



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
 )  
LUCAS BRANSTETTER, ) Case No. AP-15-17  
 )  
 )  
Respondent. )

**FINAL ORDER TO CEASE AND DESIST AND ORDER  
AWARDING RESTITUTION, CIVIL PENALTIES, AND COSTS**

Now on the 11th day of July, 2016, the Commissioner, having reviewed this matter, issues the following findings and order:

**I. PROCEDURAL BACKGROUND**

1. On April 10, 2015, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through Enforcement Counsel Tyler B. McCormick, submitted a Petition for Order to Cease and Desist and Order to Show Cause why Restitution, Civil Penalties, and Costs Should not be Imposed.
2. On April 16, 2015, the Commissioner issued an Order to Cease and Desist and Order to Show Cause why Restitution, Civil Penalties, and Costs Should not be Imposed (the "C&D Order"). The Office of the Commissioner sent, via certified U.S. mail, return service requested, a copy of the Order, and Notice of Right to Request a Hearing to the Respondent. The return receipt card was signed by M. Cable on May 5, 2015.
3. Respondent failed to request a hearing within the time allowed by Section 409.6-604.<sup>1</sup>
4. The Commissioner has not ordered a hearing in this matter pursuant to Section 409.6-604.
5. On June 19, 2015 the Enforcement Section submitted a Motion for Final Order.
6. To date the Respondent has failed to respond to the Motion for Final Order.

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

## **II. FINDINGS OF FACT**

### **A. Respondents and Related Parties**

7. Lucas Wayne Branstetter (“Branstetter” or “Respondent”) is a 39 year-old Missouri resident with a last known residential address of 5784 County Road 240, Kingdom City, Missouri 65262 who is currently being held in the Cole County Jail at 350 E. High Street, Jefferson City, Missouri 65101.
8. At all times relevant to this matter, Branstetter has never been registered with the State of Missouri as an investment adviser, investment adviser representative, broker-dealer, broker-dealer agent, and/or issuer agent.
9. At all times relevant to this matter, there was no registration, granted exemption, or notice filing indicating status as a “federal covered security” for the securities offered and/or sold by Branstetter.

### **B. Enforcement Section Investigation**

10. A Mexico, Missouri resident (“MR”) met Branstetter sometime in 2009 when MR hired Branstetter to paint the interior of MR’s house.
11. After hiring Branstetter, MR befriended Branstetter, who periodically lived at MR’s residence until June 2011.
12. MR began to provide money to Branstetter for payment of child support, and later provided money to Branstetter for other personal expenses and trips to multiple states.
13. In or around 2011, Branstetter told 66-year-old MR about an investment opportunity. With regard to the investment opportunity, Branstetter:
  - a. told MR there was no risk;
  - b. told MR that MR’s funds would be used for legal fees;
  - c. told MR that Branstetter was to receive four different settlements which totaled over \$500,000;
  - d. told MR that Branstetter had a case settlement coming from the Missouri Department of Transportation for an accident in which Branstetter was receiving in excess of \$450,000; and
  - e. told MR that Branstetter had another settlement check of approximately \$55,000 coming from Social Security.

14. MR and Branstetter signed multiple agreements from at least January 2011 until at least April of 2011. The agreements contained what the funds would be used for and the amount Branstetter was to repay MR.
15. On or around January 27, 2011, Branstetter provided MR with an agreement (“January Agreement”). The January Agreement set forth, among other things, the following:
  - a. MR had provided Branstetter with \$23,366.77 in funding prior to January 27, 2011;
  - b. MR provided an additional \$1,100 on January 27, 2011;
  - c. Branstetter would use the funds for settlement of any and all legal recovery cases; and
  - d. MR would be repaid the full amount of all prior funds provided to Branstetter plus 5% simple interest.
16. On or around January 27, 2011, Branstetter signed the January Agreement.
17. In or around March 2011, Branstetter signed and provided MR with six agreements (“March Agreements”). The March Agreements set forth, among other things, the following:
  - a. MR had provided Branstetter with \$41,448.96 in funding prior to March 23, 2011;
  - b. MR provided additional funds in each of the March Agreements;
  - c. Branstetter would use the funds MR provided for settlement of any and all legal recovery for the following cases: “Dot case”, “Social Security”, and “Kohls case”; and
  - d. MR would be repaid the full amount of all prior funds provided to Branstetter plus between 5%-24% simple interest.
18. On or around April 7, 2011, MR set up a joint bank account with Branstetter from which Branstetter could trade after Branstetter had received the settlements.
19. Around May 2011, Branstetter asked MR for \$1,800 so that Branstetter could travel to Florida. Branstetter claimed he needed to go to Florida to collect a \$600,000 settlement. Branstetter told MR that Branstetter was going to use the settlement to pay back all of the money Branstetter had borrowed; however, Branstetter returned from Florida without any money and made multiple excuses regarding why he did not receive the \$600,000 settlement.

20. On or around May 2, 2011, Branstetter signed and provided MR with an agreement (“May Agreement”). The May Agreement set forth, among other things, the following:
  - a. MR had provided Branstetter with \$69,357.29 in funding prior to May 2, 2011;
  - b. MR provided an additional \$1,500 on May 2, 2011;
  - c. Branstetter would use the funds for settlement of any and all legal recovery for the following cases: “Dot case”, “Social Security”, and “Kohls case”; and
  - d. MR would be repaid the full amount of all prior funds provided to Branstetter plus 24% simple interest.
21. On or around June 15, 2011, Branstetter provided MR with an agreement (“June Agreement”). The June Agreement set forth, among other things, the following:
  - a. MR had provided Branstetter with \$81,000 in funding prior to June 15, 2011;
  - b. MR provided an additional \$325 on March 23, 2011;
  - c. Branstetter would use the funds for settlement of any and all legal recovery for the following cases: “Dot case”, “Social Security”, and “Kohls case”;
  - d. MR would be repaid the full amount of all prior funds provided to Branstetter plus 24% simple interest; and
  - e. repayment of the \$81,000 would begin on or before July 20, 2011.
22. On or around June 17, 2011, Branstetter and MR executed the June Agreement.
23. MR has asked Branstetter numerous times for a return of MR’s investment.
24. On or around October 1, 2014, Branstetter sent MR a letter stating that Branstetter had “finally” received some of the settlement money, and that if MR would “have patience” and “trust,” Branstetter would “make things right” with MR.
25. MR has not received a return on the money MR provided to Branstetter for the legal settlements and was never repaid the principal.

#### **Additional Findings**

26. Shortly after executing the June Agreement, MR discovered Branstetter had stolen and forged checks from MR’s checking account.
27. MR reported the theft and forgery to Audrain County Sheriff’s Department. Branstetter was arrested in August 2011. On December 5, 2011, Branstetter pleaded guilty to forgery

in Audrain County.<sup>2</sup> Branstetter was sentenced to four years in prison, but received a suspended execution of sentence and was placed on probation for five years, ordered to serve 120 days shock incarceration, and pay \$600 in restitution. On January 27, 2012, a motion to amend the amount of restitution was granted, raising the amount owed to \$1,083.23.

28. On July 30, 2014, Branstetter was indicted for “Robbery of a Postal Employee” that occurred on July 19, 2014. On September 18, 2014, Branstetter pleaded guilty to the charges, in the United States District Court for the Western District of Missouri Central Division<sup>3</sup> and the guilty plea was accepted on October 8, 2014. Branstetter is currently awaiting sentencing.
29. In connection with the offer and/or sale of securities, Branstetter failed to disclose to MR, among other things, the following:
  - a. that Branstetter was not registered to offer or sell securities in the State of Missouri;
  - b. that the securities were not registered in the State of Missouri;
  - c. the specific risks associated with the investment including, but not limited to, the risk associated with the purported settlements;
  - d. specific information about the purported settlements;
  - e. financial information to support the promised return; and
  - f. the financial condition of Branstetter.

### **III. CONCLUSIONS OF LAW**

30. Because the Respondent failed to request a hearing within the time allowed by Section 409.6-604, and because the Commissioner never ordered such a hearing, the Order issued on April 16, 2015, against the Respondent became **FINAL** by operation of law.

#### **Multiple Violations of Offering and Selling Unregistered, Non-Exempt Securities**

31. **THE COMMISSIONER FURTHER CONCLUDES** that Respondent violated Section 409.3-301 when he offered and/or sold unregistered, non-exempt securities by, among other things:
  - a. soliciting MR to invest with Branstetter;

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<sup>2</sup> State v. Branstetter, No. 11AU-CR00546-01.

<sup>3</sup> U.S. v. Branstetter, No. 14-4041-01-CR-C-BCW.

- b. providing and executing agreements with MR promising a return on MR's investment dependent upon the efforts of others and not on the efforts of MR; and
  - c. receiving funds from MR.
32. These activities constitute an offer and/or sale as those terms are defined in Section 409.1-102(26).
33. The investments that Respondent offered and/or sold constitute securities as that term is defined in Sections 409.1-102(28).
34. At all times relevant to this matter, there was no registration, granted exemption, or notice filing indicating status as a "federal covered security" for the securities offered and/or sold by Respondent.
35. Respondent offered and sold securities in 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, in violation of Section 409.3-301.
36. Respondent's conduct in violation of Section 409.3-301 constitutes an illegal act, practice, or course of business and such conduct is therefore subject to the Commissioner's authority under Section 409.6-604.

**Multiple Violations of Omitting to State Material Facts or Engaging in An Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit Upon Another Person in Connection with the Offer or Sale of a Security**

37. **THE COMMISSIONER FURTHER CONCLUDES** that Respondent violated Section 409.5-501, when, in connection with the offer, sale or purchase of a security, he omitted to state to MR material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. telling MR that (1) Branstetter was to receive four different settlements which totaled over \$500,000; (2) Branstetter had a case settlement for over \$450,000 coming from an accident he was in; (3) Branstetter had a case settlement of approximately \$55,000 coming from Social Security; (4) MR's funds would be used for legal fees; and/or (5) there was no risk. These statements, in light of the circumstances under which they were made, were misleading statements because Branstetter omitted to disclose the following material facts that could impact this return and the viability of MR's investment:
    - i. that Branstetter was not registered to offer or sell securities in the State of Missouri;

- ii. that the securities were not registered in the State of Missouri;
  - iii. the specific risks associated with the investment including, but not limited to, the risk associated with the purported settlements;
  - iv. specific information about the purported settlements;
  - v. financial information to support the promised return; and/or
  - vi. the financial condition of Branstetter.
- b. providing MR with the June Agreement setting forth that (1) MR's funds would be used for settlement of any and all legal recovery for the following cases: "Dot case", "Social Security", and "Kohls case"; (2) MR would receive the principal from MR's investment plus 24% simple interest; and/or (3) repayment would begin on or before July 20, 2011. These statements, in light of the circumstances under which they were made, were misleading statements because Branstetter omitted to disclose the following material facts that could impact this return and the viability of MR's investment:
- i. that Branstetter was not registered to offer or sell securities in the State of Missouri;
  - ii. that the securities were not registered in the State of Missouri;
  - iii. the specific risks associated with the investment including, but not limited to, the risk associated with the purported settlements;
  - iv. specific information about the purported settlements;
  - v. financial information to support the promised return; and/or
  - vi. the financial condition of Branstetter.
38. **THE COMMISSIONER FURTHER CONCLUDES** that Respondent violated Section 409.5-501, when, in connection with the offer, sale or purchase of a security as described above, Branstetter engaged in an act, practice or course of business that would operate as a fraud or deceit upon MR, by, among other things:
- a. lulling MR in order to avoid or delay detection by sending MR a letter on or around October 1, 2014, stating that Branstetter had "finally" received some of the settlement money, and that if MR would "have patience" and "trust," Branstetter would "make things right" with MR.
39. Respondent 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

engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person, in violation of Section 409.5-501.

40. At the time Respondent engaged in this conduct, MR was over the age of 60-years-old and was an elderly person as that term is defined under Section 409.6-604(d)(3)(B).
41. Respondent's conduct in violation of Section 409.5-501, constitutes engaging in an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.
42. This order is in the public interest and is consistent with the purposes of the Missouri Securities Act of 2003. See Section 409.6-605(b).

#### **IV. ORDER**

**NOW THEREFORE**, it is hereby ordered that the Respondent, 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 violating or materially aiding in any violation of:

- A. Section 409.3-301, by offering or selling any securities as defined by Section 409.1-102(28), in the State of Missouri unless those securities are registered with the Securities Division of the Office of the Secretary of State in accordance with the provisions of Section 409.3-301; and
- B. Section 409.5-501, by, in connection with the offer or sale of securities, making an untrue statement of a material fact or 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 or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(d), Respondent shall 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 Final 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 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), Respondent shall pay a civil penalty in the amount of \$15,000 for multiple violations of Section 409.5-501 committed against MR who was over the age of 60-years-old and was an elderly person. This amount shall be made payable to the State of Missouri and paid within 30 days of the date of this Final 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 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), Respondent shall pay restitution to MR, in the amount of \$100,440. 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 MR. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101 within 30 days of the date of this Final Order..

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(e), Respondent shall pay \$1,740 in actual costs for investigation into, and the proceedings associated with, this matter. This amount shall be made payable to the Investor Education and Protection Fund and sent to the Missouri Securities Division, at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102 within 30 days of the date of this Final Order.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS ELEVENTH DAY OF JULY 2016.



JASON KANDER  
SECRETARY OF STATE

*Andrew M. Hartnett*

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ANDREW M. HARTNETT  
COMMISSIONER OF SECURITIES

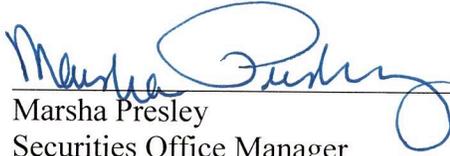
CERTIFICATE OF SERVICE

I hereby certify that on this 11<sup>th</sup> day of June, 2016, a copy of the foregoing Final Order to Cease and Desist and Order Awarding Restitution, Civil Penalties, and Costs in the above styled case was **mailed by certified U.S. mail to:**

Morgan County Adult Detention Center  
Attn: Lucas Wayne Branstetter  
Inmate #2015-0000355  
211 East Newton Street  
Versailles, Missouri 65084

**and by hand-delivery to:**

Tyler B. McCormick  
Chief Counsel  
Missouri Securities Division

  
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Marsha Presley  
Securities Office Manager