



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
MICHAEL J. BURKE; and) Case No. AP-15-32
SHANNON K. BURKE,)
)
Respondents.)

**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 September 22, 2015, the Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“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 (the “Petition”).
2. On September 28, 2015, the Missouri Commissioner of Securities (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 “Order”). On that same day, a copy of the Order and Notice of Right to Request a Hearing were sent, via U.S. certified mail, return receipt requested, to Respondents Michael J. Burke, 412 NW 23rd Street, Grand Prairie, Texas, 75050 and to Shannon K. Burke, RR6 Box 6419, Ava, Missouri, 65608.
3. On or around September 28, 2015, a copy of the Order was made available to the general public on the Missouri Secretary of State’s website.¹
4. On October 14, 2015, the Petition, Order, and Notice of Right to Request a Hearing sent to Michael J. Burke, 412 NW 23rd Street, Grand Prairie, Texas, 75050 were returned undelivered.

¹ <http://s1.sos.mo.gov/CMSImages/Securities/orders/AP-15-32.pdf>

5. On October 20, 2015, the Petition, Order, and Notice of Right to Request a Hearing sent to Shannon K. Burke, RR6 Box 6419, Ava, Missouri, 65608 were returned undelivered.
6. On November 13, 2015, a copy of the Order and Notice of Right to Request a Hearing were sent, via U.S. certified mail return receipt requested, to Michael J. Burke, 6812 Randol Mill Road, #7, Fort Worth, Texas, 76120-1239 and to Shannon K. Burke, 6812 Randol Mill Road, #7, Fort Worth, Texas, 76120-1239.
7. On February 1, 2016, the Order and Notice of Right to Request a Hearing sent to Michael J. Burke, 6812 Randol Mill Road, #7, Fort Worth, Texas, 76120-1239 were returned as “Unclaimed.”
8. On February 2, 2016, the Order and Notice of Right to Request a Hearing sent to Shannon K. Burke, 6812 Randol Mill Road, #7, Fort Worth, Texas, 76120-1239 were returned as “Unclaimed.”
9. On February 2, 2016, a copy of the Order was sent, via e-mail, to Shannon Burke at skburke71@gmail.com. No e-mail response has been received.
10. On April 5, 2016, the Commissioner was served pursuant to Section 409.6-611(b), RSMo. (Cum. Supp. 2013),² by providing a copy of the process to the office of the Commissioner. On that same day, Notice of the Service and a copy of the process were sent, via U.S certified mail, return receipt requested, to Michael Burke, 6812 Randol Mill Road, #7, Fort Worth, Texas, 76120-1239; Shannon Burke, 6812 Randol Mill Road, #7, Fort Worth, Texas, 76120-1239; and via e-mail to Shannon Burke at skburke71@gmail.com.
11. On April 6, 2016, the Petitioner filed an Affidavit of Compliance as to Section 409.6-611 demonstrating that the Enforcement Section had exercised reasonable steps to give notice to the Respondents and that substitute service on the Commissioner was justified.
12. Respondents failed to request a hearing within the time allowed by Section 409.6-604.
13. The Commissioner has not ordered a hearing in this matter pursuant to Section 409.6-604.
14. On June 10, 2016, the Enforcement Section submitted a Motion for Final Order.
15. To date, the Respondents have failed to respond to the Motion for Final Order.

² 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

16. Michael J. Burke (“M. Burke”) is a Texas resident with a last known address of 412 NW 23rd St., Grand Prairie, Texas 75050. In late 2009, M. Burke was employed at the Army Human Resource Command in St. Louis, Missouri.
17. Shannon K. Burke (“S. Burke”) is a Missouri resident with a last known address of RR 6 Box 6419, Ava, Missouri 65608.
18. As used herein, the term “Respondents” refers to M. Burke and S. Burke.
19. At all times relevant to this matter, M. Burke and S. Burke have never been registered with the State of Missouri as investment advisers, investment adviser representatives, broker-dealers, broker-dealer agents, or issuer agents.

B. Enforcement Section Investigation

Illinois Resident

20. In or around September 2009, a 38-year-old Granite City, Illinois resident (“IR”) served in the military with M. Burke in St. Louis, Missouri. During this time, M. Burke and S. Burke spoke with IR about an investment opportunity. With regard to the investment opportunity, M. Burke and S. Burke, among other things:
 - a. told IR that IR’s funds would be used to invest in stocks;
 - b. told IR the investment would triple in months; and
 - c. presented IR with a spreadsheet that purportedly stated the profit another investor was earning as a result of M. Burke’s and S. Burke’s trading abilities and strategies.
21. In or around September 2009, IR invested \$2,000 with M. Burke and S. Burke.
22. After IR’s investment, M. Burke was transferred to another military assignment in Texas.
23. IR has asked for the return of IR’s investment.
24. IR has not received a return on IR’s investment, and Respondents have refused to return IR’s investment.

Missouri Resident 1

25. In or before October 2009, M. Burke and S. Burke spoke with a 47-year-old Ferguson, Missouri resident (“MR1”) about an investment opportunity. During this time, MR1 was an Army contracted barber, and had known M. Burke for several years. With regard to the investment opportunity, M. Burke and S. Burke, among other things:
 - a. asked MR1 for funds to invest in penny stocks;
 - b. told MR1 the investment would make her wealthy;
 - c. presented MR1 with a spreadsheet stating the returns MR1 could expect for the investment; and
 - d. told MR1 that all the other investors were making good returns on their investments.
26. On or around October 1, 2009, MR1 invested \$2,500 with M. Burke and S. Burke.
27. When the investment did not provide any returns, MR1 began to question M. Burke and S. Burke about when MR1 could expect to see a return. S. Burke told MR1 she was busy moving and would locate the pertinent documents regarding the investment. S. Burke subsequently told MR1 that S. Burke could not locate the pertinent documents. Finally, S. Burke told MR1 that the funds were “lost” during stock trading that took place in an E*TRADE account.
28. A review of the E*TRADE account for M. Burke and S. Burke revealed, among other things, no deposit of \$2,500 on or around October 1, 2009.
29. On or around February 25, 2010, S. Burke wrote a \$2,500 check to MR1. The check bounced and was stamped RETURN REASON – S REFER TO MAKER.
30. On or around June 24, 2010, M. Burke and MR1 signed an agreement stating, among other things:

MR1 accepts a Samsung 55 inch LED TV as payment in full for the \$2,500 “received by Michael Burke for the sole purpose of investment into the New York Stock Exchange (NYSE) which was lost due to stock fluxation [sic] in and around December 2009.”

Missouri Resident 2

31. In or around November 2009, a 50-year-old St. Louis, Missouri resident (“MR2”) served in the military with M. Burke in St. Louis, Missouri. During this time, M. Burke spoke with MR2 about an investment opportunity. With regard to the investment opportunity, M. Burke, among other things:

- a. told MR2 that MR2's funds would be used to invest in stocks;
 - b. claimed that M. Burke was an experienced day trader; and
 - c. promised MR2 \$100,000 within two months.
32. On or around November 3, 2009, MR2 invested \$5,000 with M. Burke and S. Burke.
33. M. Burke and S. Burke had an account at USAA Federal Savings located in San Antonio, Texas ("Burke Account"). A review of the bank records for the Burke Account revealed, among other things:
- a. M. Burke and S. Burke were the sole signatories on the Burke Account;
 - b. on November 2, 2009, the Burke Account had a balance of \$3,858.95;
 - c. on November 6, 2009, MR2's \$5,000 check was deposited in the Burke Account;
 - d. investment funds from MR2 were commingled with other funds in the Burke Account and between November 6, 2009, and November 13, 2009, used for, among other things, the following activities:
 - i. cash withdrawals totaling in excess of \$4,500; and
 - ii. payments to restaurants, convenience stores, and utility companies totaling in excess of \$330.
 - e. On November 13, 2009, the Burke Account had a balance of \$197.93.
34. After MR2's investment, M. Burke was transferred to another military assignment in Texas.
35. MR2 has asked for the return of MR2's investment.
36. On or around March 16, 2010, S. Burke wrote a \$6,143 check to MR2. The check bounced and was stamped RETURN REASON – D CLOSED ACCOUNT.
37. MR2 has not received a return on MR2's investment and Respondents have refused to return MR2's investment.

Additional Findings

38. In connection with the offer and sale of securities, M. Burke and S. Burke failed to disclose to IR, MR1, and MR2, among other things, the following:

- a. that M. Burke and S. Burke were not registered to offer or sell securities in the State of Missouri;
- b. the specific risks associated with the investment including, but not limited to, the risks associated with penny stocks;
- c. financial information to support the promised return on the investments; and
- d. that investment funds would be comingled with Respondents' business and/or personal funds and used to pay personal expenses and make cash withdrawals.

III. CONCLUSIONS OF LAW

39. Because Respondents 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 September 28, 2015, against Respondents became **FINAL** by operation of law.

Multiple Violations of Transacting Business as an Unregistered Agent

40. **THE COMMISSIONER CONCLUDES** that Respondents violated Section 409.4-402(a) when M. Burke and S. Burke promised to trade penny stocks on behalf of investors in Missouri in order to generate a return for the investors, including IR, MR1, and MR2.
41. These activities constitute transacting business as an agent in the State of Missouri under Section 409.1-102(1).
42. At all times relevant, M. Burke and S. Burke were not registered as agents in the State of Missouri.
43. Respondents M. Burke and S. Burke transacted business in Missouri by offering or selling securities without being registered or exempt from registration as an agent in violation of Section 409.4-402(a).
44. Respondents' conduct in violation of 409.4-402(a) 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

45. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents violated Section 409.5-501 when, in connection with the offer, sale or purchase of a security as described above, M. Burke and S. Burke omitted to state to investors, including IR, MR1, and MR2, material facts necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading. Such statements and material omissions included, but were not limited to, the following:

- a. telling IR that (1) IR's funds would be used to invest in stocks; (2) IR's investment would triple within a matter of months; and/or (3) presenting IR with a spreadsheet purporting to state the profit another investor was earning as a result of M. Burke's and S. Burke's trading abilities and strategies. These statements, in light of the circumstances under which they were made, were misleading statements because M. Burke and/or S. Burke misrepresented or omitted to disclose the following material facts that could impact this return and the viability of IR's investment:
 - i. that M. Burke and S. Burke were not registered to offer or sell securities in the State of Missouri;
 - ii. the specific risks associated with the investment including, but not limited to, the risks associated with penny stocks; and
 - iii. financial information to support the promised return on the investment;
- b. telling MR1 that (1) MR1's funds would be used to invest in penny stocks; (2) the investment would make MR1 wealthy; (3) all the other investors were making good returns on their investments; and/or (4) presenting a spreadsheet to MR1 stating the returns MR1 could expect for the investment. These statements, in light of the circumstances under which they were made, were misleading statements because M. Burke and S. Burke misrepresented or omitted to disclose the following material facts that could impact this return and the viability of MR1's investment:
 - i. that M. Burke and S. Burke were not registered to offer or sell securities in the State of Missouri;
 - ii. the specific risks associated with the investment including, but not limited to, the risks associated with penny stocks; and
 - iii. financial information to support the promised return on the investment; and
- c. telling MR2 that (1) MR2's funds would be used to invest in stocks; (2) M. Burke was an experienced day trader; and/or (3) promising MR2 \$100,000 within two months. These statements, in light of the circumstances under which they were made, were misleading statements because M. Burke and S. Burke misrepresented or omitted to disclose the following material facts that could impact this return and the viability of MR2's investment:
 - i. that M. Burke and S. Burke were not registered to offer or sell securities in

the State of Missouri;

- ii. the specific risks associated with the investment including, but not limited to, the risks associated with penny stocks;
 - iii. financial information to support the promised return on the investment; and
 - iv. that investment funds would be commingled with Respondents' business and/or personal funds and used to pay personal expenses and make cash withdrawals.
46. Respondents 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.
47. Respondents' 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.
48. 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 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 be prohibited from violating or materially aiding in any violation of:

- A. Section 409.4-402(a), by transacting business as an unregistered agent; 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), each Respondent shall pay a civil penalty in the amount of \$10,000 for multiple violations of 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 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. This amount shall be sent to the Missouri 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), each Respondent shall 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 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. This amount shall be sent to the Missouri 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 jointly and severally pay restitution and interest in the amount of \$11,108.11 for violations of Sections 409.4-402 and 409.5-501. 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 on Exhibit 1. This amount shall be sent to the Missouri Securities Division at 600 West Main, P.O. Box 1276, Jefferson City, Missouri, 65102, within 30 days from the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(e), Respondents shall, jointly and severally, pay \$5,086.76 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. This amount shall be sent to the 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

A handwritten signature in cursive script that reads "Andrew M. Hartnett".

ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 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 sent via **U.S. mail; certified U.S. mail, and e-mail to:**

Shannon K. Burke
6812 Randol Mill Road, #7
Fort Worth, Texas 76120-1239
Skburke71@gmail.com

and

Michael J. Burke
6812 Randol Mill Road, #7
Fort Worth, Texas 76120-1239

and by hand-delivery to:

Tyler McCormick
Chief Counsel
Missouri Securities Division



Marsha Presley
Securities Office Manager