable time as set by the Commissioner constituted proper ground for the entry of an order suspending the right to offer and sell securities in the State of Missouri. The Division requested that a written response be received on or before September 21, 1999.

13. The Division's September 1, 1999 letter was received by Barwick as evidenced by the return receipt. To date, Barwick has not responded to the Division's inquiry.
14. On September 11, 2000, ETS filed for protection in the federal court for the District of Delaware under Chapter 11 of the United States Bankruptcy Code.
15. On September 29, 2000, the United States Securities and Exchange Commission filed a complaint against ETS and its founder alleging that ETS had engaged in a "massive fraudulent scheme" by raising more than \$300 million from over 10,000 investors. This complaint also alleged that investors were not told that ETS was losing money, that ETS had a negative net worth and that ETS was dependent on revenue from new investors to sustain its operations.
16. Respondents offered to sell unregistered, non-exempt interests in customer-owned, coin-operated telephones to a Missouri resident.
17. This Order is in the public interest.

CONCLUSIONS OF LAW

1. Section 409.401(o), RSMo 2000, includes within the definition of a security an "investment contract." The customer-owned, coin-operated telephone interests offered by Respondents as described in the above findings of fact constitute securities.
2. Section 409.201(a), RSMo 2000, provides that it is unlawful for any person to transact business in this state as an agent unless he is registered as an agent under Sections 409.101 to 409.419. The conduct described in the above findings of fact constitutes violations of this section.
3. Section 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 violations of this section.
4. Section 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.

5. Transacting business as an unregistered agent as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 2000.
6. The offer or sale of unregistered securities as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 2000.
7. Section 409.402(f), RSMo 2000, provides that the burden of proving an exemption or an exception from a definition is upon the person claiming it. As described the above findings of fact, Respondents failed to prove an exemption from registration or an exception from the definition of a security.
8. Section 409.408(a), RSMo 2000, provides that the refusal to furnish information within a reasonable time as set by the Commissioner, shall be proper grounds for the entry of an order by the Commissioner suspending the right to offer and sell securities in the State of Missouri. As described in the above findings of fact, Respondents failed to furnish information as requested by the Commissioner.
9. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. Section 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 customer-owned, coin-operated telephone interests through ETS or NCMI; and
- B. Offering or selling any other security in violation of Sections 409.201 or 409.301, RSMo 2000.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 13th DAY OF March, 2001.



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

NOTICE

Respondents and any unnamed representatives aggrieved by this Order may request a hearing in this matter. Any request for a hearing should be sent, in writing to Douglas M. Ommen, Commissioner of Securities, Office of the Secretary of State, Missouri State Information Center, Room 229, 600 West Main Street, Jefferson City, Missouri, 65102, within thirty (30) days of the receipt of this Order. Section 409.412(a), RSMo 2000 and MO 15 CSR 30-55.020.