

State of Missouri  
Office of Secretary of State

Case No. AP-07-05

IN THE MATTER OF:

GREAT AMERICAN INVESTORS, INC.,  
CRD No. 28489; and  
DAVID K. RICHARDS, CRD No. 375518

*Respondents.*

Serve both at: 6025 Metcalf Lane  
Overland Park, KS 66202-2301

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

On January 19, 2007, the Enforcement Section of the Securities Division of the Office of Secretary of State, through Assistant Commissioner, Mary S. Hosmer, filed a Petition for Order to Cease and Desist, Order to Censure, and Order to Show Cause Why Civil Penalties and Costs Should not be Imposed. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law, and order:

**I. FINDINGS OF FACT**

1. Great American Investors, Inc. ("Great American"), is a Missouri-registered broker-dealer with an address of 6025 Metcalf Lane, Overland Park, Kansas 66202-2301. Great American is registered in Missouri through the Central Registration Depository System ("CRD") with CRD number 28489.
2. David K. Richards ("Richards") is the President and CEO of Great American and has an address of 6025 Metcalf Lane, Overland Park, Kansas 66202-2301. Richards is registered in Missouri as a representative of Great American through the CRD, and has CRD number 375518.
3. As used herein the term "Respondents" refers to Great American and Richards.
4. On or about December 31, 2004, Great American, through Richards, terminated the employment of one of its registered representatives, Gregory Dale Bergman ("Bergman"). Bergman was registered through the CRD with CRD number 2787786.
5. Respondents documented this termination of Bergman's employment in the State of Missouri by filing a *Uniform Termination Notice of Securities Industry Registration* ("Form U-5"). In this Form U-5, Respondents listed the grounds for Bergman's termination as: "Production is not at the level anticipated by the firm at the time of the agent's registration with our firm."
6. In May 2006, the Securities Division (the "Division") initiated an investigation regarding allegations that Bergman, while employed by Great American, had borrowed money from a customer and that Great American had failed to adequately supervise this activity. As part of this investigation the Division contacted Great American regarding Bergman's termination.
7. On June 9, 2006, Richards sent a letter to the Division which stated, among other things, the following:

It came to the firm's attention in the fall (October) of 2004 that Mr. Bergman had borrowed money from one of his clients at Great American Investors, Inc. That client was [a Missouri resident].

In this case, the client called in for cash withdrawal and claimed that Mr. Bergman would not return her phone calls.

After further interrogation of the client she admitted that she had loaned Mr. Bergman money and she would put in calls to him, which he would not return. She indicated it was \$4000 to \$6000 total and now he has paid her back. She indicated at this point that she now wanted a new broker.

As Principal of this firm, I immediately removed Mr. Bergman as the representative on the account and changed the account to my representative number with the client's permission. Approximately one week later, after talking with Mr. Bergman, the firm processed his termination on 11/04/2004 to be effective on 12/31/2004. I believe this was all verbal. The firm has no copies of any promissory note or contract for supporting documentation.

Mr. Bergman joined Great American Investors, Inc. in September of 2003. The firm went through its normal pre-hire interview and Mr. Bergman was asked if he had any complaints or "yes" answers on his U-4. He stated that he did not. Within one month of his start date, we received a letter from the NASD on October 10, 2003 requesting information about Mr. Bergman's settlement of a customer complaint without informing his employer, Met Life.

The firm terminated Mr. Bergman based on these two cases Mr. Bergman was involved in.

/s/ David K. Richards  
President

8. On or about January 10, 2007, Richards faxed to the Division a copy of a Registration Comment Request Form ("RCRF") and stated that he had sent this form to the CRD through the National Association of Securities Dealers ("NASD") through an overnight mail service.
9. On the RCRF Richards requested that the NASD enter a registration comment on the CRD record of Bergman in connection with the Form U-5 that was submitted by Great American on December 31, 2004, regarding Bergman's termination.
10. On the RCRF Richards stated that the registration comment was needed to correct the reason for termination as reported in Section 3 of Form U-5.
11. On the RCRF Richards stated that the agent, Bergman, was discharged and provided the following explanation:

"Agent wrongfully borrowed money from customer on several occasions, promised to repay, then failed to repay. This was done without B/D knowledge until 18 mo. later when notified by State of Missouri [*sic*]."
12. On the RCRF Richards stated that the registration comment was needed for the following reason:

To amend U-5 to reflect actual facts at time of termination not known to B/D. B/D respectfully requests this information be added to agent's permanent record to prohibit re-entry into securities business and to prevent legal action against B/D by State.
13. An order is in the public interest and consistent with the purposes intended by this act. See Section 409.6-605(b), RSMo. (Cum. Supp. 2005).

## **II. STATUTORY PROVISIONS**

14. Section 409.4-412(c), RSMo. (Cum. Supp. 2005), provides that, "If the Commissioner finds that the order is in the public interest and subsection (d)(1) to (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this act may censure... a registrant...."
15. Section 409.4-412(d)(2), RSMo. (Cum. Supp. 2005), provides that a person may be disciplined under that Section if the person "[w]illfully violated or willfully failed to comply with this act or the predecessor act or a rule adopted or order issued under this act...."
16. Section 409.5-505, RSMo. (Cum. Supp. 2005), provides that "[i]t 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."
17. The Missouri Code of State Regulations, 15 CSR 30-51.160(3)(A), provides that applicants and registrants have a continuing duty to disclose material information, including, among other things:

Amendments to Applications for Material Change. During the pendency of any application, or effectiveness of any registration, every broker-dealer, agent, investment adviser, or investment adviser representative shall immediately report to the commissioner in writing any material change in any information, answers, responses, exhibits, or schedules submitted or circumstances disclosed in its last prior application. A correcting amendment shall be filed with the division at the time of occurrence or discovery of these changes, and not later than thirty (30) days following the specified event or occurrence. If the application was submitted through the CRD System or IARD System, any amendment shall be submitted in accordance with the guidelines of the CRD or IARD System.

18. The Missouri Code of State Regulations, 15 CSR 30-51.160(3)(B)(1), provides:

When an agent's or representative's association with the broker-dealer, issuer or investment adviser is discontinued or terminated by either party, the broker-dealer, issuer or investment adviser must file a Form U-5 within thirty (30) days of the discontinuance or termination, stating the date of and reasons for the discontinuance or termination.

19. The Missouri Code of State Regulations, 15 CSR 30-51.170(2), provides that nondisclosure or incomplete disclosure of a material fact constitutes a dishonest or unethical business practice.
20. Section 409.6-604(a), RSMo. (Cum. Supp. 2005), provides that “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 or appropriate to comply with this act.”
21. Section 409.6-604(d), RSMo. (Cum. Supp. 2005), 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.
22. Section 409.6-604(e), RSMo. (Cum. Supp. 2005), the commissioner may charge the actual cost of an investigation for a violation of the act. Those funds may be paid into the investor education and protection fund.
23. 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**

#### **Count I:**

#### **Multiple Violations of Making Misstatements of Material Fact in a Record that is used in an Action or Proceeding or Filed Under this Act**

24. Paragraphs 1 through 23 are incorporated by reference as though fully set forth herein.
25. According to information received by the Division, Bergman was terminated because Great American and Richards had discovered that Bergman had borrowed money from a client and Bergman had misrepresented information to Respondents regarding Bergman’s customer complaints at his previous employer.
26. On December 31, 2004, Respondents filed with the State of Missouri, through the CRD, a Form U-5 stating that Bergman was terminated due to poor production. This information was not true and constitutes a misstatement of material fact under Section 409.5-505, RSMo. (Cum. Supp. 2005).
27. On or about January 7, 2007, Respondents reported on a RCRF, filed with the CRD and with the State of Missouri, that Respondents did not know that Bergman had borrowed money from a client until the State of Missouri notified them of that fact. This was not true and constitutes a misstatement of material fact under Section 409.5-505, RSMo. (Cum. Supp. 2005).
28. Respondents violated Section 409.5-505 RSMo. (Cum. Supp. 2005), when they made misstatements of material facts as described in paragraphs 25-27 above.
29. Respondents’ actions in filing these documents and making such misstatements with the State of Missouri constitute an illegal act, practice or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2005).

#### **Count II:**

#### **Multiple Violations of Engaging in Dishonest or Unethical Practices in the Securities Business**

30. Paragraphs 1 through 23 are incorporated by reference as though fully set forth herein.
31. When Bergman’s association with Respondent Great American was terminated, Respondents had an obligation to file a Form U-5 within thirty (30) days of this discontinuance or termination, stating the date of and reasons for Bergman’s termination.
32. Respondents’ nondisclosure of the true grounds for Bergman’s termination constitutes a willful violation of Respondents’ reporting requirements under the Missouri Code of State Regulations, 15 CSR 30.51-160.
33. Respondents’ nondisclosure constitutes grounds to discipline Respondents’ registrations in the State of Missouri pursuant to Section 409.4-412(d)(2), RSMo. (Cum. Supp. 2005).

### **IV. 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 violating Section 409.5-505, RSMo. (Cum. Supp.2005), by making misstatements of material fact in a record that is filed under the Missouri

Securities Act of 2003.

**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 civil penalties of up to ten thousand dollars against each Respondent for more than one violation of Section 409.5-505, 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 409.4-412(c), 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 five thousand dollars against each Respondent for a violation of Section 409.4-412(d)(2), 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 409.4-412(c), RSMo. (Cum. Supp. 2005), the Commissioner will determine whether to censure Respondents for violation of Section 409.4-412(d)(2), RSMo. (Cum. Supp. 2005), in a final order, unless Respondents request a hearing and show cause why such censure should not be issued.

**IT IS FURTHER ORDERED** that, as the Enforcement Division has petitioned for an award for the cost 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 30<sup>TH</sup> DAY OF JANUARY, 2007.

ROBIN CARNAHAN  
SECRETARY OF STATE

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

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of January, 2007, a copy of the foregoing Order filed in the above styled case was mailed certified U.S. Mail, postage prepaid to Respondents at the below listed addresses.

Great American Investors, Inc.  
6025 Metcalf Lane  
Overland Park, KS 66202-2301

David K. Richards  
6025 Metcalf Lane  
Overland Park, KS 66202-2301

John Hale  
Specialist