



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
MAXIMUM PERFORMANCE, INC.; and)
HOWARD E. ROBERTS,) Case No. AP-15-49
)
Respondents.)

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION’S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through Counsel Roumen Manolov, has alleged that Maximum Performance, Inc., and Howard E. Roberts (“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 in violation of Section 409.5-501, RSMo (Cum. Supp. 2013)¹, and that this constitutes grounds to issue an order pursuant to Section 409.6-604.
2. Respondents and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Respondents’ alleged violations of Section 409.5-501.

CONSENT TO JURISDICTION

3. Respondents and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities (“Commissioner”) has jurisdiction over the Respondents and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondents and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), which provides:

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

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”

WAIVER AND EXCEPTION

5. Respondents waive Respondents’ rights to a hearing with respect to this matter.
6. Respondents waive any right that Respondents may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Enforcement Section that, should the facts contained herein prove to be false or incomplete in a material way, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER’S ORDER

8. Respondents and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondents’ (a) testimonial obligations; (b) rights to take legal or factual positions in connection with litigation, arbitration, or other legal proceeding in which the Commissioner is not a party; or (c) rights to make public statements that are factual.
10. Respondents agree that Respondents are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents do not admit the allegations made by the Enforcement Section, but consent to the Commissioner’s Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

COMMISSIONER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

A. Respondent and Related Parties

12. Maximum Performance Inc. ("MPI") is a Tennessee for-profit corporation formed on October 21, 1996. MPI is a supplier of horse, human, and dog supplements. MPI was administratively dissolved on August 9, 2011, and formed again on June 14, 2013. Its registered agent is Business Filings Incorporated, Suite 2021, 800 South Gay Street, Knoxville, Tennessee, 37929-9710.
13. Howard Roberts ("Roberts") was a Missouri resident during the time relevant to this petition with a last known Missouri address of 402 West Mount Vernon, #117, Nixa, Missouri 65714. Currently, Roberts is a resident of Kentucky with a last known address of 850 Washburn Avenue, Louisville, Kentucky.
14. As used herein, the term "Respondents" refers to MPI and Roberts.

B. Enforcement Section Investigation

Missouri Resident ("MR")

15. In or around late 2013 or early 2014, Roberts initiated contact with a seventy-seven (77) year old Springfield, Missouri resident ("MR").
16. MR and Roberts first met over four (4) decades ago but had not communicated since that time.
17. MR had been a widow for at least three (3) years and Roberts was recently divorced.
18. Shortly after reconnecting, Roberts began to take MR out for dates.
19. Sometime in January of 2014, Roberts moved into MR's home.
20. Roberts told MR that his business (MPI) was struggling without funding and stated that no one wanted to invest in the business.
21. On or about March 4, 2014, while living together, MR purchased a new truck as a gift for Roberts in the amount of forty-three thousand six hundred sixty dollars and twenty-one cents (\$43,660.21).
22. On or about April 11, 2014, Roberts solicited from MR an investment of two hundred and fifty thousand dollars (\$250,000) in MPI.

23. MR stated that she would provide funding for MPI but wanted stocks in return.
24. On April 11, 2014, MR and Roberts, on behalf of MPI, executed a six (6) page Stock Sale and Purchase Agreement specifying that MR was purchasing twenty-five (25) shares of MPI stock with an “aggregate purchase price of two hundred and fifty thousand dollars (\$250,000).”
25. On April 17, 2014, MR invested two hundred and fifty thousand dollars (\$250,000) in MPI with Roberts via a cashier’s check made payable to MPI.
26. A review of MPI’s bank records, on which Roberts was the sole signatory, revealed, among other things, that Roberts deposited the two hundred fifty thousand dollars (\$250,000) investment check received from MR in MPI’s business account on April 17, 2014.

Roberts’ On-the-Record Statement

27. On September 25, 2015, the Enforcement Section conducted an on-the-record statement of Roberts pursuant to Section 409.6-602(a)(2), RSMo. (Cum. Supp. 2013), (“OTR”). During the OTR, Roberts stated, among other things, that:
 - a. Roberts moved into MR’s house sometime in January of 2014;
 - b. at the time when he moved into MR’s house, he just finished his divorce and had very little money to run MPI;
 - c. at that time, MPI was trying to develop a human product and Roberts had already made the down payment on the purchase of the human product;
 - d. it was very expensive for MPI “to get what they call the NSF [sticker]” and “without that sticker on there [the bottle], no college athlete, or professional athlete can take that product without that being on there”;
 - e. MR put two hundred and fifty thousand dollars (\$250,000) in MPI in order to get the product manufactured;
 - f. “the way it was presented was that it was a gift”;
 - g. at the time when MR invested the money, Roberts “figured that she and I would die together, and I think she felt the same way”;
 - h. when asked to explain the meaning of “die together”, Roberts stated that meant “we would have continued living there, building the business, working together until death do us apart”;

- i. MR suggested that she and Roberts get married but Roberts did not intend to do so;
- j. Roberts, however, never let MR know that marriage would not happen;
- k. sometime in May of 2014, Roberts' ex-wife moved into MR's house and stayed in the house with Roberts and MR. According to Roberts, neither he nor his ex-wife told MR that this was Roberts's ex-wife;
- l. Roberts was arrested, convicted, and served a sentence for mail fraud;
- m. in 2004, Roberts filed for bankruptcy; and
- n. Roberts never informed MR of his prior arrest, conviction, or bankruptcy.

II. CONCLUSIONS OF LAW

- 28. The Commissioner finds 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, and that this conduct constitutes grounds to issue an order pursuant to Section 409.6-604.
- 29. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondents and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409.

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

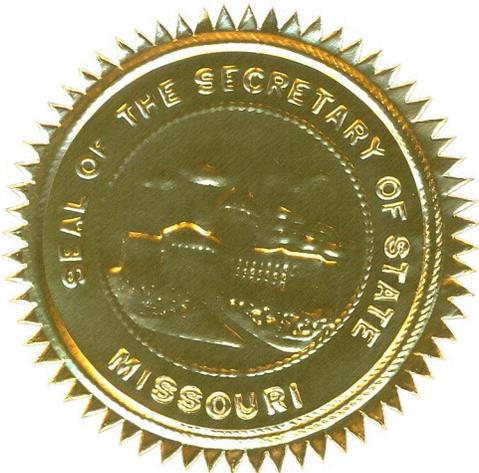
- 1. Respondents, their agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and in engaging in an act, practice, or course of business that would operate as a fraud or deceit in violation of Section 409.5-501.
- 2. Respondents are ordered to transfer to MR a truck, 2014 Ford F-250, VIN: 1FT7X2BT6EEA66334, in lieu of restitution. The transfer shall be completed within 45 days of the effective date of this Consent Order. Respondents shall file with the Commissioner a sworn affidavit confirming the completion of the transfer not later than

15 days of the completion of the transfer. Respondents agree to maintain the service warranty on the truck until the transfer takes place and guarantee that the mileage will not exceed 150,000 miles.

3. Respondents are ordered to pay \$10,000 to the Investor Education and Protection Fund, and this payment shall be suspended for 5 years. All suspended payments and unpaid portions of amounts ordered above shall become due immediately upon the sooner of (1) Respondent's noncompliance with the terms of this Consent Order, or (2) a finding, after notice and opportunity for a hearing, by the Commissioner or a court of competent jurisdiction that Respondent has committed another act or acts in violation of the Missouri Securities Act unrelated to and not contemplated herein. Such immediately due payments shall be in addition to all other penalties then available under the law.
4. After 5 years from the date of this Consent Order, provided Respondent has complied with all terms of this Consent Order, all suspended payments referenced in paragraph 3 above are waived.
5. Upon Respondents' failure to comply with the terms of this Consent Order, all remaining payments shall become immediately due and payable upon operation of law, and such immediately due payments shall be in addition to all other penalties then available under the law.
6. Respondents are jointly and severally ordered to pay \$700 as the cost of this investigation. This amount shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. The Division will send the money to the Missouri Secretary of State's Investor Education and Protection Fund.
7. Respondents shall pay their own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 5TH DAY OF DECEMBER, 2016.



JASON KANDER
SECRETARY OF STATE

Andrew M. Hartnett

ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES

Consented to by:

THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION



Roumen Manolov
Counsel

RESPONDENTS

MAXIMUM PERFORMANCE, INC.

BY: 

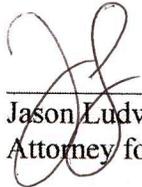
NAME: HOWARD ROBERTS

TITLE: CEO



Howard Roberts

Approved as to Form:

 12/5/16

Jason Ludwig, Carson and Coil, P.C.
Attorney for Respondents