

State of Missouri
Office of Secretary of State

Case No. AP-04-73

IN THE MATTER OF:

RICH ECKEL;
JUDY ECKEL; and
BILLINGS CHAPMAN,

Respondents,

Serve Rich and Judy Eckel at:
2001 Robin Terrace
Columbia, Missouri 65201

Serve Billings Chapman at:
911 Hulen Drive
Columbia, Missouri 65201

**SUMMARY ORDER TO CEASE AND DESIST AND ORDER TO SHOW CAUSE WHY
CIVIL PENALTIES AND COSTS SHOULD NOT BE IMPOSED**

On the 13 th day of October 2004, Mary S. Hosmer, Assistant Commissioner for Enforcement 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. ABC Seamless, Inc., a.k.a. ABC Seamless Siding ("ABC Seamless") was a Missouri corporation that was formed on September 11, 2000. On October 19, 2000, ABC Seamless, Inc. changed its name to ABC Alliance ("Alliance").
2. Rich Eckel was the President of Eckel Enterprises d/b/a ABC Seamless. Rich Eckel purported to be on the board of directors and served as a consultant for Alliance . Rich Eckel has a home address of 2001 Robin Terrace, Columbia , Missouri 65201 .
3. Judy Eckel was the Vice President of Eckel Enterprises. Judy Eckel purported to be on the board of directors for Alliance . Judy Eckel has a home address of 2001 Robin Terrace, Columbia , Missouri 65201 .
4. Billings Chapman ("Chapman") purported to be employed by ABC Seamless and purported to be the acting president of Alliance . Chapman has an address of 911 Hulen Drive , Columbia , Missouri 65201 .
5. Limerick Heights Inc. ("Limerick ") was a Missouri Corporation. Rich Eckel was the President and Judy Eckel was the Secretary of Limerick. Limerick owned 260 acres of land located in Columbia , Missouri .
6. Million heirs ("Heirs") are the immediate children and spouses of the Kay Million Trust. The Kay Million Trust owned 300 shares of Limerick stock. The Heirs individually owned 810 shares of Limerick stock.
7. As used in this Cease and Desist Order, the term "Respondents " refers to Rich Eckel, Judy Eckel and Billings Chapman.
8. In early February 2000, Chapman telephoned an Heir of the Kay Million estate and stated that Rich Eckel asked Chapman to act as a liaison between Rich and Judy Eckel and the Heirs. Allegations had been made that Rich Eckel had used money from Limerick to help fund ABC Seamless without the Heirs' knowledge or approval. Chapman was to negotiate an agreement between Eckel and the Heirs to purchase the Heirs' remaining Limerick stock.
9. On February 23, 2000, Chapman met with a Missouri resident ("MR1"), one of the Million Heirs, and stated that Rich and Judy Eckel were planning to sell ABC Seamless on May 30, 2000, and Rich and Judy Eckel would then use the ABC Seamless proceeds to pay the Heirs for the Limerick stock.
10. On October 16, 2000, Rich and Judy Eckel prepared and signed a promissory note to pay the Heirs \$225,000 for their shares of Limerick stock. This promissory note would be due April 16, 2001. The Heirs kept the note but did not agree that the amount was sufficient to pay for their shares of stock in Limerick .
11. On October 20, 2000, the Alliance Private Placement Memorandum ("PPM") was issued. The PPM stated among other things that:
 - a. "ABC Alliance, Inc. is a newly organized Missouri corporation that was organized for the purpose of purchasing an existing home improvement company which does business under the name ABC Seamless. . . . The Company has

- signed a purchase agreement . . . for the sale of all of the assets of the existing company [ABC Seamless].
- b. Upon the purchase of the contract for purchase of ABC Seamless, the Company will have significant assets and ongoing business income including the lease-purchase option on two warehouses and the buildings in which ABC Seamless is located."
 - c. "ABC Alliance, Inc. was created by Rich Eckel and Billings Chapman. The Eckels founded ABC Seamless in 1987."
 - d. "The Company's office, warehouse and showroom are located at 1604 Business Loop 70 West in Columbia , MO. "
 - e. "The Company sells and installs exterior improvement products for property dwellings."
12. The PPM contained no financial information about ABC Seamless and very little financial information about Alliance . Under the heading "CAPITALIZATION" Alliance 's debt was listed as "\$0."
13. On November 3, 2000, Rich Eckel d/b/a ABC Seamless and Chapman acting as president of Alliance signed a contract to purchase the ABC Seamless business assets and liabilities. This contract stated, among other things, the following:
- a. The purchase price for all the ABC Seamless assets and liabilities was \$1,200,000 to be paid to Rich Eckel in increments;
 - b. "If the [Alliance] received any income from the sale of stock of Alliance the [Alliance] shall immediately deliver fifty percent of the income received to the seller."; and
 - c. "Upon receipt of Ten Thousand Dollar (\$10,000) and the execution of this Contract, [Alliance] shall have control over the day-to-day operations of ABC Seamless, a division of [Eckel Enterprises]."
14. On November 3, 2000, Chapman and Alliance signed a lease with option to purchase the ABC Seamless real property from Rich Eckel.
15. On December 7, 2000, Chapman spoke with a Missouri resident ("MR2") another of the Million Heirs and stated, among other things, the following:
- a. Chapman, Rich Eckel and Judy Eckel were forming a new company named Alliance ;
 - b. The Board of Directors of Alliance consisted of very influential people;
 - c. By trading the Limerick stock for stock in Alliance all the heirs would be guaranteed \$1 per share;
 - d. The Limerick buyout would be \$350,000 and the heirs would trade stock in Limerick for 400,000 shares of stock in ABC Alliance at \$1 a share; and
 - e. Chapman, Rich Eckel, Judy Eckel and the Board members would personally guarantee the stock.
16. On January 25, 2001, the Heirs were invited to attend a dinner meeting. Chapman took the Heirs into a separate room before the dinner meeting and told them, among other things, the following:
- a. They should trade the Limerick stock for 400,000 shares of stock (worth \$1 each) in Alliance ;
 - b. This trade would benefit the Heirs since the Heirs could not realize any income from Limerick due to Rich Eckel's poor management;
 - c. Chapman was acting as President of Alliance and Rich Eckel would serve as a silent board member; and
 - d. Rich Eckel and Judy Eckel were moving and this would be the Heirs chance to redeem their inheritance.
17. During the January 25, 2001 dinner meeting, the Alliance Board of Directors were given Financial reports on Alliance through December 31, 2000. The final summary statement in the report read, "As the year 2001 begins ABC Alliance needs to restock its material inventory and arrange to meet a number of past due accounts payable. There are insufficient financial resources to accomplish these goals." None of the Million Heirs received this Financial Report. The Heirs did receive a copy of the Alliance Private Placement Memorandum.
18. On February 8, 2001, Chapman spoke with MR1 and stated, among other things, the following:
- a. Chapman was forming Alliance ;
 - b. Chapman had sold stock in Alliance ;
 - c. Alliance was going to acquire ABC Seamless;

- d. Chapman was investing \$350,000 of personal and family stock in Alliance ;
 - e. This Heir should consider purchasing stock in Alliance ; and
 - f. Chapman was going to Florida to sell more stock, but there should be some Alliance stock left for the Heirs to purchase.
19. On February 26, 2001, the accountant sent a letter to the Chairman of the Board of Directors of Alliance and copied Chapman. This February 26, 2001 letter stated, among other things, the following:
- "When last we spoke you said I should communicate any concerns I have directly with you. My purpose with this communication is to alert you to the specific facts of the current condition. I keep daily tabs on the cash account, and you can see from page 2 that the balance per G/L is \$(76,115.68). We have \$82,105.45 in outstanding checks, but are holding \$43,150 in the office. Most of the checks being held are federal & state tax deposits. ABC will incur stiff penalties and interest on these balances when the Internal Revenue Service catches up with us. ABC has a very real \$32,524 problem with the bank at this point. Employees are not able cash [sic] their paychecks and nothing can be done on any other pressing matters hanging over the company."
- ".The liabilities assumed have some very old balances and some vendors have initiated lawsuits. My principle concern is not with the lawsuits or the age of the payables, but with the lack of available resources to deal with the problems. A contract for the purchase of Seamless was drawn up without any new capital to seal the deal. At this point cash worthy stockholders will not solve the immediate problems. The \$32,534 cash shortfall is today and tomorrow. The \$43,150 in checks being held follows close behind as some of that amount is to cover returned checks which could involve the Boone County Prosecutor."
20. On February 26, 2001, the Heirs met with Chapman, Rich Eckel and Judy Eckel and signed the agreement to trade shares of the Heirs' Limerick stock for shares of stock in Alliance . In addition, the Heirs agreed to cancel the promissory note for \$225,000 issued by Limerick and Eckel to the Heirs on October 16, 2000. The Contract for the Issuance of Shares ("Agreement") stated in part:
- a. That Alliance represented to the Heirs that "There are now no pending or threatened lawsuits, administrative proceeding, or claims of any type or kind that may have an adverse effect upon the interest of Distributees" (the heirs); and
 - b. "Representations of ECKEL and LIMERICK: ECKEL AND LIMERICK represent and warrant that the financial information and other statements, both oral and written, relating to the value of LIMERICK, the contract and agreements with LIMERICK , and the agreements with Distributees, and the agreements with ABC are true and correct."
21. On March 2, 2001, Chapman telephoned MR1 and stated that Chapman needed \$3,500 to cover some Alliance expenses because the bank was holding checks on the Alliance account. Chapman would see that MR1 would get the \$3,500 returned on March 7, 2001. In return for loaning Alliance the \$3,500, MR1 would be given 1000 shares of founder stock as interest on this \$3,500 loan. After MR1 agreed to the \$3,500 loan, Chapman told MR1 to make the \$3,500 check payable to another employee. MR1 received a receipt for the \$3,500 from Chapman.
22. On March 6, 2001, Chapman met with several Heirs. Chapman told the Heirs that Chapman was looking for an investor who would be willing to purchase \$150,000 of Alliance stock. In return for the \$150,000 investment in Alliance , Chapman would give the investor 150,000 shares of stock in Alliance and 100,000 additional shares of founder stock.
23. During this March 6, 2001 meeting the Heirs suggested that board members pledge assets so that Alliance would be able to get a bank loan for \$150,000. Chapman showed interest in the idea and the three agreed to meet again on March 9, 2001.
24. In March 2001, several Heirs discovered, among other things the following:
- a. A copy of the Alliance/ABC Seamless March 12, 2001 balance sheet, which showed that Alliance/ABC Seamless had liabilities of \$339,628.96;
 - b. That several employees had not been paid for several weeks and that the business had serious financial problems and this employee and others were terminating their employment with Alliance/ABC Seamless;
 - c. That board members had never purchased any shares of Alliance stock; and
 - d. The assets of Alliance/ABC Seamless were scheduled for auction on April 23, 2001.
25. Chapman stated to the attorney for the Million Heirs that the lease payments were not made and that Rich Eckel sold the assets of Alliance/ABC Seamless in April 2001.
26. A check of the records maintained by the Commissioner confirmed no registration for Chapman or Rich or Judy Eckel to sell securities in the State of Missouri .

27. Chapman's registration as a representative was revoked in 1970 and the National Association of Securities Dealers barred Chapman from the securities industry. The Missouri investors were not told about this order.
28. The commissioner of securities issued a cease and desist order and served it upon Chapman in 1991 for engaging in fraudulent or illegal practices in the securities business. *In the matter of Christmas Spirite, et al.* . 1991 WL 734765 (Mo.Div.Sec.) The Missouri investors were not told about this order.
29. On December 18 and December 22, 2003, the Securities Division sent letters of inquiry to Respondents that requested a claim of exemption from registration or exception from definition upon which Respondents relied in offering unregistered securities in the State of Missouri . The letters also requested additional information about the offers to Missouri residents and advised Respondents that failure to respond may result in the entry of an order prohibiting Respondents from offering and selling securities in the State of Missouri.
30. On January 8, 2004, the Division received a response from Rich Eckel that stated, in part, that Rich and Judy Eckel have never held any ownership in Alliance, and that the Rich and Judy Eckel had nothing to do with the creation or naming of the company, had no ownership or control of the finances of the company, nor its management nor the conduct or integrity of the buyers.
31. On December 30, 2003, Chapman telephoned and stated he would send a response to the Division by the due date January 14, 2004.
32. On January 13, 2004, counsel for Chapman requested an extension of time to respond to the Division's request for information. Chapman was granted an extension with the due date set for January 21, 2004.
33. On January 23, 2004, counsel for Chapman responded to the Division's request for information, and stated, among other things, that Chapman was no longer affiliated with Alliance and did not have access to the books and records. Furthermore, counsel stated that Chapman did not make any securities sales.
34. In connection with the offer, sale or purchase of a security to Missouri residents, Respondents omitted to state the following material facts:
 - a. Chapman's registration as a representative was revoked in 1970 and the National Association of Securities Dealers barred him from the Securities Industry;
 - b. Chapman was ordered by the Missouri commissioner of securities in 1991 to cease and desist engaging in fraudulent or illegal practices in the sale of securities;
 - c. Alliance/ABC Siding was in serious financial difficulty, in that it was deeply in debt, receiving daily calls from debt collectors in November and December 2000, had accounts that were past due, and employees who were not being paid on a timely basis.
35. In connection with the offer, sale or purchase of a security to Missouri residents, Respondents made the untrue statements of material facts:
 - a. Alliance/ABC Siding was financially stable when in fact the March 12, 2001 financial balance sheet indicated that Alliance/ABC Siding had liabilities of \$339, 628.96;
 - b. Billings Chapman, Rich Eckel, Judy Eckel and the Board members would personally guarantee the stock; and
 - c. Upon the purchase of ABC Siding, Alliance would have significant assets and ongoing business income.
36. Respondent Rich Eckel made or caused to be made, in a record that was filed under this act, a statement that was false or misleading by filing information under the act that stated that Rich and Judy Eckel have never held any ownership in Alliance, and that the Rich and Judy Eckel had nothing to do with the creation or naming of the company, had no ownership or control of the finances of the company, nor its management nor the conduct or integrity of the buyers, when, in fact, this was not true.
37. This Order is in the public interest.

CONCLUSIONS OF LAW

I. Missouri Uniform Securities Act

1. §409.401(o), RSMo, 2000, includes "stock " within the definition of a security. The interests offered and sold by Respondents as described in the above findings of fact constitute securities.
2. §409.101, RSMo 2000, provides that it is unlawful, in connection with the offer, sale or purchase of any security (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit

upon any person. The conduct described in the above findings of fact constitutes a violation of this section.

3. 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.

4. Omitting to state a material fact necessary to make the statement made not misleading, in connection with the offer or sale of a security, constitutes an illegal practice under §409.408(b), RSMo 2000.
5. Making an untrue statement of material fact, in connection with the offer or sale of a security, constitutes an illegal practice under §409.408(b), RSMo 2000.
6. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.408(b), RSMo 2000.

II. Missouri Securities Act of 2003

7. §409.5-505, RSMo Cumulative Supp. 2003 provides:

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this act, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

As described in the above findings of fact and in violation of this section, Respondent Rich Eckel, in a document submitted to the commissioner of securities in response to an investigative request, stated that Rich and Judy Eckel have never held any ownership in Alliance, and that the Rich and Judy Eckel had nothing to do with the creation or naming of the company, had no ownership or control of the finances of the company, nor its management nor the conduct or integrity of the buyers, when, in fact, this was false or misleading.

8. §409.6-604(a), RSMo Cumulative Supp. 2003 provides:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice or course of business constituting a violation of this act or a rule adopted or order issued under this act or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act, the commissioner may:

1. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary and appropriate to comply with this act;

9. §409.6-604(d), RSMo Cumulative Supp. 2003 provides:

In a final order, the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.

10. §409.6-604(e), RSMo Cumulative Supp. 2003 provides:

In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

11. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.6-604(a), RSMo Cumulative Supp. 2003.

ORDER

NOW, THEREFORE, it is hereby ordered that Respondents, their agents, employees and servants, and all other persons with knowledge of this order participating in or about to participate in the following activities are immediately prohibited from

- A. Offering or selling investments in ABC Alliance, Inc.;
- B. Violating §409.101(2), RSMo 2000 or §409.5-501(2), RSMo Cumulative Supp. 2003, by omitting, in connection with the

offer or sale of any securities in or from the state of Missouri, any material facts, that would make statements made in light of the circumstances under which they are made, not misleading, including following:

1. Chapman's registration as a representative was revoked in 1970 and the National Association of Securities Dealers barred him from the securities industry;
2. Chapman was ordered by the Missouri commissioner of securities in 1991 to cease and desist engaging in fraudulent or illegal practices in the sale of securities;
3. Alliance/ABC Siding was in serious financial difficulty, in that it was deeply in debt, receiving daily calls from debt collectors in November and December 2000, had accounts that were past due, and employees who were not being paid on a timely basis; and
4. Rich Eckel, Judy Eckel and Chapman are now the subject of this order and are prohibited from specific unlawful activity in connection with the offer and sale of securities.

C. Violating §409.101(2), RSMo 2000 or §409.5-501(2), RSMo Cumulative Supp. 2003, by making, in connection with the offer or sale of any securities in or from the state of Missouri, any untrue statements of material fact, including the following:

1. That Alliance/ABC Siding was financially stable when in fact the March 12, 2001 financial balance sheet indicated that Alliance/ABC Siding had liabilities of \$339,628.96;
2. Billings Chapman, Rich Eckel, Judy Eckel and the Board members would personally guarantee the stock; and
3. Upon the purchase of ABC Siding, Alliance would have significant assets and ongoing business income.

IT IS FURTHER ORDERED that that Respondents, their agents, employees and servants, and any person with knowledge of this order, who has or is about to materially aid in the violation, are immediately prohibited from violating §409.5-505, RSMo Cumulative Supp. 2003, by making or causing to be made a false or misleading statement in any document filed with the commissioner.

IT IS FURTHER ORDERED that the Enforcement Section is granted leave to petition for civil penalties, and specifically, the award of one thousand dollars (\$1,000) , against Respondent Rich Eckel. The commissioner may issue a final order awarding this penalty, unless Respondent requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that the Enforcement Section is granted leave to petition for costs of investigation and prosecution of this proceeding against Respondent Rich Eckel. The Commissioner may issue a final order awarding at least one thousand dollars (\$1,000) to the credit of the Investor Education and Protection Fund, unless Respondent Rich Eckel requests a hearing and shows cause why the award should not be charged against him.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY , MISSOURI THIS 2ND DAY OF NOVEMBER, 2004.

MATT BLUNT
SECRETARY OF STATE

(Signed/Sealed)
DOUGLAS M. OMMEN
COMMISSIONER OF SECURITIES