

State of Missouri
Office of Secretary of State

Case No. AP-07-11

IN THE MATTER OF:

JASON MITCHELL GUILLEN

Respondent.

Serve at:

3704 W. Kingsley Street
Springfield, Missouri 65807

**FINAL ORDER TO CEASE AND DESIST AND ORDER
IMPOSING CIVIL PENALTIES aAND RESTITUTION**

On the 2nd day of April, 2007, the Enforcement Section of the Securities Division, through Assistant Commissioner of Securities Mary S. Hosmer, and Respondent Jason M. Guillen, submitted a Joint Motion for Final Order to Cease and Desist and Order to Pay Civil Penalties, Costs and Restitution and Respondent's Consent to this Order (the "Motion"). After reviewing the Motion, the Commissioner issues the following:

I. FINDINGS OF FACT

1. Jason Mitchell Guillen ("Guillen") has a residential address of 3704 W. Kingsley Street, Springfield, Missouri 65807. At all times relevant to this Order, Guillen was not registered as a securities agent with the Missouri Securities Division.
2. Guillen is an insurance agent licensed with the Missouri Department of Insurance (license number PR324801).
3. On October 27, 2006, the Securities Division received information regarding a check made payable from a Missouri bank ("Bank") to Guillen from the joint banking account of two Missouri residents ("MR1" and "MR2"). [\[1\]](#)
4. An investigator with the Securities Division contacted Bank personnel who provided information that on August 2, 2006:
 - a. Guillen presented a check to the Bank for over fifty thousand dollars (\$50,000) and requested the full amount in cash;
 - b. After review by Bank personnel it appeared that the check had two different colors of ink, appeared to have been previously presented for payment to another financial institution, and the encoding from that prior financial institution appeared to be for a different amount;
 - c. Because of these "fraud indicators" the Bank refused the transaction;

- d. Guillen departed the Bank and returned a short time later with a new check signed by MR2. Guillen presented the check to the Bank and requested the funds in cash;
 - e. Guillen claimed to Bank personnel that Guillen was a licensed investment broker and that he was “investing the money in AIG;”
 - f. Bank personnel called MR2 to confirm this transaction. MR2 stated that she had issued the check but was unsure why MR2 had issued the check and referred questions to MR1;
 - g. Bank personnel contacted MR1, who stated that Guillen was representing MR1 and MR2 as their investment broker; and
 - h. Guillen did not provide any evidence to the Bank that he was a licensed broker-dealer agent.
5. After talking with MR1, the Bank issued a cashier’s check made payable to Guillen and MR1 for fifty-three thousand, nine hundred dollars and twenty cents (\$53,900.20).
 6. This matter was referred to the Missouri Division of Aging.
 7. When contacted by the Division of Aging investigator, Guillen sent the investigator an investment contract (“Investment Contract”) signed by MR1, MR2, and Guillen. This Investment Contract stated:

This agreement is a legal contract. Please read it carefully [sic]

Herein, a contract is entered into between [MR1] and JASON GUILLEN on August 8, 2006. All rights and agreements follow.

JASON GUILLEN (Hereafter “JASON”) is to receive from [MR1] the amount of \$53,900.20. She is loaning him these funds for a period of THIRTEEN MONTHS EXACTLY, or unto the date of September 8, 2007. Jason is using these funds to create an investment account with Oanda, [2] a foreign exchange trading company. [MR1] is aware that this is how these funds are to be used. Jason agrees to return these funds with a 10% interest rate, for a total of \$59,290.20. At this date, he may return all funds to [MR1] should she wish, or, they may enter and create a new investment contract. At any time, [MR1] or her advisors may decide to lend Jason more, for further interest.

[MR1] makes this decision fully understanding where her money is being invested, as well as feeling confident that this is a wise decision. Her sister [MR2] has reviewed this document, and fully approves of all circumstances.

Notably:

- JASON shall place the funds in the position to gain a yield.
- Thirteen month’s [sic] hence, JASON owes [MR1] a complete

return, with 10% interest. This amounts to \$59,920.20.

- It is understood that JASON is an individual with an insurance license, (state # PR324801) and that he does not have his series 7, 6, or 62 licenses, nor does he hold any security licensure, nor a seat on any exchange. JASON will be making use of his primary relationships with Oanda to invest these funds.
- JASON has full access to all funds for the duration of this contact [sic]. He will make the choices he deems necessary to ensure the return of [MR1's] money.

By our collective hand

| | |
|-------------------|--------------|
| [MR1] /s/ | Date: 8-8-06 |
| Jason Guillen /s/ | Date: 8-8-06 |
| Witness [MR2] | Date: 8-8-06 |

[Notary Public] /s/

8. On November 17, 2006, an investigator with the Securities Division contacted MR1 who stated, among other things, that:
 - a. MR1 has been acquainted with Guillen for several years;
 - b. MR1 has a power of attorney over MR2;
 - c. MR1 understood that Guillen was in a “financial predicament” and was seeking financial assistance;
 - d. MR1 decided to loan Guillen fifty thousand dollars (\$50,000);
 - e. These funds were to be paid back to MR1 and MR2 with interest;
 - f. To evade the Bank’s inquiry, Guillen drafted a contract to pretend that Guillen was going to use the money for investment purposes; and
 - g. MR1 wanted the Securities Division’s investigation closed.
9. On November 15, 2006, the Securities Division sent a letter, via certified mail to Guillen. The letter asked Respondent to provide the definitional or registration exemption upon which Respondent had relied in allegedly offering unregistered securities. The letter also requested additional information from Respondent and advised Respondent that failure to respond within a reasonable time as set by the Commissioner constituted further proceedings to prohibit Respondent from offering or selling securities in this State.
10. On November 17, 2006, Guillen called an investigator with the Securities Division. During this telephone conversation, Guillen stated, among other things, that:
 - a. he has known MR1 for three (3) years;
 - b. he and MR1 and MR2 entered into an investment contract to alleviate a difficulty with the Bank so that he could gain access to MR1 and MR2’s funds;

- c. after obtaining the funds from MR1 and MR2, he used the funds for his personal use;
 - d. he set up an online account through Oanda for his own investment purposes;
 - e. he had over seven thousand dollars (\$7,000) in monthly expenses that he had to pay;
 - f. he acquired a loan from MR1 and MR2; and
 - g. he and his wife were in the process of filing for bankruptcy.
11. During this November 17, 2006, telephone call, Guillen agreed to come to the Securities Division and bring documents relating to his transaction with MR1 and MR2.
12. On December 5, 2006, Guillen appeared at the Securities Division. At this time, Guillen stated, among other things, that:
- a. he was not a securities broker or agent;
 - b. he was a licensed insurance agent;
 - c. he received a check written to him from MR1 and MR2 for over fifty three thousand dollars (\$53,000);
 - d. he believes that MR1 withdrew funds from an annuity policy to loan these funds to Guillen;
 - e. pursuant to the loan agreement Guillen had until September 2007 before Guillen was to repay the loan to MR1 and MR2;
 - f. Guillen prepared the Investment Contract after the Bank's inquiry. This Investment Contract was prepared because it was, "what the bank believed we had done" and so the Investment Contract would, "mesh with our story that we had told the bank so they would let us be;"
 - g. he was required to provide all paper work to the Division of Aging, relating to Guillen's transaction with MR1 and MR2;
 - h. Guillen sent this Investment Contract to the Division of Aging. This was done in error, "as this contract was false;"
 - i. Guillen prepared another contract the "Installment Note Contract" to reflect the actual agreement between Guillen and MR1 and MR2; and
 - j. this Installment Note Contract was not sent to the Division of Aging.
13. Guillen provided the Securities Division with a copy of the Installment Note Contract. This Installment Note Contract was also signed and dated August 8, 2006, by Guillen and MR1 and MR2.

14. The Installment Note Contract provided that:

Follows [sic] is the agreement between [MR1], [MR2] and Jason Guillen, Dated August 8, 2006 [sic].

Herein, a contract is entered into between Jason Guillen and [MR1], [MR2], sisters.

Jason Guillen is borrowing from [MR1] and [MR2] a sum equaling \$53,900.20. The sisters are loaning him these funds for a period of thirteen months exactly, or until the date of September 8, 2007. At this time, his payments will begin to be made, at \$1000.00 a month for 60 months. Jason is using the funds for the following:

- 1) He is creating a small investment account for himself with a foreign exchange company, Oanda.[\[3\]](#)
- 2) He is financing his own bankruptcy.
- 3) He is moving and paying off old personal debts.
- 4) He is getting married and having a honeymoon.
- 5) Purchasing computer equipment.
- 6) Any other purpose that leads him to a financial solvency in 2007.

Any failure to repay the monies borrowed will result in civil action.

By our Collective hand [sic]:

| | |
|-------------------|--------------|
| [MR1] /s/ | Date: 8/8/06 |
| Jason Guillen /s/ | Date: 8-8-06 |
| [MR2] /s/ | Date: 8/8/06 |

15. 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 securities offered by Guillen in or from Missouri.
16. The securities offered and sold by the Guillen were not federal covered securities.
17. A check of the records maintained by the Missouri Commissioner of Securities revealed no registration, or granted exemption for Guillen to offer and sell securities in or from the State of Missouri.
18. 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. 2006).

II. CONCLUSIONS OF LAW

19. Section 409.1-102, RSMo. (Cum. Supp. 2006), includes “investment contracts”

- within the definition of a security. Pursuant to Section 409.1-102(28)(D), RSMo. (Cum. Supp. 2006), investment contract includes “an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor.”
20. Section 409.1-102, RSMo. (Cum. Supp. 2006), includes “evidence of indebtedness” and “notes” within the definition of a security.
 21. Section 409.3-301, RSMo. (Cum. Supp. 2006), states 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.”
 22. Section 409.4-401(a), RSMo. (Cum. Supp. 2006), provides that it is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered or exempt.
 23. Section 409.5-501, RSMo. (Cum. Supp. 2006), provides that it “is unlawful for a person, in connection with the offer, sale or purchase of any 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 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; 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.”
 24. Under Section 409.6-604(d), RSMo. (Cum. Supp. 2006), 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.
 25. Under Section 409.6-604(e), RSMo. (Cum. Supp. 2006), 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.
 26. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. Section 409.6-604(a), RSMo. (Cum. Supp. 2006).

Multiple Violations of Transacting Business as an Unregistered Securities Agent

27. Paragraphs 1 through 26 are incorporated by reference as though fully set forth herein.
28. Guillen’s Investment Contract and Installment Note Contract constitute an “evidence of indebtedness,” “note” or “investment contract” and qualify as securities under Section 409.1-102(28), RSMo. (Cum. Supp. 2006).
29. Guillen’s separate actions of offering a security to MR1 and MR2 were “attempt[s] or offer[s] to dispose of, or solicitation[s] 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. 2006), and combined with his representations that he was an “investment broker,” constitute transacting business as a broker-dealer

agent.

30. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration, granted exemption for Guillen.
31. Guillen violated Section 409.4-406(a), RSMo. (Cum. Supp. 2006), when he unlawfully transacted business in this state as an agent and was not registered or exempt under the Missouri Securities Act of 2003.

Multiple Violations of Offering Nonexempt, Unregistered Securities

32. Paragraphs 1 through 26 are incorporated by reference as though fully set forth herein.
33. Guillen's Investment Contract and Installment Note Contract constitute an "evidence of indebtedness," "note" or "investment contract" and qualify as securities under Section 409.1-102(28), RSMo. (Cum. Supp. 2006).
34. Guillen's separate actions of offering a security to MR1 and MR2 was 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. 2006).
35. Guillen's separate actions of selling a security to MR1 and MR2 is a disposition of a security or interest in a security for value which satisfies the definition of "sale" under Section 409.1-102(26), RSMo. (Cum. Supp. 2006).
36. At all times relevant to this order, 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 of the securities offered or sold by Guillen to MR1 or MR2.
37. Guillen violated Section 409.3-301, RSMo. (Cum. Supp. 2006), when, as described above, Guillen offered to sell and sold securities in Missouri without those securities being: (1) a federal-covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-202, RSMo. (Cum. Supp. 2006), or (3) registered under the Missouri Securities Act of 2003.

Multiple Violations Of Engaging In An Act, Practice, Or Course Of Business That Operates Or Would Operate As A Fraud Or Deceit Upon Another Person

38. Paragraphs 1 through 26 are incorporated by reference as though fully set forth herein.
39. In connection with the offer and sale of securities, in the form of a note, investment contract or evidence of indebtedness to MR1 and MR2, Guillen engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person, as follows:

- a. Guillen engaged in the following acts that operated as a fraud or deceit upon the Bank:
 1. Guillen told Bank personnel during the Bank's review of MR1 and MR2's check that Guillen was an "investment broker," when, in fact, this was not true;
 2. Guillen told Bank personnel that Guillen was investing the money from MR1's and MR2's check into an AIG account, when, in fact, this was not true
- b. Guillen engaged in the following acts that operated as a fraud or deceit upon the Division of Aging:
 1. Guillen provided information to an investigator at the Division of Aging that contained, among other things, an Investment Contract between Guillen and MR1 and MR2 that provided that:
 - A. Guillen would place MR1 and MR2's funds in the position to gain a yield when, in fact, some of the funds were to be used to pay for Guillen's personal bankruptcy, honeymoon and other personal expenses;
 - B. Guillen would use these funds to create an investment account with Oanda, a foreign exchange trading company when, in fact, some of the funds were to be used to pay for Guillen's personal bankruptcy, honeymoon and other personal expenses;
 2. Guillen failed to disclose to the investigator at the Division of Aging that:
 - A. this Investment Contract was not the "real" agreement between Guillen and MR1 and MR2;
 - B. Guillen wrote up this Investment Contract because it was, "what the bank believed we had done;"
 - C. Guillen drafted this Investment Contract so that it would, "mesh with our story that we had told the bank so they would let us be;"
 - D. After drafting the Investment Contract, Guillen subsequently drafted the Installment Note Contract.
 3. Although Guillen stated that he was "required to provide all paper work" to the Division of Aging regarding Guillen's transaction with MR1 and MR2, Guillen did not provide the Installment Note Contract to the Division of Aging.
 4. Guillen provided the Division of Aging investigator the Investment Contract but failed to disclose that this Investment Contract was "in error, as this contract was false."

40. Guillen violated Section 409.5-501, RSMo. (Cum. Supp. 2006), when Guillen, in

connection with the offer and sale of securities to MR1 and MR2, Guillen engaged in an act, practice or course of business that operated or would operate as a fraud or deceit upon the Bank.

41. Guillen violated Section 409.5-501, RSMo. (Cum. Supp. 2006), when Guillen, in connection with the offer and sale of securities to MR1 and MR2, Guillen engaged in an act, practice or course of business that operated or would operate as a fraud or deceit upon the Division of Aging.

ORDER

NOW, THEREFORE, it is hereby ordered that:

- A. Respondent, his agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of the Order, are prohibited from:
1. transacting business as an unregistered agent;
 2. offering or selling unregistered securities in the State of Missouri; and
 3. engaging in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.
- B. Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2006), Respondent shall pay, subject to paragraph E, below, the sum of thirty thousand dollars (\$30,000) to the State of Missouri as civil penalties for multiple violations of Sections 409.3-301, 409.4-402 and 409.5-501, RSMo. (Cum. Supp. 2006). This amount shall be sent to the Secretary of State and made payable to the State of Missouri, within thirty (30) days of the date of this Order, and the Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondents shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102;
- C. Pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2006), Respondent will pay, subject to paragraph E, below, the additional sum of four thousand dollars (\$4,000) as reimbursement for the costs of the investigation in this matter. This amount shall be sent to the Secretary of State and made payable to the Missouri Secretary of State's Investor Education and Protection Fund within thirty (30) days of the date of this Order. Respondent shall deliver this payment to the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, Missouri 65102;
- D. As agreed upon and consented to by Respondent in the Motion, Respondent shall pay restitution for the benefit of the aggrieved Missouri investors list in Exhibit 1 here to. Respondent shall pay the total sum of twenty thousand dollars (\$20,000) to the Missouri Investor Restitution Fund, payable in monthly installments of one thousand dollars (\$1,000) due on the first day each month from May 1, 2007, through December 1, 2008. Each of Respondent's monthly payments shall be sent to the Missouri Secretary of State and made payable to the Missouri Investor Restitution Fund. Respondent shall deliver each payment to the Securities Division, 600 West

Main Street, PO Box 1276, Jefferson City, Missouri, 65102. The Secretary of State shall pay these funds to the aggrieved Missouri investors listed in Exhibit 1 hereto. If Respondent fails to make any payment described in this paragraph D, the full amount remaining and owed to the Missouri Investor Restitution Fund shall be immediately due and payable after five days notice to cure, and if any amount remains unpaid after such five-day cure period, the Commissioner may refer this matter for enforcement as provided in Sections 409.6-603 and 409.6-604, RSMo. (Cum. Supp. 2006).

- E. Respondents obligation to make the civil penalty and costs payments described in Paragraphs B and C, above, is hereby suspended provided and on the condition that Respondent complies in full with each part of this Order including, without limitation, the ordered restitution payment obligations described in Paragraph D, above. Upon full satisfaction of the obligations in Paragraph D, above, a portion of the civil penalty imposed against Respondent in Paragraph B, above, twenty seven thousand dollars (\$27,000), shall be waived. In addition, upon full satisfaction of the obligation in Paragraph D, above, a portion of the costs payment imposed against Respondent in Paragraph C, above, three thousand dollars (\$3,000), shall be waived. Within sixty (60) days of the final timely restitution payment by Respondent pursuant to Paragraph D, above, Respondent shall pay three thousand dollars (\$3,000) as his full and final civil penalty under and as directed in Paragraph B, above, and one thousand dollars (\$1,000), as his full and final costs payment under and as directed in Paragraph C, above. In the event that Respondent fails to fully comply with any part of this Order including, without limitation, the restitution payment obligations described in Paragraph D, above, the suspended civil penalty payments described in Paragraph B, above, and the suspended costs payment described in Paragraph C, above, shall be immediately due and payable, under operation of law, and such immediately due and owed civil penalty and costs payments shall be in addition to all other payments then due under this Order and in addition to all other penalties thus available under the law.
- F. This Order is in the public interest and is consistent with the purposes intended by the Missouri Securities Act of 2003.

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 13TH DAY OF APRIL, 2007.

ROBIN CARNAHAN
SECRETARY OF STATE

CERTIFICATE OF SERVICE

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

I hereby certify that on this 13th day of April, 2007,
copies of the foregoing Final Order in the above styled
case was **mailed by certified U.S. Mail, postage prepaid, to:**

Jason Mitchell Guillen
3704 W. Kingsley Street
Springfield, Missouri 65807

And hand delivered to:

Mary Hosmer
Assistant Commissioner
Securities Division

John Hale
Specialist

[1] MR1 and MR2 are sisters.

[2] Oanda is a provider of foreign exchange, currency trading, and information services to Forex traders. Oanda possesses a website at www.oanda.com.

[3] Guillen stated that he had lost over eleven thousand dollars (\$11,000) in this online account and has since abandoned trading in the account.