

State of Missouri  
Office of Secretary of State

Case No. AP-06-18

IN THE MATTER OF:

BIRD & ASSOCIATES, LLC;  
ISLAND FALLS FINANCIAL, INC.;  
IDEAL FINANCIAL SERVICES, INC.;  
THE SPEAR OF DESTINY, LLC;  
CALVIN BIRD;  
KEVIN RICHARD HACKENBERG; *and*  
FRANCIS L. GIBSON,

*Respondents.*

Serve: Bird & Associates, LLC at  
400 Broadway Street, Suite 101  
Cape Girardeau, Missouri 63701

Serve: Calvin Bird at  
2222 Earleen Street  
Cape Girardeau, Missouri 63701

Serve: Island Falls Financial, Inc. and  
Kevin R. Hackenberg at  
12 E. Greenway Plaza, Suite 1100  
Houston, Texas 77046

Serve: The Spear of Destiny, LLC  
201 N. Occidental Blvd.  
Los Angeles, California 99026

and

Serve: Ideal Financial Services, Inc. and  
Francis L. Gibson, Jr. at  
131 N. Main Street, Apt. 250  
Hailey, Indiana 83333

**ORDER TO CEASE AND DESIST AND OTHER ADMINISTRATIVE PENALTIES**

On the 12th day of September 2006, the Enforcement Section of the Securities Division, (the "Division") by and through Lori Neidel, Chief Enforcement Counsel, submitted a Petition for Cease and Desist Order and other Administrative Penalties. After reviewing the petition, the Commissioner of Securities issues the following findings of fact, conclusions of law and order:

**I. FINDINGS OF FACT**

***A. The Respondents***

1. Bird & Associates, LLC ("B&A") is a company organized in the State of Missouri with a last known business address of 400 Broadway Street, Suite 101, Cape Girardeau, Missouri 63701. B&A purports to be in the business of construction management and consulting services.
2. Island Falls Financial, Inc. ("Island Falls") is purportedly a Wyoming corporation operating in the State of Texas with a last known business address of 12 E. Greenway Plaza, Suite 1100, Houston, Texas 77046. Island Falls purportedly engages in the business of loan development and project financing.
3. Ideal Financial Services, Inc. ("Ideal Financial") is purportedly an Idaho company with a last known business address of 131 North Main Street, Hailey, Idaho 83333. Ideal Financial purportedly sought funds from Island Falls for a funding commitment in connection to a real estate development project located in the State of New Jersey.
4. The Spear of Destiny, LLC ("Spear of Destiny") is purportedly a company located in the State of California with a last known business address of 201 N. Occidental Blvd., Los Angeles, California 99026, and a last known mailing address of 12 E. Greenway Plaza, Suite 1100, Houston, Texas 77046. Spear of Destiny purportedly is in the business of film making.

5. Calvin Bird (“Bird”) is the registered agent and CEO of B&A. Bird is also part owner of Island Falls. Bird maintains a residential address of 2222 Earleen Street, Cape Girardeau, Missouri 63701.
6. Kevin R. Hackenberg (“Hackenberg”) is the CEO of Island Falls and maintains a last known business address of 12 E. Greenway Plaza, Suite 1100, Houston, Texas 77046. Hackenberg purportedly also operates Spear of Destiny but it is unclear in what capacity.
7. Francis L. Gibson (“Gibson”) is the CEO of Ideal Financial and maintains a last known business address of 131 N. Main Street, Hailey, Idaho 83333.
8. As used in this Order, the term “Respondents” refers to B&A, Island Falls, Ideal Financial, Spear of Destiny, Bird, Hackenberg and Gibson.

### ***B. Missouri Resident***

9. Missouri Resident (“MR”) received money in a settlement from a personal injury suit concerning an accident where MR was burned over 80% of his body.
10. MR met Bird in early 2005 through a mutual acquaintance.<sup>[1]</sup> Shortly after being acquainted, Bird telephoned MR concerning an investment opportunity. Bird subsequently arranged to meet MR at the offices of B&A.
11. Sometime in mid 2005, MR met with Bird at the offices of B&A located at 400 Broadway Street, Suite 101, in Cape Girardeau, Missouri. Bird, among other things, informed MR that:
  - a. Bird could “double” MR’s money in 30-45 days;
  - b. The investment involved a real estate-related opportunity;<sup>[2]</sup> and
  - c. Bird had connections with an individual in Houston (i.e., Hackenberg) in real estate who would participate in a conference call with MR.
12. During this conference call, among other things, Bird and Hackenberg<sup>[3]</sup> represented to MR that, if MR invested with them, MR’s investment would be doubled and returned to MR in 30-45 days. Bird told MR that MR’s money would be used for an investment related to real estate, specifically for a project located in New Jersey.
13. On or about July 13, 2005, MR went to the offices of B&A located at 400 Broadway Street, Suite 101 in Cape Girardeau, Missouri and personally hand delivered to Bird three signed personal checks with the payee line left blank. Bird told MR that:
  - a. He would fill in one of the checks for the amount of \$10,000. Bird told MR that this was a fee for “connecting” MR to the investment opportunity with Hackenberg.
  - b. He would make the second check out for purposes of investing. Bird dated the check for July 13, 2005, and made it out to Island Falls Financial in the amount of \$60,000, with the words “Land Investment” written in the memo line of the check.
  - c. He would make the third check out for purposes of investing.
14. The Division’s investigation revealed that Bird dated the third check for July 25, 2005, and made it out to Island Falls in the amount of \$200,000, with the word “Investment” written in the memo line of the check.
15. On or about July 13, 2005, Bird provided MR with a document titled “Receipt” that outlined MR’s investments. The document was on B&A’s stationery and read:

#### **Receipt**

This document is to serve as the Official Receipt for [MR] for funds received for Services and also for Checks being held for Disbursement [sic].

<b>Check #</b>	<b>To Whom</b>	<b>Amount \$</b>
130	<i>Island Falls Financial</i>	<i>\$60,000.00</i>
131	<i>Bird &amp; Associates</i>	<i>\$10,000.00</i>

The Following Check Was is [sic] in the Custody of Bird & Associates for investment purposes but has not been Issued (capitalization contained in the original) currently. Upon issuing of this check an official receipt documenting to whom it was written and the amount will be forwarded to [MR].

<b>Check #</b>	<b>To Whom</b>	<b>Amount \$</b>
132	<i>TBD</i>	<i>TBD</i>

Signed,

By: Calvin Bird /s/

Printed Name: Calvin Bird

Title: CEO, Bird & Associates LLC

16. Between July 13, 2005, and July 25, 2005, Bird provided to MR a document titled "Fee Agreement," dated July 13, 2005, that indicated that MR had made an investment with B&A. Both MR and Bird signed the Agreement. The agreement states in part:

**This agreement between [MR] or assignees hereinafter referred to as 'Client' and BIRD & ASSOCIATES, hereinafter referred to as 'B&A' agree to the following terms and conditions of this commitment:** (emphasis in the original)

1. *"B&A agrees to arrange for Client, Business Investments in the amount of \$350,000.00 Three Hundred Fifty Thousand Dollars in Phases. B&A will arrange investments best suited for client, based on information provided in consultation."*
2. *The fee agreed for service to be arranged for Client is **\$10,000 (Ten Thousand Dollars)**.*
3. *Client agrees to authorize B&A, its lenders or assignees, to act on its behalf to obtain investments opportunities [sic] with Special and Limited Power of Attorney to represent Client in the application and verification process, either electronically, verbally, written or otherwise as it pertains to the Funding Program...*

17. Also on July 13, 2005, Bird gave MR a letter on Island Falls' stationery that read:

Dear Calvin Bird,

Please find enclosed with this letter a commitment from our lending source indicating the payout from the closing proceeds to your investor, [MR]. Per our conversation, [MR's] original principal will help facilitate the remaining upfront closing costs associated with the refinance of the building located at 24 Meadowlands Parkway, Secaucus, New Jersey.

As you well know, Island Falls has the physical and liquid assets to insure your investor's original principal should this closing not occur. Please call if you have any further questions. Thank you.

Sincerely,

By: Richard Hackenberg /s/

Printed Name: Richard Hackenberg

18. Along with the above-referenced letter from Hackenberg, Bird also provided MR with a four-page document titled "RE: Funding Commitment \$14,500,000 Debt Financing," dated July 12, 2005. The document was on Ideal Financial's letter head and signed by Francis L. Gibson as CEO.<sup>6</sup> The correspondence was addressed to Hackenberg and stated, among other things:

Dear Kevin:

Further to our discussions and based on the information that you provided us, please find a Term Sheet outlining terms and condition of then debt investment by Ideal Financial Services Inc or any of its affiliates and any of its partners (the "Lender").

19. Among other things, in this document Gibson stated to Hackenberg the following information:

- a. That Ideal Financial was seeking a loan totaling \$14,500,000 for 36 months by September 15, 2005.
- b. That the Borrower is "A single asset company with 100% ownership of the Property, to be owned (and controlled) by Artists Guild of America and Top Notch Entertainment Inc."<sup>[4]</sup>
- c. Interest Rate of the loan shall be fixed at 18% per annum. . .
- d. That the loan would be used toward a "project" identified on the document as, "Studio and Office Complex 24 Meadowlands Parkway, Secaucus New Jersey."
- e. Loan brokerage fees of
  1. Total commission 4% (\$580,000)
  2. MR (\$120,000)

3. Island Falls Financial (\$460,000.00)

20. Bird also provided to MR a document titled "Program/Opportunity Overview and Procedures." This document stated, among other things:
- This is a **Performing Program**, (emphasis in original) operating out of the United States based on a twelve month contract that pays as discussed;
  - The minimum preferred entry level into this program is **\$10M USD** (emphasis in original). (This direct opportunity will be closing soon at this level) Rate of return in the form of monthly payout from Trustee of trust is as follows: ***Investment/Escrow Sum-\$10M and Up USD- total Net Profit to Client: \$ as discussed USD paid by escalating monthly payouts for the twelve month term, plus return of principle in one year.*** (emphasis in the original)
21. On August 9, 2005, Bird asked MR to sign a document titled, "Asset Management Agreement and Private Placement Irrevocable Pay Order." [5] This document was signed by both MR and Respondent Hackenberg and dated August 9, 2005. The document stated in part:

PARTY "A": [MR] (hereinafter "INVESTOR")  
DL #: [Missouri License Number of MR]  
[Address of MR]  
[City and State of residency of MR]

PARTY "B": ISLAND FALLS FINANCIAL, INC (hereinafter "IFF")  
KEVIN HACKENBERG, DIRECTOR  
Passport #: 131738797 USA  
12 E. Greenway Plaza, Suite 1100  
Houston, TX 77046

Program Type: Private Placement Program

Amount: Two Hundred Sixty Thousand US Dollars

Terms:

- 1) Bank Instrument: Cash
- 2) Amount: \$260,000 USD
- 3) Purpose: Project Funding and Investments
- 4) Return: \$1,000,000
- 5) Trade Platform: Leveraging Programs
- 6) Trade Cycle: Fifteen Months

"The purpose of this Private Placement & Irrevocable Pay Order Agreement (hereinafter referred to as the "AGREEMENT"), between INVESTOR and IFF is to establish certain contractual and financial arrangements between the two Parties, to engage in a Secured Asset Management Program (also known as a "LEVERAGING Program," and hereinafter referred to as the "PROGRAM"), and to generate enhanced revenues from this PROGRAM."

Further, on Page 11 of the agreement it states the following:

We, Island Falls Financial (hereinafter "IFF") hereby guarantee with full corporate and personal (individual) responsibility and authority, under penalty of perjury, to pay the following proceed participation interest(s) from the gross PROCEEDS:

1. "The INVESTOR will receive \$1,000,000 on or before December 31st, 2006. Additionally, the original principal amount (\$260,000) will be returned to the investor within 45 business days of the signing of this agreement."
22. MR waited past the forty-five days and became concerned that MR had not received a return of MR's investment. On numerous occasions, MR telephoned Bird concerning MR's return of the original investment. MR received no satisfactory responses from Bird during these conversations. During one conversation, Bird informed MR that he had MR's investments in "several different things" and that he was making efforts to pay MR back.
23. On several occasions MR also telephoned Hackenberg concerning the return of MR's investment. On one occasion, when

questioned about MR's investment, Hackenberg suggested that MR speak directly with Bird to get answers to MR's questions. Further, Hackenberg stated that "the situation is in Bird's hands."

24. Recently, MR attempted to contact Hackenberg. Hackenberg would no longer answer or return MR's telephone calls and Hackenberg's telephone is now disconnected.
25. To date, MR has not had MR's money returned.
26. Additionally, in connection with MR's investment with Respondents, MR received two separate telephone calls from two separate individuals that identified themselves as former employees of Hackenberg.<sup>[6]</sup> Among other things, both individuals informed MR that Hackenberg "was defrauding people out of people's money" and that MR was a victim of fraud.

### *C. Calvin Bird's Response to the Securities Division*

27. On May 15, 2006, the Division sent a letter of inquiry to B&A, to the attention of Calvin Bird. The letter asked Respondents B&A and Bird to provide the exemption upon which they had relied in offering unregistered securities. The letter also requested additional information about the alleged offers and advised that failure to respond within a reasonable time as set by the Commissioner could result in proceedings to prohibit those Respondents from offering or selling securities in this State.
28. On May 30, 2006, Bird responded to the Division's May 15, 2006, letter. Among other things, Bird stated:

"Bird & Associates is a Missouri registered Limited Liability Company. Whose business objective is in Construction Management and Consulting Services in the building of Church and Religious buildings [sic]. Furthermore, because of other ancillary business contact from the construction arena from time to time we were asked to help find funding or funding sources for loans [sic]. In the quest for acquiring financing and or funding mechanisms we began to look at alternative sources of funding, such as compensatory balances and collateral backed loans from other sources. In the connection of principles for each side of the transactions our company would receive commissions. This type of transaction became the primary source of income for our Company...

...in some cases clients who wish to participate in the actual transaction request to place discretionary funds at there [sic] disposal into a transaction with the hopes of gaining a greater return on their funds... In these types of transaction Bird & Associates would serve as the facilitator and would offer Memorandums of Understanding to the clients for the potential returns for the particular transaction they are involved in.

...Island Falls Financial is a Wyoming Based Corporation Owned by Calvin Bird and Mr. Kevin Hackenberg. This company was born out of the need of Bird & Associates to devote more attention to larger Transactions that the scope of complexity and size in value grew beyond the capability and capacity of Bird & Associates. Mr. Hackenberg's background was in loan facilitation and lines of credit as well as credit repair. Over time Island Falls began to take the lead on all consulting contracts regarding any participation of clients as well as the lead facilitator on all the transaction regarding Loan Development and Project Financing etc..."

29. On May 31, 2006, the Division sent subsequent correspondence to Bird and B&A requesting additional information.
30. On June 30, 2006, an attorney representing Bird responded to the Division's May 31, 2006, letter stating:
  - a. That Bird was in the process of gathering information on past clients and that in Birds' estimation, there are approximately six or seven clients, but that there are no agreements in existence reflecting any "investment transactions by investors."<sup>[7]</sup>
  - b. That Bird and Hackenberg are joint partners with split profit sharing and that the "basis of determining the amount of compensation is on a client by client basis as each transaction is unique. There is no set uniform "formula" used for each transaction."
  - c. That MR approached Bird and requested that \$260,000 be "expended on a real estate project in Maine, as well as a movie being made in California."<sup>[8]</sup>
  - d. That MR's check for "\$60,000 represented numerous fees associated with the real estate deal including, but not limited to, appraisal fees, expected closing costs, down payment, etc."
  - f. That the bulk of the \$60,000 has been paid back and any remaining funds should be allocated to MR within a month.<sup>[9]</sup>
  - g. That "[MR] approached Bird at a local civic center for children where Bird was volunteering" and that MR stated to Bird that "[MR] had won the lottery and felt as if [MR] didn't have anything to show for it and asked for Birds' advice."<sup>[10]</sup>
  - h. That "Ideal [Financial] is the group that was responsible for the construction loan in Maine. Francis Gipson was Mr. Bird's contact with this company. He is in the process of obtaining Mr. Gipson's information. Artists Guild is, to the

best of Mr. Bird's knowledge, a union of people associated with the movie industry. We do not have contact information as Mr. Hackenberg, not Mr. Bird, was associated with any transaction with the same."

31. On July 28, 2006, the Division again sent correspondence to the offices of the attorney representing Respondent Bird, requesting additional information.
32. To date, the Division has not received a complete response to the Division's May 31, 2006 letter, or a complete response to the July 28, 2006 letter.

#### ***D. Kevin Hackenberg's Response to the Securities Division***

33. On May 15, 2006, the Division sent a letter of inquiry to Island Falls, attention Richard Hackenberg. The letter asked Respondent Island Falls and Respondent Hackenberg to provide the exemption upon which those Respondents had relied on in offering unregistered securities. The letter also requested additional information about the alleged offers.
34. On June 2, 2006, the Division sent a second letter requesting the same information that was requested in the Division's letter of May 15, 2006.
35. On June 19, 2006, Hackenberg responded to the Division's May 15 and June 2 letters. Among other things, Hackenberg stated:

"In response to your letter dated June 2nd, 2006, Island Falls has never sold or will ever sell or market securities in Missouri or any state in the U.S. Island Falls is not licensed to do so in Texas or any other state for that matter . . . Island Falls caters privately to a few investors that use our contacts in the financial world to obtain a return on their investments. None of these investments involve Island Falls selling securities at any time."

36. On June 20, 2006, the Division sent correspondence via certified mail to Respondent Hackenberg requesting additional information.
37. On June 28, 2006, the Division again sent a letter asking for the same information that was requested in the June 20, 2006 correspondence. This letter was sent via U.S. postal service.
38. On June 27, 2006 the United States Postal Service returned the June 20 letter to the Securities Division. The letter was marked "Refused."
39. [intentionally omitted]

#### ***E. The Bank Records***

##### ***Wells Fargo Bank – Island Falls Account, Number 693-6031886***

40. According to bank records obtained from Wells Fargo Bank, the records indicate that Respondents Bird and Hackenberg, on behalf of Island Falls, opened a business checking account, account number 693-6031886, on May 23, 2005, with an opening deposit of \$100.00 ("The Island Falls Account").
41. Records obtained by the Division indicate the following deposits into the Island Falls Account:
  - a. A \$23,000 deposit dated July 1, 2005.[\[11\]](#)
  - b. A \$60,000 deposit dated July 15, 2005, as a result of funds that were obtained from MR.
  - c. A \$200,000 deposit dated July 26, 2005, as a result of funds that were obtained from MR.
42. The bank records contained the following amounts taken by Respondents Bird and Hackenberg from the Island Falls Account from July 8, 2005 through September 21, 2005:
  - a. One (1) check made payable to "Finnegan Chrysler Jeep" in the amount of \$12,500, dated July 5, 2005. The memo line of this check indicated "Down Payment on Chrysler 300."
  - b. One (1) cashier's check made payable to "Richard Hackenberg" in the amount of \$45,000, dated July 19, 2005.
  - c. One (1) counter withdrawal at a Wells Fargo Bank branch location in the amount of \$7,000, dated July 19, 2005.
  - d. One (1) check made payable to "Occidental Studios" in the amount of \$15,000, dated July 22, 2005. The memo line of this check indicated "Spear of Destiny Production Office 3 mo..."
  - e. One (1) check made payable to "Finnegan Chrysler Jeep" in the amount of \$11,000, dated July 29, 2005. The memo line of this check indicated "Down Payment on Chrysler 300."

- f. One (1) check made payable to "American Express" in the amount of \$50,000, dated July 29, 2005.
- g. One (1) counter withdrawal at a Wells Fargo Bank branch location in the amount of \$5,000, dated August 2, 2005.
- h. One (1) counter withdrawal at a Wells Fargo Bank branch location in the amount of \$20,000, dated August 3, 2005.
- i. One (1) counter withdrawal at a Wells Fargo Bank branch location in the amount of \$4,000, dated August 25, 2005.
- j. One (1) check made payable to "Calvin Bird" in the amount of \$2,000, dated September 16, 2005.
- k. Seven (7) checks made payable to "Richard Hackenberg" that totaled \$25,400.
- l. Thirteen (13) online outgoing wire transfers to Wells Fargo Bank account number 693-6031860 that totaled \$108,814.92.

43. The Island Falls Account statement dated September 21, 2005, possessed an ending balance of \$577.89.

***Wells Fargo Bank – Spear of Destiny’s Operating Account, #693-6031860***

- 44. According to bank records obtained from Wells Fargo Bank, the records indicate that Respondents Bird and Hackenberg, on behalf of The Spear of Destiny, LLC, opened a business checking account, account number 693-6031860, on June 23, 2005, with an opening deposit of \$108.59. Bank statements labeled this account as an "Operating Account," and such account is hereinafter identified by the same name.
- 45. Records obtained by the Division indicate the following wire transfers from the Island Falls Account into the Operating Account, from July 25, 2005, through September 15, 2005:

<u>Date</u>	<u>Amount</u>
July 25, 2005	\$ 500.00
July 25, 2005	\$ 200.00
August 1, 2005	\$ 50,000.00
August 5, 2005	\$ 7,300.00
August 5, 2005	\$ 3,720.00
August 15, 2005	\$ 30,000.00
August 19, 2005	\$ 10,000.00
August 24, 2005	\$ 170.00
August 29, 2005	\$ 300.00
August 30, 2005	\$ 100.00
September 15, 2005	\$ 174.92

- 46. Bank records contained the following amounts taken by Respondents Bird and Hackenberg from the Operating Account from August 8, 2005 through September 2, 2005:
  - a. Seventeen (17) checks that totaled \$44,619.60. These checks were made payable to nine (9) different individuals or entities that are allegedly associated with the film production. Bank records revealed that these individuals received funds for such services<sup>[12]</sup> as, "Fight Coordinator," "Spear Illustration," "Trainer," "Assistant...Mr. Hackenberg," "Construction Coordinator," "Production Designer," "Art PA," "Payroll," "Script Clearance, copyright & title search," "Producer" and "Set Designer."
  - b. One (1) counter withdrawal at a Wells Fargo Bank branch location in the amount of \$4,500, dated August 18, 2005.
  - c. One (1) outgoing wire transfer in the amount of \$10,000 on August 19, 2005, to the beneficiary of Raleigh Film and Television Studios located in Hollywood, California.

***Wells Fargo Bank – Spear of Destiny’s Escrow Account, # 257-7420686***

- 47. According to bank records obtained from Wells Fargo Bank, Respondents Bird and Hackenberg, on behalf of The Spear of Destiny, LLC, opened another business checking account, account number 257-7420686 (the "Escrow Account"), on June 20, 2005, with an opening deposit of \$200.00.
- 48. Records obtained by the Division indicate that four (4) wire transfers came into the Escrow Account from the Island Falls Account from August 29, 2005 through September 15, 2005 that totaled \$5,804.59.
- 49. Bank records contained the following amounts taken by Respondents Bird and Hackenberg from the Escrow Account:
  - a. One (1) counter withdrawal at a Wells Fargo Bank branch location in the amount of \$2,000 dated September 1, 2005.

- b. One (1) Check Card purchase payable to "Custom Car Stereo" located in Houston, Texas in the amount of \$1,500.00, dated September 1, 2005.

### ***F. Additional Statement of Facts***

50. A check of the records maintained by the Missouri Commissioner of Securities revealed no registration, granted exemption or notice filing indicating status as a "federal covered security" for any of the alleged securities offered by Respondents in Missouri.
51. Respondents were not registered to offer or sell securities in the State of Missouri.
52. Respondents offered and sold unregistered, nonexempt securities to Missouri residents.
53. The securities offered and sold by the Respondents were not federal covered securities.
54. In connection with the offer, sale or purchase of a security to a Missouri resident, 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, including, but not limited to:
- a. that the Respondents were not registered to offer and sell securities in the State of Missouri.
  - b. Bird was the subject of a civil suit for conversion of funds which a Missouri resident had given to him for the purpose of securing financing for building a house that was never provided.[\[13\]](#)
  - c. MR's funds would not go towards investing in a real estate project but instead would be used to pay expenses for Spear of Destiny, a movie project.
  - d. MR's funds would not go toward investing in a real estate project but instead would be used to pay for Respondent's personal expenses such as a car and car stereo.
55. In connection with the offer or sale of a security, Respondents made untrue statements of material fact, including, but not limited to:
- a. MR would receive the return of MR's investment in 45 days.
  - b. MR would receive double the amount of MR's investment in 45 days.
  - c. MR's money would be used towards securing financing for a building in Secaucus, New Jersey.
56. This Order is in the public interest.

## **II. STATUTORY PROVISIONS**

57. Section 409.1-102(26), RSMo. (Cum. Supp. 2005), 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."
58. Section 409.1-102(28), RSMo. (Cum. Supp. 2005), includes, in part, "stock", "certificate of interest or participation in a profit-sharing agreement", and "investment contract" within the definition of a security.
59. Section 409.3-301, RSMo. (Cum. Supp. 2005), 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.
60. Section 409.4-403(a), RSMo. (Cum. Supp. 2005), provides that it is unlawful for a person to transact business in this state as an investment adviser unless that person is registered as an investment adviser or is exempt from registration.
61. Section 409.5-502(a), RSMo. (Cum. Supp. 2005), reads as follows:
- (a) It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:



- (1) To employ a device, scheme, or artifice to defraud;
- (2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

62. Section 409.5-501, RSMo. (Cum. Supp. 2005), 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.

63. Section 409.6-604(a), RSMo. (Cum. Supp. 2005), 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 . . . .

64. Section 409.6-604(d), RSMo. (Cum. Supp. 2005), 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.”

65. Section 409.6-604(e), RSMo. (Cum. Supp. 2005), 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.”

66. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. Section 409.6-604(a), RSMo. (Cum. Supp. 2005).

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

#### **Violation of Offering or Selling Nonexempt, Unregistered Securities**

67. Paragraphs 1 through 66 are incorporated by reference as though fully set forth herein.

68. The investment by MR with the Respondents described above constitutes an investment contract and falls under the definition of “securities” contained in Section 409.1-102(28), RSMo. (Cum. Supp. 2005).

69. Respondents’ offer and sale of the securities described in paragraphs 11-21 above is an “attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value,” which satisfies the definition of “offer to sell” under Section 409.1-102(26), RSMo. (Cum. Supp. 2005).

70. At all times relevant, 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 security offered or sold by Respondents to MR.

71. Respondents violated Section 409.3-301, RSMo. (Cum. Supp. 2005), when they offered or sold securities in Missouri without the securities being (1) a federal-covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-202 RSMo. (Cum. Supp. 2005), or (3) registered under the Missouri Uniform Securities Act of 2003, as described in paragraphs 11-21 above.

#### **Multiple Violations of Omitting to State Material Facts in Connection with the Sale of a Security**

72. Paragraphs 1 through 66 are incorporated by reference as though fully set forth herein.

73. In connection with the offer and sale of securities, 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, including, but not limited to:

- a. That the securities described in paragraphs 11-21 above were unregistered securities;
- b. That Bird was the subject of a civil suit for the conversion of funds which a Missouri resident had given to him for the

purpose of securing financing for building a house that was never provided;

- c. That MR's funds would not go toward an investment in real estate, but instead would be transferred to the accounts of Respondents Bird and Hackenberg's Spear of Destiny, to pay for a movie's production costs; and
- d. MR's funds, would be used towards purchasing a car, a car stereo and Respondents other personal expenses.

74. Respondents violated Section 409.5-501(2), RSMo. (Cum. Supp. 2005), when they omitted to state the material facts described immediately above and when stating such facts was necessary to make the statements made not misleading.

**Multiple Violations of Making an Untrue Statement of a Material Fact  
in Connection with the Sale of a Security**

75. Paragraphs 1 through 66 are incorporated by reference as though fully set forth herein.

76. In connection with the offer and sale of securities, Respondents made untrue statements of material fact, including, but not limited to, the following:

- a. That MR would receive the return of his investment in 45 days, when in fact he did not.
- b. That MR would receive double the amount of MR's investment in 45 days, when in fact he did not.
- c. That the funds would be used towards securing financing for a building in Secaucus, New Jersey, when in fact they were not.

77. Respondents violated Section 409.5-501(2), RSMo. (Cum. Supp. 2005), when they made untrue statements of material fact as described immediately above.

**Multiple Violations by Respondents Bird and Hackenberg of Transacting Business in Missouri  
as Unregistered Investment Adviser Representatives**

78. Paragraphs 1 through 66 are incorporated by reference as though fully set forth therein.

79. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration for Bird or Hackenberg as investment advisers.

80. Respondents Bird and Hackenberg violated Section 409.4-403, RSMo. (Cum. Supp. 2005), when they unlawfully transacted business in this State as investment advisers and were not properly registered to do so, as described in paragraphs 11-21, 28 and 35.

**Engaging or Employing a Practice or Course of Business  
That Operates as a Fraud or Deceit Upon a Person**

81. Paragraphs 1 through 66 are incorporated by reference as though fully set forth therein.

82. In advising others, for compensation, as to the value of securities or the advisability of investing therein, Respondents Bird and Hackenberg engaged in an act, practice or course of business that operated as a fraud or deceit upon MR when Respondents Bird and Hackenberg advised and arranged for MR's investment of over \$250,000 for the purported purpose of investing in a New Jersey real estate venture, but when such investment funds were instead used for pay for a car, a car stereo, other personal expenses of Bird, Hackenberg and other Respondents, and for production costs of the movie The Spear of Destiny.

83. Respondents Bird and Hackenberg repeatedly violated Section 409.5-502(a), RSMo. (Cum. Supp. 2005), when they engaged in act, practice or course of business that operated as a fraud or deceit upon MR as described in paragraph 82 immediately above, and in paragraphs 11-21, 41-42, and 44-49.

**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 securities, including investment contracts or any other securities as defined by Section 400.9-102(28), RSMo. (Cum. Supp. 2005), in 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 Section 409.3-304, RSMo. (Cum. Supp. 2005);
- B. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2005), by, in connection with the offer or sale of securities as defined by Section 400.9-102(28), RSMo. (Cum. Supp. 2005), making an untrue statement of a material fact or omitting to 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;

C. violating Section 409.4-403, RSMo. (Cum. Supp. 2005), by transacting business in this State as an investment adviser or investment adviser representative when not properly registered to do so; and

D. engaging in the acts, practices or courses of business described in paragraphs 11-21, 41-42, and 44-49, above.

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2005), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to one thousand dollars for a single violation, or up to ten thousand dollars for more than one violation, against each Respondent, for violations of Section 409.3-301, RSMo. (Cum. Supp. 2005), in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2005), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to ten thousand dollars against each Respondent for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2005), in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2005), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to ten thousand dollars against each of Respondent Bird and Respondent Hackenberg for multiple violations of Section 409.4-403, RSMo. (Cum. Supp. 2005), in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2005), the Commissioner will determine whether to grant the Enforcement Division's petition for an imposition of a civil penalty of up to ten thousand dollars against each of Respondent Bird and Respondent Hackenberg for multiple violations of Section 409.5-502(a), RSMo. (Cum. Supp. 2005), in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

**IT IS FURTHER ORDERED** that as the Enforcement Section has petitioned for an award for costs of the investigation against Respondents in this proceeding, the Commissioner will issue a final order pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2005), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and show cause why an award should not be made.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 26th DAY OF SEPTEMBER, 2006

State of Missouri  
Office of Secretary of State

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW KITZI  
COMMISSIONER OF SECURITIES

Case No. AP-06-39

IN THE MATTER OF:

BIRD & ASSOCIATES, LLC;  
ISLAND FALLS FINANCIAL, INC.;  
IDEAL FINANCIAL SERVICES, INC.;  
THE SPEAR OF DESTINY, LLC;  
CALVIN BIRD;  
KEVIN RICHARD HACKENBERG; *and*  
FRANCIS L. GIBSON,

Serve: Bird & Associates, LLC at  
400 Broadway Street, Suite 101  
Cape Girardeau, Missouri 63701

Serve: Calvin Bird at  
2222 Earleen Street  
Cape Girardeau, Missouri 63701

Serve: Island Falls Financial, Inc. and  
Kevin R. Hackenberg at  
12 E. Greenway Plaza, Suite 1100  
Houston, Texas 77046

Serve: The Spear of Destiny, LLC

201 N. Occidental Blvd.  
Los Angeles, California 99026

*Respondents.*

## NOTICE

**TO: Respondents and any unnamed representatives aggrieved by this Order:**

You may request a hearing in this matter. Any request for a hearing should be sent, in writing to:

**Matthew Kitz**  
**Commissioner of Securities**  
**Office of the Secretary of State**  
**Missouri State Information Center, Room 229**  
**600 West Main Street**  
**Jefferson City, Missouri, 65102**

Said request must be made within thirty (30) days of the receipt of this Order pursuant to Section 409.412(a), RSMo., Cum. Supp. 2004 and 15 CSR 30-55.020.

## CERTIFICATE OF SERVICE

I hereby certify that on this day 26th of September, 2006, a copy of the foregoing notice, order and petition was mailed by certified U.S. Mail, postage prepaid, to the Respondents in this matter.

Beth Perkins  
Administrative Aide

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[1] MR had no prior relationship with Bird before early 2005.

[2] MR also hired Bird as a general contractor to build a new home for MR, and on or about August 3, 2005, MR gave Bird a personal check with the payee line left blank. Bird dated the check for August 3, 2005, and made it out to "Construction Consolidated Services, LLC" in the amount of \$37,227.11. The memo line of this check specified the words: "1st Payment New Home Construction." Bird never used these funds to pay the subcontractors and MR is now being pursued for payment to the subcontractors.

[3] MR states that MR has never met Hackenberg in person, but that MR carried on several telephone conversations with Hackenberg.

[4] In a letter dated May 31, 2006, the Division requested Bird provide information concerning the affiliation that B&A and Island Falls had with Ideal Financial, Artists Guild of America ("Artist Guild") and Top Notch Entertainment, Inc. ("Top Notch"). Respondent Bird failed to provide an answer.

[5] This document was thirteen (13) pages in length. Each page was initialed by MR and Hackenberg as the initials were indicated at the bottom of each page. Hackenberg's initials and signature appeared to be in an electronic form.

[6] These two individuals are residents of the State of Texas. They were both former employees of Hackenberg.

[7] To date, this information has not been provided to the Division.

[8] MR alleges that MR had no knowledge that MR's funds would be used toward a movie production and did not request the funds be used as such. Despite the Division's request to Bird's attorney in the July 28, 2006 letter requesting all signed agreements and documents concerning MR's desire to invest in a movie project, no documents have been provided.

[9] To the contrary, MR states that he has not received any of this money back.

[10] MR had not acquired the funds as a result of a lottery winning, but as a result of a work-related injury settlement.

[11] A second Missouri resident gave Bird and Hackenberg \$25,500 (this payment was made with two different checks one for \$23,000 the other \$2,500) to secure financing for a business. This financing was never received.

[12] The information identified as "services" were indicated on the memo line of the executed checks.

[13] *Gadberry v. Bird*, 191 S.W.3d 673 (Mo. App. E.D. 2006). On appeal, the Southern District Missouri Court of Appeals found in favor of the plaintiff and that Bird had misappropriated \$8,000 of the money plaintiff paid to Bird.