

State of Missouri
Office of Secretary of State

Case No. AP-05-29

IN THE MATTER OF:

SECURITIES COMPLIANCE DEPARTMENT
CONRAD SHORE
ROBERT JAMES, *and*
JOHN PHOENIX

Respondents.

Serve all at:

2300 Main Street
Kansas City, MO 64108

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

PROCEDURAL SUMMARY: After being petitioned by the Securities Division, the Commissioner of Securities issued a cease and desist order against the Respondents on July 11, 2005. Because neither the Respondents nor the Commissioner requested a hearing on that order, the cease and desist order became final against the Respondents by operation of law on August 11, 2005, pursuant to § 409.6-604(b), RSMo Supp. 2004.

On the 15th day of September 2005, Patrick T. Morgan, Deputy Chief Counsel for the Securities Division, submitted to the Commissioner a motion for costs of investigation in connection with this matter. Now, after reviewing the motion, the Commissioner issues the following findings of fact, conclusions of law and final order to cease and desist and order awarding civil penalties and costs of investigation:

I. FINDINGS OF FACT

1. On July 7, 2005, the Missouri Securities Division received a telephone call from an Australian Resident ("AR") who stated, among other things, the following:
 - a. In June 2002, AR was contacted by an individual who purportedly represented Century Group Mergers and Acquisitions ("Century Group"), a Nebraska business. The Century Group representative claimed that he had a customer who wanted to buy AR's 10,150 shares of stock in Security Plus, Inc.
 - b. According to the representative, AR would receive \$159,308.64 in Australian dollars ("A\$") for AR's shares in Security Plus, Inc. In exchange, AR would have to pay the United States withholding tax on the sale.
 - c. The representative further said that AR should send this withholding tax money to the Espirito Santo Bank of Florida in Miami, Florida.
2. On June 22, 2004, AR received a letter from Century Group stating, among other things, the following: "This letter is to serve as a final closing document outlining the necessary following steps in completing this acquisition. . . . Transmit by fax all listed document to Century Group Mergers and Acquisitions."
3. On June 25, July 21, July 23, September 20, and October 2 of 2004, AR transferred monies totaling A\$46,596.00 to Century Group.
4. In May 2005, AR was unable to contact the Century Group and to date has not received the money for AR's shares of stock in Security Plus, Inc.
5. AR also represented that, on or around July 6, 2005, an individual identifying himself as "Conrad Shore" telephoned AR. Shore represented that he was an investigator with the "Securities Compliance Department."

"The Securities Compliance Department"

6. The Securities Compliance Department maintains a website^[1] which reads in part as follows:

The Securities Compliance Department promotes the development of globally competitive financial markets through its effective regulation and monitoring activities that widely disseminate reliable information for the protection of the investing public. Our regulatory policies and programs close cooperation and coordination—

factors that become increasingly important with the rapid pace of change in technologies. These technologies transcend political and geographical boundaries and have created what is, in essence, a global market for securities requiring international cooperation and coordination of regulatory authorities, where the Securities Compliance Department is at the forefront.

7. The Securities Compliance Department website has a number of links to some of its other websites titled “Investor Help,”^[2] “Public Information,”^[3] and “File a Complaint.”^[4] These websites are registered to a “John Phoenix” with a purported address of “78th Street, Miami, Florida.”

8. The Securities Compliance Department’s “About Us” website^[5] reads in part as follows:

The Securities Compliance is established to promote investor confidence in the securities and capital markets by providing more structure and oversight. The Securities Compliance Department oversees the activities of key participants in the securities industry, concerned with ensuring an appropriate regulatory environment to protect investors, enforce the securities laws, promote disclosure of important information, and sustain fair and efficient markets.

The Securities Compliance Department implements regulatory programs that provide the investing public meaningful financial information so they may judge for themselves if a company’s securities are a sound investment. . . .

Through its effective enforcement actions, the Securities Compliance Department uncovers companies and individuals with fraudulent activities and securities laws violations. . . .

Aside from administering and enforcing securities laws in order to maintain fair, honest, and efficient markets, the Securities Compliance Department has continuously committed itself to disseminating information to the investing public

While it is the overseer and regulator of financial markets, the Securities Compliance Department works closely with many other institutions.

(Emphasis added.)

9. The Securities Compliance Department’s “Contact Us” website reads in part as follows:

Through this Website, you’ll find various ways of contacting the office of the Securities Compliance Department. If you cannot find what you need, please contact us directly using the contact information below:

The Securities Compliance Department Central Office

2300 Main Street
Kansas City,
Missouri, 64108

Contact Numbers

Phone: +1 (816) 799-0477
Fax: +1 (816) 817-1955

(Emphases in original.)

10. An investigation by the Missouri Securities Division revealed that there is no “Securities Compliance Department” or “Conrad Shore” at 2300 Main Street in Kansas City, Missouri. Moreover, the owner of the site and its registered leasing agents informed the Division that their records showed no “Securities Compliance Department” or “Conrad Shore” had ever leased a space from them at that site.

11. A July 8, 2005 telephone call from the Division to the phone number provided by the above website reached an answering machine that played the following greeting: “Hello, you’ve reached the Securities Compliance Department. All of our investigators are currently attending to other calls. Please leave a message and someone will get back to you as soon as possible. Thank you and have a good day.”

Conrad’s Telephone Call and Faxes to AR

12. In his July 6, 2005 phone call to AR, Shore stated, among other things, the following:

- a. The Securities Compliance Department had been able to secure AR’s and other investors’ interest in Security Plus, Inc. and was responsible for dispersing the funds to the investors.
- b. AR would need to send money to the Securities Compliance Department to complete the transaction.

13. On July 7, 2005, AR received four documents via fax bearing the same date.
- All the documents were included under a fax cover sheet with a letterhead reading "Securities Compliance Department" and listing the address noted at the website above. Each document bore a similar letterhead. The cover sheet also included the text "From the Offices of: Mr. Conrad Shore."
 - All the documents were signed "Conrad Shore, Head Senior Investigator."
14. In sum, these faxes reiterated Shore's representations to AR on the phone and described the process by which AR could "purchase [the] outstanding warrants attached to shares of Security Plus, Inc." The first document AR received on July 7, 2005 read in pertinent part:

Dear [AR],

In reference to your file # 22490 a search was performed which revealed that the 10,150 units of Security Plus Inc. have 20,300 warrants attached to them. In order to release your completion sum of USD 342,401.00 *the warrants must be purchased at \$1.00 per unit.* The balance of USD 20,300 must be remitted to the appointed escrow agent. Once the remittance has been made the completion sum of USD 342,401.00 will be released to your designated account within 5 to 7 business days.

...

We wish to propose the following two viable solutions. Either the client immediately makes the required necessary Telex payment to the appointed escrow agent to put closure to this matter and thus the immediate release of all funds showing not preferential treatment, or all existing funds will be deemed unclaimed.

(Emphasis added.)

15. The second document AR received on July 7, 2005 read in pertinent part:

Dear [AR],

As per you [*sic*] request please find a breakdown of the procedures required to bring closure to your transaction.

- Remit necessary funds to the appointed escrow agent, in order to purchase outstanding warrants attached to shares of Security Plus Inc.*
- Provide a copy of bank confirmation and an updated version of personal banking coordinates to SCD upon funds being sent.
- 7-10 business day following the bank confirmation funds will be credited to your personal account.
- 3 business days following than an appointment will be made in order to have a bonded courier meet with you and someone considered to be a Notary Public or equivalent there of in order to have all document signed by both parties and returned to SCD. (stock transfer release form will be provided by courier) [*sic*]

All aforementioned steps will allow for quick and speedy conclusion the release of your completion sum and will bring final closure to this transaction.

(Emphasis added.)

16. The third document AR received on July 7, 2005 was apparently addressed to a third party and ostensibly summarized the proposed transaction. This document read in pertinent part:

To whom it may Concern,

Regarding case file #22490 pertaining to [AR] of the [*sic*] Australia there has been a unanimous consensus by all parties involved that the best course of action is to move for immediate release of [AR's] completion sum of USD 342,401.00. A discrepancy has been brought to the forefront regarding the amount of USD 20,300.00 which is to be remitted for a balance owing for Outstanding Warrants. It is contingent on the remittance of the Warrants monies that the completion sum be released to the designated shareholders [*sic*] account.

The amount of USD 20,300.00 will be made up by [AR] in order to bring immediate closure to this mater without any hesitation. Further to the aforementioned statement, [AR] is fully aware of all possible options regarding this case and had decided to remit the necessary funds to bring closure to this matter without prejudice.

In conclusion, we ask that you authorize the release of [AR] completion sum once the necessary remittance has been made to the nominated escrow agent to be appointed by your office.

(Emphasis added.) In addition to Shore's alleged signature, this third document also ended with the purported signature of "Robert James/Chancellor of the Securities/Enforcement Division."

17. The fourth document AR received on July 7, 2005 instructed as follows:

Please wire the amount of USD 20,300.00 to the following banking coordinates:

Bank: Barclay Bank PLC
Address: 222 Broadway, New York, NY 10038 — USA

18. At all times relevant to this petition the records maintained by the Missouri Commissioner of Securities contained no registration, granted exemption or notice filing indicating status as a "federal covered security" for any securities offered by Respondents in Missouri.
19. At all times relevant to this petition the records maintained by the Missouri Commissioner of Securities contained no registration for Respondents to offer or sell securities in the State of Missouri.
20. On July 11, 2005, Deputy Chief Counsel Morgan petitioned the Commissioner for a cease and desist order against the Respondents.
21. On July 11, 2005, the Commissioner issued a cease and desist order against the Respondents.
22. Neither the Respondents nor the Commissioner requested a hearing on that order, and the cease and desist order became final against the Respondents by operation of law on August 11, 2005, pursuant to § 409.6-604(b), RSMo Supp. 2004.
23. On September 15, 2005, Deputy Chief Counsel Morgan moved that the Commissioner order Respondents to pay the costs of investigation in connection with this matter. Deputy Chief Counsel Morgan's motion included an exhibit accounting for costs of investigation in the amount of \$3,298.75.
24. The requested order is in the public interest.

II. STATUTORY PROVISIONS

25. Section 409.6-601(a), RSMo Supp. 2004, reads in part as follows: "This [Missouri Securities Act of 2003] shall be administered by the commissioner of securities who shall be appointed by and under the direction of the secretary of state"
26. Section 409.1-102(26), RSMo Supp. 2004, 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."
27. Section 409.1-102(28), RSMo Supp. 2004, defines a "security" to include a "warrant . . . to subscribe to or purchase" stock.
28. Section 409.3-301, RSMo Supp. 2004, reads as follows:

It is unlawful for a person to offer or sell a security in this state unless:

 1. The security is a federal covered security;
 2. The security, transaction, or offer is exempted from registration under sections 409.2-201 to 409.2-203; or
 3. The security is registered under this act.
29. Section 409.5-501, RSMo Supp. 2004, reads as follows:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

 1. To employ a device, scheme, or artifice to defraud;
 2. To make an untrue statement of a material fact or to omit state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
 3. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.
30. Section 409.5-503(a), RSMo. Supp. 2004, reads as follows: "In a[n] . . . administrative proceeding under this act, a person

claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.”

31. Section 409.6-604(a), RSMo Supp. 2004, reads as follows:

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 . . .

32. Section 409.6-604(b), RSMo Supp. 2004, reads as follows:

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.

33. Section 409.6-604(c), RSMo Supp. 2004, reads in part as follows: “The final order may make final, vacate, or modify the order issued unless under subsection (a).”

34. Section 409.6-604(d), RSMo Supp. 2004, reads as follows: “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.”

35. Section 409.6-604(e), RSMo Supp. 2004, reads as follows: “In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act These funds may be paid into the investor education and protection fund.”

36. Section 409.6-610, RSMo Supp. 2004, reads in pertinent part as follows:

- a. Sections 409.3-301 [and] 409.5-501 . . . do not apply to a person that . . . offers to sell a security unless the offer to sell . . . is made in this state
- b. For the purpose of this section, an offer to sell . . . is made in this state, whether or not either party is then present in this state, if the offer: . . .
- c. Originates from within this state

III. CONCLUSIONS OF LAW

Count I: Offering Unregistered, Nonexempt Securities

37. Respondents violated § 409.3-301, RSMo Supp. 2004, when they offered a security from Missouri without the security being (1) a federal-covered security, (2) exempt from registration under §§ 409.2-201 or 409.2-202, or (3) registered under the Missouri Securities Act of 2003 when they offered unregistered, nonexempt warrants to AR.

- a. The “warrants” that Respondents represented that AR could purchase qualify as “securities” under § 409.1-102(28), RSMo Supp. 2004.
- b. Respondents made an “offer to sell” a security to AR when they telephoned him and faxed him documents requesting that he “purchase[] at \$1.00 per unit” the “warrants attached” to the 10,150 units of Security Plus Inc.

Count II: Making an Untrue Statement of Material Fact in Connection with the Offer or Sale of a Security

38. Respondents violated § 409.5-501(2), RSMo Supp. 2004, when, in connection with the offer of a security, they made an untrue statement of material fact when they offered to sell warrants to AR while falsely representing on their website and their faxed documents to AR that they were located at “2300 Main Street/Kansas City, Missouri, 64108.”

Count III: Engaging in a Course of Business that Operates as a Fraud or Deceit in Connection with the Offer or Sale of a Security

39. Respondents violated § 409.5-501(3), RSMo Supp. 2004, when, in connection with the offer of a security, they engaged in a course of business that would operate as a fraud or deceit upon AR when they offered to sell warrants to AR while doing the following:

- a. maintaining websites that falsely represent that the Securities Compliance Department is a securities regulating agency;

- b. maintaining a website that falsely represents that the Securities Compliance Department is located at 2300 Main Street, Kansas City, Missouri, 64108;
- c. using stationery falsely representing that the Securities Compliance Department is a regulatory agency; and
- d. using stationery falsely representing that the Securities Compliance Department is located at 2300 Main Street, Kansas City, Missouri, 64108.

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 are prohibited from:

- A. Offering or selling the above-described securities in or from 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 § 409.3-304, RSMo Supp. 2004.
- B. Engaging in any course of business in connection with the offer or sale of a security in or from Missouri that would operate as a fraud or deceit and that includes the representation, whether in electronic media or otherwise:
 - 1. that the Securities Compliance Department is a securities regulating agency; and
 - 2. that Respondents are located at 2300 Main Street, Kansas City, Missouri, 64108.

IT IS FURTHER ORDERED that, pursuant to § 409.6-604(d), Respondents 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. Respondents' payment of \$10,000.00 shall be by cashier's check or money order payable to Missouri Secretary of State. Respondents shall deliver their 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), Respondents must pay to the State of Missouri the costs of investigation in this matter in the amount of \$3,298.75 within thirty (30) days from the date of service of this Order. Respondents' payment of \$3,298.75 shall be by cashier's check or money order payable to The Investor Education and Protection Fund. Respondents shall deliver their 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 15TH DAY OF September, 2005.

ROBIN CARNAHAN
SECRETARY OF STATE

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

[1] Available at <http://www.scd-gov.us/indexrest.php> (last visited July 8, 2005).

[2] Available at <http://www.scd-gov.us/investorhelp.php> (last visited July 8, 2005).

[3] Available at <http://www.scd-gov.us/publicinformation.php> (last visited July 8, 2005).

[4] Available at <http://www.scd-gov.us/complaintcenter.php> (last visited July 8, 2005).

[5] Available at <http://www.scd-gov.us/aboutus.php> (last visited July 8, 2005).