



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
POP N GO, INC., ET AL.,) Case No. AP-11-25
)
 Respondents.)

FINAL ORDER TO CEASE AND DESIST AND ORDER AWARDING CIVIL PENALTIES, RESTITUTION AND COSTS AS TO THE REMAINING RESPONDENTS

Now on the 21st day of October, 2015, the Commissioner, having reviewed this matter, issues the following findings and order:

I. PROCEDURAL BACKGROUND

1. On October 26, 2011, Mary S. Hosmer, Assistant Commissioner for the Securities Division and on behalf of the Enforcement Section of the Missouri Securities Division (“Enforcement Section”), submitted a Petition for Order to Cease and Desist and Order to Show Cause why Restitution, Civil Penalties, and Costs Should not be Imposed (the “Petition”) in the above-styled matter.
2. On October 31, 2011, the Commissioner issued an Order to Cease and Desist and Order to Show Cause why Restitution, Civil Penalties, and Costs Should not be Imposed against Respondents and one other party.¹
3. The Petitioner made numerous attempts to locate and serve Pop-N-Go, Inc. (“POPN”) and Melvin Wyman (“Wyman”) (“Respondents”).
4. On May 2, 2014, Respondents were served with the Petition and Order pursuant to Section 409.6-611(b), RSMo. (Cum. Supp. 2013)², by leaving a copy of the process in the office of the Commissioner, and a copy of the notice, and a copy of the process was sent to Respondents POPN and Wyman at their last known addresses.

¹ The original Petition and Cease and Desist Order also included Kirk Porter (“Porter”) as a respondent. In 2012, Porter entered into a Consent Order with the Enforcement Section. The Commissioner issued that Consent Order on April 20, 2012.

² Unless otherwise noted, all statutory references are to the 2013 cumulative supplement of the Revised Statutes of Missouri.

5. Respondents failed to request a hearing or otherwise contact the Commissioner regarding this matter within the time allowed by Section 409.6-604.
6. The Commissioner has not ordered a hearing in this matter pursuant to Section 409.6-604.
7. On March 24, 2015, the Enforcement Section submitted a Motion for Final Order with respect to Respondents seeking to impose upon POPN and Wyman restitution, civil penalties, and costs for investigation pursuant to Section 409.6-604.
8. To date, the Respondents have failed to respond to the Motion for Final Order.

II. FINDINGS OF FACT

A. Respondents and Related Parties

9. POPN is a Delaware Corporation and conducts business in the State of California. POPN has a mailing address of 12429 E. Putnam Street, Whittier, California 90602. POPN's agent for service of process is Herbert Davis with a mailing address of 601 West 5th Street, 8th Floor, Los Angeles, California 90071.
10. Wyman is the chief executive officer of POPN. Wyman maintains a mailing address of 12429 E. Putnam Street, Whittier, California 90602. Wyman has never been registered as an agent with the State of Missouri.
11. At all times relevant to this matter, no representative of POPN has been registered as an agent with the State of Missouri.
12. Sterling Trust Company ("Sterling Trust"), is a passive self-directed IRA custodian for self-directed IRAs, qualified business retirement plans, and non-qualified custodial accounts. Sterling Trust has an address of 1101 Wooded Acres, Suite 120, Waco, Texas 76710.
13. Sometime in 2006, a representative of POPN ("POPN Representative") contacted a 65-year-old Independence, Missouri resident ("MR1") and MR1's 78-year-old spouse ("MR2") concerning an investment opportunity in POPN.
14. The POPN Representative told MR1 and MR2, among other things, that:
 - a. the POPN Representative was a representative of POPN;
 - b. POPN was in the business of selling popcorn machines;
 - c. POPN was seeking funds from investors for assistance in the growth of POPN;

- d. POPN was selling convertible debentures;
 - e. the investment in convertible debentures would pay 14 percent interest per year with interest payments to be paid on a quarterly basis;
 - f. the risks associated with the investment would be low;
 - g. MR1 and MR2 could invest their IRA funds in POPN through Sterling Trust; and
 - h. MR1 and MR2 could learn more about POPN by reviewing its website.
15. Sometime in 2006, a POPN Representative provided documents to MR1 and MR2 containing company literature, company news releases, and projected balance sheets.
 16. POPN's balance sheets projected sales in 2007 of \$14,199,400 and net earnings of \$5,616,100.
 17. POPN's SEC registration filings for the POPN common stock revealed that, for the nine months ending on June 30, 2006, POPN had total sales of \$77,357 and a net loss of \$9,655,682.
 18. In an SEC registration filing for POPN common stock dated October 12, 2006, POPN disclosed, among other things, that:

“Our independent auditor . . . has expressed substantial doubt as to our ability to continue as a going concern As of September 25, 2006, we have \$8,435,502 in convertible debentures We are in default in the repayment of principal on approximately \$3,067,416, or 36.36% of the convertible debentures.”
 19. On or about December 8, 2006, MR1 and MR2 invested \$25,000 in POPN convertible debentures through the POPN Representative and Wyman.
 20. Subsequent to the December 2006 investment, the POPN Representative and Wyman called MR1 and MR2 and conveyed that interest rates on the POPN convertible debentures remained high and encouraged MR1 and MR2 to invest more money in these convertible debentures.
 21. The POPN Representative told MR1 and MR2 that if MR1 and MR2 invested funds through an IRA, Sterling Trust would require that MR1 and MR2 sign subscription agreements stating that MR1 and MR2 were accredited investors.
 22. MR1 and MR2 each executed a subscription agreement indicating that they were accredited investors and sent the subscription agreements to POPN.

23. MR1 and MR2 stated that the POPN Representative never discussed the definition of an accredited investor with MR1 and MR2 to determine if MR1 and MR2 were accredited investors prior to the investment.
24. The Enforcement Section's investigation revealed that MR1 and MR2 were not accredited investors.
25. On or about February 26, 2007, MR2 invested \$6,991.82 in convertible debentures with POPN through MR2's IRA at Sterling Trust.
26. On or about March 8, 2007, MR1 invested \$55,888.27 in convertible debentures with POPN through MR1's IRA at Sterling Trust.
27. As a result of MR1 and MR2's investments, MR1 and MR2 were issued convertible debentures from POPN, signed by Wyman. These debentures had a one-year maturity date.
28. On several occasions, MR1 and MR2 requested that POPN return MR1's and MR2's invested funds.
29. MR1 stated that Wyman told MR1 and MR2, among other things, that POPN had no funds to pay MR1 and MR2 and that converting these debentures to POPN shares did not make sense because the shares were worth "almost nothing."
30. By March 8, 2008, all of MR1 and MR2's investments in the convertible debentures had matured.
31. To date, MR1 and MR2 have not received a return of their \$87,880.09 investment principal from POPN, Wyman, or POPN Representative. In addition, MR1 and MR2 have not received all of the interest on their convertible debentures.
32. Wyman sent a letter to the Enforcement Section, dated November 6, 2009. In this letter Wyman stated, among other things, that:
 - a. Wyman was the founder of POPN and served as CEO;
 - b. POPN was a reporting company trading over the counter for the period 2000-2008;
 - c. MR1 and MR2 were the only Missouri residents who purchased securities from POPN;
 - d. the POPN Representative served as a finder and that the POPN Representative received funds as a finder pursuant to a verbal understanding;
 - e. POPN sold securities in Missouri pursuant to a Regulation D exemption; and

- f. no notice documents were filed in the State of Missouri as the sale in Missouri was a limited one-time event to accredited investors.
33. A check of the records maintained by the Missouri Commissioner of Securities confirmed that:
- a. there was no registration or notice filing indicating status as a “federal covered security” for the convertible debentures offered and sold by POPN;
 - b. POPN had not filed a Notice of Sale of Securities Pursuant to the Missouri Accredited Investor Exemption; and
 - c. neither Wyman nor the POPN Representative were registered securities agents in Missouri.
34. Wyman and POPN failed to disclose to MR1 or MR2, among other things, that:
- a. there was no registration or notice filing indicating status as a “federal covered security” for the convertible debentures offered and sold by POPN;
 - b. POPN had not filed a Notice of Sale of Securities Pursuant to the Missouri Accredited Investor Exemption;
 - c. neither Wyman nor the POPN Representative were registered securities agents in Missouri; and/or
 - d. POPN’s independent auditor had expressed substantial doubt as to POPN’s ability to continue as a going concern.

III. CONCLUSIONS OF LAW

Offering and Selling Unregistered, Non-Exempt Securities

35. **THE COMMISSIONER CONCLUDES** that the convertible debentures in POPN were securities as that term is defined under Section 409.1-102(28).
36. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents both offered to sell and sold, as those terms are defined in Section 409.1-102(26), securities in the State of Missouri to MR1 and MR2 by:
- a. soliciting, or employing agents to solicit, funds from investors; and
 - b. receiving, or employing agents to receive, investment funds from individuals.

37. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents offered and sold securities in or from Missouri without these securities being (1) a federal covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-203, or (3) registered under the Missouri Securities Act of 2003 (the “Act”).
38. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents violated Section 409.3-301 by both offering to sell and selling the above securities to MR1 and MR2 when those securities were not registered under the Act.

Transacting Business as an Unregistered Agent by Respondent Wyman

39. **THE COMMISSIONER FURTHER CONCLUDES** that Respondent Wyman transacted business in the State of Missouri as an unregistered agent by both offering to sell and selling securities to MR1 and MR2.
40. **THE COMMISSIONER FURTHER CONCLUDES** that Respondent Wyman violated Section 409.4-402(a) by transacting business as an agent in the State of Missouri when Wyman was not registered as an agent.

Employing or Associating with an Unregistered Agent

41. **THE COMMISSIONER FURTHER CONCLUDES** that Respondent POPN employed or associated with the POPN Representative and Respondent Wyman who, on behalf of POPN, transacted business as unregistered agents.
42. **THE COMMISSIONER FURTHER CONCLUDES** that Respondent POPN violated Section 409.4-402(d) when it employed or associated with Respondent Wyman and the POPN Representative who, on behalf of POPN, transacted business as agents when Wyman and the POPN Representative were not registered.

Multiple Violations of Making an Untrue Statement and Omitting to State Material Facts in Connection with the Offer or Sale of a Security

43. **THE COMMISSIONER FURTHER CONCLUDES** Respondents violated Section 409.5-501(2) when, in connection with the offer, sale, or purchase of a security as described above, Respondents POPN and Wyman 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. Specifically, Respondents touted that the investment would pay 14% per year and the risks associated with the investment would be low, but failed to state:
- a. that the debentures offered by POPN were not registered as a “federal covered security;”
 - b. that POPN had not filed a *Notice of Sale of Securities Pursuant to the Missouri Accredited Investor Exemption*;

- c. that Wyman was not a registered securities agent in Missouri; and/or
 - d. that POPN's independent auditor had expressed substantial doubt as to POPN's ability to continue as a going concern.
44. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents' conduct in violation of Sections 409.3-301, 409.4-402(a), 409.4-402(d), and 409.5-501(2) constitute engaging in illegal acts, practices, or courses of business, and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.
45. **The COMMISSIONER FURTHER CONCLUDES** that, pursuant to Section 409.6-605(b), this order is necessary and appropriate in the public interest and is consistent with the purposes of the Act.

IV. 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. violating or materially aiding in any violation of Section 409.3-301 by offering or selling unregistered, non-exempt securities;
- B. violating or materially aiding in any violation of Section 409.4-402(a) by transacting business as an unregistered agent;
- C. violating or materially aiding in any violation of Section 409.4-402(d) by employing or associating with an unregistered agent; and
- D. violating or materially aiding in any violation of Section 409.5-501 by, in connection with the offer or sale of securities, omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.

IT IS FURTHER ORDERED that Respondents shall each pay a civil penalty in the amount of \$10,000 for multiple violations of Section 409.3-301. This amount shall be made payable to the State of Missouri and paid within 30 days of the date of this Order. 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. Respondents shall send or deliver this payment to the Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that Respondent Wyman shall pay a civil penalty in the amount of \$1,000 for violating Section 409.4-402(a). This amount shall be made payable to the State of Missouri and paid within 30 days of the date of this Order. 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. Respondent Wyman shall send or deliver this payment to the Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that Respondent POPN shall pay a civil penalty in the amount of \$10,000 for multiple violations of Section 409.4-402(d). This amount shall be made payable to the State of Missouri and paid within 30 days of the date of this Order. 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. Respondent POPN shall send or deliver this payment to the Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that Respondent POPN and Respondent Wyman shall each pay a civil penalty in the amount of \$10,000 for multiple violations of Section 409.5-501. This amount shall be made payable to the State of Missouri and paid within 30 days of the date of this Order. 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. Respondent POPN and Respondent Wyman shall send or deliver this payment to the Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondents shall pay, jointly and severally, restitution in the amount of \$87,880.09. 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 those persons referenced in Exhibit 1 attached hereto. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101, within 30 days from the date of this Final Order.

IT IS FURTHER ORDERED that Respondents POPN and Wyman shall each pay their own costs and attorney's fees in this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS TWENTY-FIRST DAY OF OCTOBER 2015.



JASON KANDER
SECRETARY OF STATE

A handwritten signature in blue ink that reads "Andrew M. Hartnett".

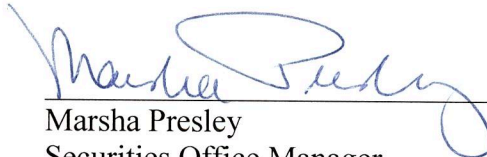
ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of October, 2015, a copy of the foregoing **Final Order to Cease and Desist and Order Awarding Civil Penalties, Restitution and Costs as to the Remaining Respondents** in the above styled case was sent via **Certified Mail U.S. mail** to:

Pop N Go, Inc.
c/o Herbert Davis, Registered Agent
601 West 5th Street, 8th Floor
Los Angeles, California 90071

Melvin Wyman
12429 East Putnam Street
Whittier, California 90602



Marsha Presley
Securities Office Manager