

State of Missouri
Office of Secretary of State

Case No. AP-05-14

IN THE MATTER OF:

DONNYE SOMMERVILLE

Serve at:

P.O. Box 4678
St. Louis, MO 63108

and

6931 Lexington Street
St. Louis, MO 63121

**FINAL ORDER TO CEASE AND DESIST AND ORDER AWARDING CIVIL
PENALTIES AND COSTS OF INVESTIGATION**

NOW ON the 30th of June, 2005, the Commissioner of Securities, after notice to Respondent and an opportunity for hearing, issues the following findings of fact, conclusions of law and final order ("Order").

FINDINGS OF FACT

1. A-1 Credit Services, LLC ("A-1 Credit") is a company operating in the State of Missouri with a last known business address of 625 North Euclid, Suite 534, St. Louis, MO 63108. A-1 Credit purportedly engaged in the business of repairing consumer credit.
2. Donnye Sommerville ("Respondent") purports to be the President of A-1 Credit and has a last known business address of 625 North Euclid, Suite 534, St. Louis, MO 63108.
3. On or about December 2003, a Missouri resident ("MR") approached Ronnye Sommerville—Respondent's brother—regarding an investment opportunity in Mr. Sommerville's business of buying, rehabilitating, and selling houses. Mr. Sommerville referred MR to Respondent. Respondent informed MR that house rehabilitation would require a large investment but then stated that MR could use MR's funds to make another commercial investment.
4. Respondent informed MR that MR's funds could be used for advertising and expanding the business of A-1 Credit.
5. On December 12, 2003, MR wrote check #1704 made payable to "A-1 Credit Services, LLC (Donnye Sommerville)." MR wrote the check for the amount of \$5,250.00 and added the phrase "Commercial Investment" on the check's memo line.
6. On December 12, 2003, Respondent gave MR a document with the words "**PROMISSARY [sic] NOTE**" appearing in bold at the top of the document. The note stated in part:

FOR VALUE RECEIVED, the undersigned hereby jointly and severally promise to pay the order of [MR], sum of Dollars (\$7,750.00), for the purpose of investing in the commercial ad for A-1 Credit Services, LLC. Said sum shall be paid in the manner following:

Principal sum is loaned to A-1 Credit Services, LLC. (\$7,750.00 to be paid in full on or before March 26, 2004. [sic]

Should the return date pass, an additional \$1,000.00 will be paid on or before April 30, 2004.

7. On December 15, 2003, Respondent's business bank account (the "A-1 Credit account") reflected a deposit of \$5,250.[\[1\]](#) Before this deposit, the account's balance was 54¢. The only other deposit to the A-1 Credit account during the remainder of that month was a deposit of \$348 on December 31, 2003.
 - a. After the deposit of \$5,250 but within December of 2003, Respondent wrote checks from the A-1 Credit account amounting to \$1,700. Specifically, Respondent wrote the following:
 - i. check #1159 on December 17, 2003, made payable to "A-1 Credit" for \$500;
 - ii. check #1161 on December 21, 2003, made payable to "Cash" for \$500; and
 - iii. check #1162 on December 30, 2003, made payable to "Cash" for \$700.
 - b. On December 19, 2003, an automatic mortgage payment of \$1,296.00 for property not owned by A-1 Credit was

deducted from the A-1 Credit account.

- c. On December 23, 2003, \$50.00 was transferred by phone from the A-1 Credit account to Respondent's personal checking account.
 - d. Respondent used the above \$3,046 for purposes other than what he promised in his promissory note to MR.
8. Based on the promissory note, MR attempted to contact Respondent to verify the maturity date of the money MR loaned to Respondent. MR attempted to contact Respondent on the following approximate dates:[\[2\]](#)
- a. March 24, 2004,
 - b. April 5, 2004,
 - c. May 3, 2004,
 - d. May 17, 2004,
 - e. June 7, 2004,
 - f. June 21, 2004, and
 - g. August 2, 2004.
9. To date, MR has not received any payments from Respondent.
10. On August 10, 2004, the Division received information that indicated that Respondent had allegedly offered unregistered securities in Missouri.
11. On September 2, 2004, the Division sent a letter of inquiry (the "September 2nd letter") to Respondent. This letter asked Respondent to provide the Division with the definitional or registration exemption upon which Respondent had relied in allegedly offering unregistered securities. The letter also requested additional information about the alleged offers and advised Respondent that failure to respond within a reasonable time as set by the Commissioner constituted further proceedings to prohibit him from offering or selling securities in this State.
12. On September 27, 2004, the September 2nd letter was returned to the Division and marked as "unclaimed." According to the United States Postal Service, delivery of the September 2nd letter was attempted and unclaimed three times.
13. On September 21, 2004, the Division sent a second letter of inquiry (the "September 21st letter") to Respondent.[\[3\]](#) This letter requested the same information as the September 2nd letter. The September 21st letter was marked as "Attempted, Not Known" and returned to the Division on October 6, 2004.
14. On January 19, 2005, the Division sent a third letter (the "January 19th letter") of inquiry to Respondent.[\[4\]](#) The January 19th letter again asked Respondent to provide the Division with the definitional or registration exemption upon which Respondent had relied in allegedly offering unregistered securities. The January 19th letter also requested additional information about the purported offers to Missouri residents. This letter advised Respondent that his failure to respond within a reasonable time as set by the Commissioner would constitute further proceedings to prohibit him from offering or selling securities in Missouri.
15. On January 31, 2005, a representative of the Division received a telephone call from Respondent. Respondent said he had received the Division's January 19th letter. Respondent stated that he was no longer in business and that he was "not offering or selling securities."
16. On February 3, 2005, the Division received a letter dated February 2, 2005 (the "February 2nd letter") from Respondent. This letter purported to respond to the January 19th letter.
- a. In the February 2nd letter, Respondent denied "offer[ing] or sell[ing] unregistered or registered securities."
 - b. The January 19th letter requested copies of the promotional materials, contracts, or other documents used in connection with any offer or sale of securities in this State. In response, the February 2nd letter stated that there were neither promotional materials nor contracts.
 - c. Respondent's February 2nd letter also stated in part:

Around December 2003 I met with my grade school friend [MR]. . . . I told her that I was starting a radio and television commercial campaign and if she'd loaned [*sic*] me some money to help pay for the spots, that I would pay her back. She wanted something in writing to state what we had talked about, so I filled out a promissory note.
17. On February 17, 2005, the Division sent a correspondence (the "February 17th letter") to Respondent via certified mail. This letter requested additional information concerning the representations made in his February 2nd letter.
18. On March 4, 2005, the Division received a facsimile (the "March 4th fax") from Respondent that purported to respond to the February 17th letter.
- a. In that March 4th fax, Respondent claimed that he "operate[d]" or was "affiliate[d] with" the following "inactive

companies”:

- i. A-1 Credit, and
 - ii. Nationwide Credit Clearing.[\[5\]](#)
- b. Respondent also claimed that he “operate[d]” or was “affiliate[d] with” Creative Capital Group, LLC.[\[6\]](#)
- c. Respondent’s March 4th fax read in part as follows:

The television network . . . here in St. Louis was running a special for small businesses to take part in so that we could advertise. I used the money loaned to me by [MR]. . . . I did invest the money in the t.v. commercial and it didn’t produce the results I was looking for. I then was unable to meet my obligation to pay her back in a timely manner that was mutually agreed upon by this promissory note. . . . I have every intention on paying [MR] back every penny that I owe her. She didn’t give it to me in payments, so I didn’t think that she would want it back in payments. If I had to do payments, I could afford to pay \$100.00 per month.

19. On April 22, 2005, Patrick T. Morgan, Deputy Chief Counsel for the Enforcement Section of the Division, submitted a petition requesting a cease and desist order and other relief in the above matter.
20. On April 22, 2005, the Commissioner ordered Respondent to cease and desist, Order No. AP-05-14. On that same date, the Commissioner sent notice and a copy of the order to Respondent pursuant to § 409.6-604(b), RSMo Supp. 2004.
21. Respondent did not request a hearing in this matter nor did the Commissioner order a hearing.
22. On June 29, 2005, Deputy Chief Counsel Morgan moved for an order imposing against Respondent the costs of investigation in this matter for the amount of \$2,598.00.
23. This Order is in the public interest.

STATUTORY PROVISIONS

24. Section 409.1-102(28), RSMo Supp. 2004, includes “any note” within the definition of a security.
25. Section 409.1-102(26), RSMo Supp. 2004, defines “sale” to include “every contract of sale, contract to sell, or disposition of, a security or interest in a security for value.” That same section defines “offer to sell” as “every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.”
26. Section 409.5-501(3), RSMo Supp. 2004, makes it unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.[\[7\]](#)
27. Section 409.6-605, RSMo Supp. 2004, reads in pertinent part as follows:
 - a. 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 . . . , 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 or appropriate to comply with this act; . . .
 - b. An order under subsection (a) is effective on the date of issuance. . . . If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. . . .
 - c. If a hearing is requested or order pursuant to subsection (b), a hearing before the commissioner must be provided. . . . The final order may make final, vacate, or modify the order issued under subsection (a).
 - d. In a final order under subsection (c), 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.
 - e. 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.

CONCLUSIONS OF LAW

28. The promissory note that Respondent gave to MR in return for \$5,250 was a “security” for purposes of § 409.1-102(28).

29. Respondent's actions in giving a promissory note to MR in exchange for \$5,250 constituted the "sale" or "offer to sell" of a security.
30. Respondent violated § 409.5-501(3), when he, in connection with the offer and sale of a security to MR, engaged in an act, practice, or course of business that operated as a fraud or deceit upon MR in that Respondent represented to MR that the \$5,250 she invested with him would be used for a "commercial ad for A-1 Credit Services" but then used \$3,046 of that investment for other purposes.
31. Respondent violated § 409.5-501(3), when he, in connection with the offer and sale of a security to MR, engaged in an act, practice, or course of business that operated as a fraud or deceit upon MR in that Respondent (1) sold MR a \$5,250 promissory note for the "commercial ad for A-1 Credit Services," (2) did not disclose that the A-1 Credit account had a balance of only 54¢ at the time, (3) represented to MR that he would repay her \$7,250 in approximately three months, (4) used MR's money for purposes other than what he represented to her, and (5) has not, to date, repaid her.

ORDER

NOW, THEREFORE, it is hereby ordered that Order No. AP-05-14 is FINAL.

Respondent, Donnye Sommerville, his 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 ordered to cease and desist the following:

- A. offering or selling securities the above-described securities in the State of Missouri; and
- B. violating or materially aiding in any violation of the Missouri Securities Act of 2003.

IT IS FURTHER ORDERED that, pursuant to § 409.6-604(d), Respondent must pay to the State of Missouri a civil penalty in the amount of \$10,000.00 (ten thousand dollars) within thirty (30) days from the date of service of this Order. Respondent's payment of \$10,000.00 shall be by cashier's check or money order payable to Missouri Secretary of State. Respondent shall deliver his payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, MO 65102.

IT IS FURTHER ORDERED that, pursuant to § 409.6-604(e), Respondent must pay to the State of Missouri the costs of investigation in this matter in the amount of \$2,598.00 within thirty (30) days from the date of service of this Order. Respondent's payment of \$2,598.00 shall be by cashier's check or money order payable to The Investor Education and Protection Fund. Respondent shall deliver his payment to the Securities Division, 600 W. Main Street, Jefferson City, Missouri 65102.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 29TH DAY OF JUNE, 2005.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
DAVID B. COSGROVE
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June 2005, a copy of the foregoing motion were mailed by certified U.S. Mail, postage prepaid, to the Respondent in this matter.

Beth A. Perkins
Administrative Aide

[1] According to Respondent's subpoenaed bank records, this bank accounted was registered under the name "Donnye Sommerville dba A-1 Credit Services."

[2] In the course of attempting to contact Respondent, MR learned that her number had been blocked from Respondent's cellular phone.

[3] This letter was addressed as follows: "A-1 Credit Services, LLC, Attn: Donnye Sommerville, 4901 Delmar, St. Louis, MO 63108."

[4] This letter was sent to P.O. Box 4678, St. Louis, MO 63108 via the U.S.P.S.

[5] Nationwide Credit Clearing, LLC, was a company operating in Missouri with a last known address of P.O. Box 4678, St. Louis,

Missouri 63108.

[6] Creative Capital Group, LLC, is a company operating in Missouri with a last known address of P.O. Box 4678, St. Louis, Missouri 63108 and 2366 Rockymont Drive, St. Louis, Missouri 63136. Creative Capital Group, LLC, purportedly engages in the business of purchasing real estate property and financial consulting.

[7] Under § 409.1-102(9), RSMo Cum. Supp. 2004, the terms “fraud” and “deceit” are not limited to common law deceit.