



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:

STANLEY HELVEY
1320 South Glenstone Street, Suite #3
Springfield, Missouri 65804,

Respondent.

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Order No. CD-01-30

ORDER TO CEASE AND DESIST

On the 1st day of October 2001, Mary S. Hosmer, Assistant Commissioner of Securities 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. Stanley Helvey is a Missouri-licensed insurance agent. Helvey has a last-known business address of 1320 South Glenstone Street, Springfield, Missouri, 65804. Helvey purports to be an agent of Alpha Telcom, Inc.
2. Alpha Telcom, Inc. ("Alpha Telcom"), is an Oregon corporation with a last known business address of 2900 Vine Street, Suite J, Grants Pass, Oregon, 97526. Alpha Telcom purports to engage in the business of owning, operating, servicing and managing customer-owned, coin-operated telephone equipment.
3. ATC, Inc. ("ATC"), is an Oregon corporation with the same last known address as that of Alpha Telcom. ATC purports to be in the business of selling customer-owned, coin-operated telephone equipment. ATC is owned by and is a subsidiary of Alpha Telcom.
4. ATC by and through Helvey, offered customer-owned, coin-operated telephone equipment for sale at \$5,000 per unit. Helvey offered and sold 4 customer-owned, coin-operated telephones to two Missouri residents, for a total investment of \$20,000.

5. Promotional materials of ATC and Alpha Telcom state that investors would receive a minimum of 14% return per year for each telephone purchased.
6. ATC's "Telephone Equipment Purchase Agreement" ("Purchase Agreement") states that investors have the option to operate and manage the pay telephones directly or they may contract with a service provider who will operate and manage the telephone for the investor. The only service provider named in the Purchase Agreement was Alpha Telcom. Alpha Telcom and ATC also offer to buy back the telephone equipment after three years for 100% of the purchase price ("lease-buyback"); this option is only available if the buyer contracts with Alpha Telcom to manage the telephone equipment.
7. Neither of the investors who purchased telephone equipment through Helvey opted to manage the equipment themselves. In addition, both Missouri investors opted to have the equipment managed by Alpha Telcom and both Missouri investors opted for the lease-buyback option.
8. Helvey acted as an agent for ATC by soliciting Missouri residents to purchase ATC's telephone equipment.
9. Helvey acted as an agent for Alpha Telcom by soliciting Missouri investors to contract with Alpha Telcom to provide telephone service and maintenance through Alpha Telcom's "Telephone Services Agreement" ("Services Agreement"). Helvey's name and insurance license number appear on both ATC's and Alpha Telcom's Agreements, identifying him as an agent or representative of both entities.
10. The Purchase Agreement coupled with the Services Agreement constitute an investment contract. The investor purchases a telephone from ATC for \$5,000 and contracts with Alpha Telcom to manage the telephone. The investor expects to make a profit from these agreements. A common enterprise exists between the investor and both ATC and Alpha Telcom through ATC's use of investor funds to pay sales commissions, marketing, and administrative costs and through the sharing of profits generated by Alpha Telcom's management of the telephone equipment.
11. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for the securities described herein.
12. A check of the records maintained by the Commissioner revealed that Helvey was not registered to sell securities in the State of Missouri.
13. On August 23, 2001, the Division sent a letter of inquiry to Helvey that requested a claim of exemption from registration or exception from the definition of a security. The letter also requested a claim of exemption from registration or exception from the definition of a securities agent upon which Helvey relied in offering securities in the State of Missouri. The letter also advised Helvey 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 letter requested a response by August 30, 2001.

14. On August 24, 2001, Alpha Telecom filed for Chapter 11 bankruptcy protection in the Southern District of Florida.
15. On August 27, 2001, a U.S. District Court judge granted the Securities and Exchange Commission's (SEC) request for a temporary order freezing the assets of ATC. The request was based on allegations that Alpha Telecom participated in a \$100 million "Ponzi-like" securities scam.
16. On August 29, 2001, the Division received Helvey's response. Helvey stated that he relied on the opinion of counsel for ATC and Alpha Telecom that these offerings did not constitute securities.
17. No attorney-client relationship existed between Helvey and this attorney.
18. Helvey did not claim a securities exemption under Section 409.402, RSMo 2000.
19. Helvey did not claim an exemption or an exception from definition as an agent.
20. The investments offered by Helvey are not federal covered securities.
21. The documents signed by the investors as well as Helvey's solicitation of these investors indicate that the interests are securities and that Helvey was involved in the sale of lease-buyback options:
 - a. Both Missouri investors stated that Helvey presented the ATC and Alpha Telecom payphone offer to them only as an investment, and not as a business management opportunity.
 - b. The investors were not asked if they were capable of performing any of the myriad tasks necessary to operate and manage the telephone equipment. One stated that the idea of self-management was never mentioned to her by Helvey.
 - c. Both Missouri investors who bought telephone equipment from ATC through Helvey are elderly retired persons who have no experience managing or maintaining coin-operated telephone equipment.
 - d. Both of these investors stated that they never considered performing any of the tasks themselves necessary to make their payphones functional and profitable, nor did they have any desire to perform these functions. Both Missouri investors were only interested in making an investment and receiving monthly payments as a result of that investment.
 - e. The promotional materials used by ATC, Alpha Telecom and Helvey contained no specific information about the tasks necessary to maintain and

manage the telephone equipment.

- f. The distribution of the equipment made it effectively impossible for the elderly Missouri investors to consider managing the various tasks necessary to make the equipment profitable. One Missouri resident had telephones in Florida; the other had telephones in Connecticut.
22. 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 leases offered by Sutton as described in the above findings of fact constitute securities.
2. Advice of legal counsel is not a defense to a claim Respondent was offering or selling a security.
3. Other states have found that the interests offered by Alpha Telcom are securities. These include the following:
 - a. Pennsylvania Securities Commission Cease and Desist Order, issued February 2, 1999; *In the Matter of Alpha Telcom, Inc., et al*, No. 9812-06.
 - b. Illinois Secretary of State consent order of prohibition, issued January 14, 2000; *In the Matter of Alpha Telcom, Inc.*, No. 9900201.
 - c. Wisconsin Department of Financial Institutions Cease and Desist Order, issued November 24, 1999; *In the Matter of Alpha Telcom, Inc. and Paul S. Rubera, et al.*, No. S-99225(EX).
 - d. Ohio Division of Securities issued a Cease and Desist Order on July 26, 2001; *In the Matter of Alpha Telcom, Inc.*, Order No. 01-215.
 - e. California Department of Corporations Desist and Refrain Order, issued October 24, 2000.
 - f. Arkansas Securities Department Cease and Desist Order, issued September 5, 2001; *In the Matter of Alpha Telcom, Inc., et al.*, No. 01-36-S.
4. 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.
5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 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 Section 409.201, RSMo 2000, by transacting business as a securities agent without an effective registration;
- B. Violating Section 409.301, RSMo 2000, by offering or selling unregistered customer-owned, coin-operated telephone lease-buyback contracts;

C. Violating Section 409.301, RSMo 2000, by offering or selling any other security without registration or an effective exemption from registration.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 2nd DAY OF October, 2001.



MATT BLUNT
SECRETARY OF STATE

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

DOUGLAS M. OMMEN
COMMISSIONER OF SECURITIES

NOTICE

Respondent 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.