

State of Missouri  
Office of Secretary of State

Case No. AP-06-13

IN THE MATTER OF:

PERRY DEVELOPMENT AND INVESTING; *and*  
DWAYNE PERRY

*Respondents.*

**CONSENT ORDER**

**WHEREAS**, the Missouri Securities Division has alleged that Respondents Perry Development and Investing and Dwayne Perry offered unregistered, nonexempt securities in the form of notes in Missouri in violation of section 409.3-301, RSMo; and

**WHEREAS**, Respondents and the Securities Division desire to settle this allegation; and

**WHEREAS**, Respondents and the Securities Division stipulate and agree that the Commissioner of Securities has jurisdiction over these matters pursuant to Chapter 409, RSMo; and

**WHEREAS**, Respondents and the Securities Division stipulate and agree that the Commissioner of Securities has authority to enter this Consent Order pursuant to section 409.6-604 (h), RSMo; and

**WHEREAS**, Respondents 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 and waiving their right to a hearing with respect to this matter and further stipulate and agree that they waive any right they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Consent Order; and

**WHEREAS**, Respondents forever release and agree to hold harmless the Missouri Office of Secretary of State, the Commissioner of Securities, the Securities Division, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter; and

**WHEREAS**, Respondents stipulate and agree that, should the facts contained herein prove to be false or incomplete, the Commissioner of Securities and the Securities Division preserve the right to pursue any and all legal or administrative remedies at their disposal; and

**WHEREAS**, Respondent and the Securities Division stipulate and agree to the following facts;

**NOW, THEREFORE**, the Commissioner of Securities, pursuant to section 409.6-604(h), RSMo, enters this Consent Order:

**I. FINDINGS OF FACT**

1. Respondent Perry Development and Investing ("Perry Development") is a Missouri entity operating in the State of Missouri with a business address of 1106 A. Lafayette Avenue, St. Louis, Missouri 63104. Perry Development attempts to raise funds for the purpose of investing in real estate and real estate related developments.
2. At all relevant times, Dwayne Perry ("Perry") was the president of Perry Development. Perry maintains a business address of 1106 A. Lafayette Avenue, St. Louis, Missouri 63104.
3. On or about Sunday, September 4, 2005, Perry ran an advertisement in the St. Louis Post Dispatch. The advertisement stated:

**Invest in the redevelopment of St. Louis!**

We are seeking partners

to invest in luxury condo

developments in downtown & Soulard area.

**Call Perry Development & Investing. 314-713-7151**

(Emphasis in original.)

4. On or about September 22, 2005, a Missouri resident ("MR") telephoned Perry Development in response to an advertisement in the St. Louis Post Dispatch regarding an investment opportunity in Perry Development. During the conversation, Perry told MR about Perry Development and informed MR that Perry Development was offering three (3) types of investment programs involving real estate investments. MR informed Perry to send MR an email explaining each program

5. On or about September 22, 2005, MR received by email a document outlining the three programs as discussed with Perry in a prior phone conversation. Among other things, the document stated in part:

**Program 1  
CASH INVESTMENTS**

Cash investments offer a 15% annual return, which can be paid quarterly. All cash investments are secured by real estate liens on current condominium developments.

**Program 2  
INVESTMENT CONDOMINIUMS**

Condominiums are sold to an investor at a wholesale price while Perry Development continues to market the property at retail price points. There is no cash investment required, however the investor must have good credit. There will be a return of \$15,000 upon construction completion if property is per-sold and \$25,000 if property is sold as an inventory condominium. Perry Development will be responsible for mortgage payments for the first six months after the close date of the condominium. Perry Development will act as property manager if leasing is necessary.

| <b>Property</b> | <b>Investment<br/>Price</b> | <b>Marketing<br/>Pre-sold</b> | <b>Price<br/>Finished</b> | <b>Turnaround<br/>Time (days)</b> |
|-----------------|-----------------------------|-------------------------------|---------------------------|-----------------------------------|
| 1900B Sydney    | 155,000                     | N/A                           | 169,000                   | 30 or less                        |

...

**Program 3  
DEVELOPMENT INVESTING**

Perry Development occasionally has condominium developments which we start and allow investors to continue after we provide them with a comprehensive plan of action. We will provide the investor with all the tools that is needed to start their own condominium development. We will contract the property to the investor and provide them with architect plans, condominium conversion and survey work, and the filing and recording of the development with the city. A \$25,000 (our fee) investment can bring you a return of \$250,000 or more.

6. On September 26, 2005 MR telephoned Perry to obtain additional information regarding the three investment programs. Perry discussed and provided MR with a synopsis of each program. Furthermore, Perry stated he would fax MR examples of forms and contracts relevant to the three programs.
7. On September 27, 2005 MR received by fax three (3) documents contained under a cover sheet that was headed "Perry Development." The cover sheet listed Perry Development's contact information including the address and phone number. The three documents were titled, "NOTE," "SPECIAL SALE CONTRACT," and "AMENDMENT TO SALE CONTRACT."
8. The document titled "Note" read in part as follows.

**NOTE**

For Value Received, the undersigned jointly and severally as principals promise to pay to the order of JOHN DOE

One Hundred Three Thousand Seven Hundred and Fifty Dollars \$ 103,750 the balance of principle to be paid on the 1st day of January, [sic] 2006

...

John E. Doe

Perry Development/Dwayne Perry

**II. JURISDICTIONAL BASIS**

9. Section 409.6-601, RSMo, provides that the Missouri Securities Act of 2003 shall be administered by the commissioner of securities.
10. Section 409.1-102(28), RSMo, defines a "security" to include "a note."
11. Section 409.3-301, RSMo, provides that it is unlawful for any person to offer or sell any 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.

12. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. Section 409.6-604(a), RSMo Supp. 2005.
13. In an order under section 409.6-604(c), RSMo, 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. Section 409.6-604(d), RSMo Supp. 2005.
14. In a final order under section 409.6-604(c), RSMo, the commissioner may charge the actual cost of an investigation for a violation of this act. Section 409.6-604(e), RSMo Supp. 2005. Such funds may be paid into the investor education and protection fund. *Id.*
15. Section 409.6-604(h), RSMo, provides that the commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

### **III. CONCLUSIONS OF LAW**

16. Respondents violated section 409.3-301, RSMo, when they offered to MR a note in Missouri when that note was not (1) a federal-covered security, (2) exempt from registration under sections 409.2-201 or 409.2-202, or (3) registered under the Missouri Securities Act of 2003 when they offered notes to MR.

### **ORDER**

**WHEREAS**, the Commissioner, after consideration of the above and with the consent of Respondents and the Securities Division, finds the following Consent Order to be in the public interest and necessary for the protection of public investors, and consistent with the provisions of Chapter 409, RSMo;

NOW, THEREFORE, it is hereby AGREED AND ORDERED that:

- A. Respondents, their agents, employees and servants are prohibited from violating section 409.3-301, RSMo, by offering or selling securities in Missouri when that security is not registered or exempt from registration.
- B. Upon execution of this Consent Order, Respondents must jointly and severally pay one thousand dollars (\$1,000) payable to the Missouri Investor Education and Protection Fund. Respondents' payment must be by cashier's check, money order, or any other immediately available funds and made payable to the Missouri Secretary of State. Respondents must deliver or send this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102;
- C. Upon execution of this Consent Order, Respondents must jointly and severally pay one thousand forty-five dollars (\$1,045) to the Missouri Investor Education and Protection Fund for the costs of this investigation. Respondents' payment must be by cashier's check, money order, or any other immediately available funds and made payable to the Missouri Secretary of State. Respondents must deliver or send this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102;
- D. Respondents will 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 22ND DAY OF MAY, 2006.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:

Missouri Securities Division  
Patrick T. Morgan  
Chief Counsel (51956)

Perry Developing and Investing  
by:  
Dwayne Perry, President