

State of Missouri
Office of Secretary of State

Case No. AP-07-18

IN THE MATTER OF:

ROBERT J. KETCHUM,
CRD No. 2490769,

Respondent.

Serve at:

4790 Oak Street, Apt. 214
Kansas City, MO 64112-2221

**ORDER TO CEASE AND DESIST, ORDER BARRING RESPONDENT FROM
REGISTRATION PENDING ADMINISTRATIVE PROCEEDING, AND ORDER TO
SHOW CAUSE WHY CIVIL PENALTIES AND COSTS SHOULD NOT BE IMPOSED**

On the 2nd day of April, 2007, the Enforcement Section of the Securities Division, of the Office of Secretary of State, through Chief Enforcement Counsel Lori Neidel, submitted a Petition for Cease and Desist Order and Order to Show Cause Why Civil Penalties Should not be Enforced (the "Petition"). After reviewing the Petition, the Commissioner issues the following Findings of Fact, Conclusions of Law, and Order:

I. FINDINGS OF FACT

1. Robert J. Ketchum ("Respondent") has a last known address of 4790 Oak Street, Apt. 214, Kansas City, MO 64112-2221, and has a CRD Number of 2490769.
2. Respondent was registered in Missouri as a broker-dealer agent with Edward D. Jones & Company, L.P. ("Edward Jones"), CRD No. 250, from April 21, 1994, until his voluntary termination from the firm on December 11, 2004.
3. Respondent was subsequently registered in Missouri as a broker-dealer agent with Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"), CRD No. 7691, from December 10, 2004, until January 13, 2006, when Respondent was discharged for job abandonment.
4. Respondent is not currently registered with any broker-dealer.
5. At all times, pertinent hereto, Edward Jones provided to all agents a compliance manual that stated, among other things, that: "[a]ssociates may not lend money to customers nor may they obtain a loan from a customer"
6. From April 1, 2000, through October 10, 2000, Respondent borrowed \$246,000 from two of his customers at Edward Jones, a Missouri couple ("MC").
7. Respondent initially approached MC about borrowing \$8,000, allegedly to purchase stock for Respondent's personal account, and MC agreed to lend such money; MC's money was deposited into Respondent's personal checking account at Bank of America. This money was taken from MC's personal bank account at Commerce Bank.
8. Subsequently, Respondent requested that MC borrow money from MC's margin account at Edward Jones, deposit it in MC's personal bank account, and loan it to Respondent via personal check from MC's bank account. MC did so and incurred interest on the withdrawals from their margin account.
9. On or about January 3, 2002, Respondent sent a handwritten note to MC acknowledging that he had borrowed \$238,000 from MC which had accrued interest in the amount of \$35,791.52 through December 31, 2001.
10. Also on or about January 3, 2002, Respondent sent MC a promissory note for \$238,000.00 plus interest at the prime rate. There was no stated maturity date for the promissory note. At this same time, Respondent also provided MC with a handwritten note acknowledging that an additional \$8,000 that was borrowed was accruing interest at 5% for four years.
11. To date, Respondent has made twelve payments to MC totaling \$161,000.00. The last payment made by Respondent to MC on the Promissory Note was November 1, 2003. No additional payments have been received by MC.
12. On January 22, 2007, the Missouri Secretary of State, Securities Division (the "Division") received a complaint from MC regarding Respondent's activities described above.
13. On or about January 23, 2007, the Division sent a written inquiry to Respondent.

14. On or about February 22, 2007, Respondent responded to the Division's inquiry and stated, in part, as follows:

"I did receive funds from [MC] totaling \$246,000 in various amounts commencing on April 10, and concluding on October 10, in the year 2000 The circumstances surrounding each advance involved the subsequent purchase of stock on my part and/or payment of margin calls that existed in my securities account.

On June 28, 2004, I executed a promissory note to [MC] that acknowledged this indebtedness [sic] to them. It included a proposed repayment schedule that I was able to maintain for a time. To date I have repaid approximately \$ 160,000 of the monies

In all cases the funds were deposited to my personal account at the . . . [bank] . . . The funds from [MC] were received in the form of checks drawn on their [bank] account! (emphasis in the original). They obtained the funds that were provided to me from their Edward Jones Investment Customer Loan Account"

15. Edward Jones conducts annual audits on all of its agents. On March 5, 2001, Edward Jones conducted an audit of Respondent and his office. As a part of the audit process a Field Supervision Audit Questionnaire was submitted to the Respondent. Question 34 of the Audit Questionnaire asked: "Have you ever borrowed money from or loaned money to an Edward Jones customer?" The Respondent checked "no." Respondent signed the Questionnaire on March 5, 2001.
16. The following year, Edward Jones conducted its annual audit of Respondent on October 3, 2002. Once again, the Questionnaire submitted to Respondent as a part of the audit process asked Respondent if he had ever borrowed money from or loaned money to an Edward Jones customer. Respondent checked the "yes" box and wrote that "my brother has borrowed money in the past." Respondent omitted to state the fact that he had borrowed money from MC.
17. Every year after the Respondent borrowed the money and continued his registration with Edward Jones, the broker-dealer submitted the same question to Respondent during its annual audit. Respondent answered "no" to the question in the subsequent audit questionnaires of 2003 and 2004, and signed his name under the attestation that the information provided was accurate and complete.
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. APPLICABLE STATUTES AND REGULATIONS

19. Section 409.1-102(28), RSMo. (Cum. Supp. 2006), includes "notes" and "evidence of indebtedness" within the definition of a security.
20. 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 a security, directly or indirectly:
- (1) To employ a device, scheme, or artifice to defraud; or
 - (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.
21. Under Section 409.6-604(a), RSMo. (Cum Supp. 2006), if the commissioner determines that a person has engaged in an act, practice, or course of business constituting a violation of this act or a rule adopted under this act, the commissioner may issue an order directing the person to cease and desist from engaging in the act, practice, or course of business.
22. Under Section 409.6-604(d), RSMo. (Cum Supp. 2006), in a final order issued under subsection (c) of that same section, 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, of the Missouri Securities Act of 2003.
23. Under Section 409.6-604(e), RSMo. (Cum Supp. 2006), in a final order issued under subsection (c) of that same section, the commissioner may charge the actual cost of an investigation or proceeding for a violation of the Missouri Securities Act of 2003, or a rule adopted under that act. Those funds may be paid into the investor education and protection fund.
24. Under Section 409.4-412(b), RSMo. (Cum Supp. 2006), if the commissioner finds that the order is in the public interest and that subsection (d) of that same Section authorizes the action, the commissioner may issue an order to revoke, suspend, condition, or limit the registration of a registrant.
25. Under Section 409.4-412(d)(13), RSMo. (Cum Supp. 2006), a person may be disciplined under subsection (b) of that same Section for, among other things, engaging in dishonest or unethical practices in the securities business within the previous ten years.
26. MO 15 CSR 30-51.170(1) identifies certain specific activities which qualify as dishonest or unethical business practices for broker-dealers or agents, and in subsection (V) states that dishonest or unethical practice in the securities business includes

“borrowing of money or securities from a customer by an agent”

27. Section 409.4-412(f), RSMo. (Cum Supp. 2006), states:

The commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

28. Section 409.4-412(k), RSMo. (Cum Supp. 2006), states, in part, the following:

If a proceeding is instituted to revoke or suspend a registration of any agent, broker-dealer, investment adviser, or investment adviser representative pursuant to subsection (b) [of Section 409.4-412], the commissioner shall refer the matter to the administrative hearing commission. The administrative hearing commission shall conduct hearings and make findings of fact and conclusions of law in such cases. The commissioner shall have the burden of proving a ground for suspension or revocation pursuant to this act. The administrative hearing commission shall submit its findings of fact and conclusions of law to the commissioner for final disposition.

III. CONCLUSIONS OF LAW

Violation of Omitting To State a Material Fact in Connection with the Offer or Sale of a Security

29. Paragraphs 1-28 are incorporated by reference as though fully set forth herein.

30. The promissory note offered and sold by Respondent to CM is a security under Section 409.1-102(28), RSMo. (Cum Supp. 2006).

31. In connection with the offer and sale of securities, Respondent omitted to state to Missouri residents the fact that borrowing money from clients as a broker-dealer agent is an unethical and dishonest business practice, when stating such material fact was necessary in order to make certain statements that were made, in light of the circumstances under which they were made, not misleading.

32. Respondent violated Section 409.5-501(2), RSMo. (Cum Supp. 2006), when he omitted to state the material facts described immediately above and when stating such facts was necessary to make statements made not misleading.

Grounds to Revoke, Suspend, Condition, or Limit the Registration of Respondent Pursuant to Section 409.4-412(d)(13), Dishonest or Unethical Practices in the Securities, Commodities, Investment, Franchise, Banking, Finance, or Insurance Business

33. Paragraphs 1-28 are incorporated by reference as though fully set forth herein.

34. Respondent made an untrue statement of a material fact when he checked the “no” box on the Audit Questionnaire in response to the broker-dealer’s question asking if the agent had ever borrowed money from an Edward Jones customer. Furthermore, when the Respondent checked “no” in response to this same question each year as Respondent did in the years 2001, 2002, 2003 and 2004, and Respondent acknowledged that the information he provided by his responses were accurate and complete by his signature, Respondent made multiple untrue statements of material fact. The making of untrue statements in a dishonest business practice.

35. Respondent engaged in an unethical business practice when he borrowed money from MC in violation of 15 CSR 30-51.170(1)(V).

36. Engaging in dishonest and unethical business practices in the securities industry is grounds for revoking, suspending, conditioning, or limiting the registration of Respondent under Sections 409.4-412(d)(13), RSMo. (Cum Supp. 2006).

37. The dishonest and unethical business practices engaged in by Respondent and described in paragraphs 34 and 35 above are grounds for a bar against registration by Respondent with the Securities Division under Sections 409.4-412(d) and (f), RSMo. (Cum Supp. 2006), pending final determination in an administrative proceeding.

38. The dishonest and unethical business practices engaged in by Respondent and described in paragraphs 34 and 35 above are grounds for a revocation of Respondent’s registration with the Securities Division under Sections 409.4-412(b), (d) and (k),

ORDER

NOW, THEREFORE, it is hereby ordered that Respondent, his 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) violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2006), by, in connection with the offer, sale or purchase of securities, 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; or
- (b) engaging in any dishonest or unethical behavior, including the borrowing of funds from clients, in the securities industry.

IT IS FURTHER ORDERED that given the allegations of unethical and dishonest behavior by Respondent, including the borrowing of money from his clients while engaged as their broker-dealer agent, the Respondent is **BARRED** from registration as a broker-dealer agent or investment adviser representative in the State of Missouri pending final determination of a hearing on the above allegations concerning unethical and dishonest behavior. Within fifteen (15) days after the receipt of a request in a record from the Respondent or the Enforcement Section of the Division, the matter of the bar against Respondent's registration will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty days after the date of service of this order, the bar-against-registration component of this order will become final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate this order or extend this order until final determination.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2006), 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 (\$10,000) against Respondent for more than one violation of Section 409.5-501, RSMo. (Cum. Supp. 2006), in a final order, unless Respondent requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an award of the costs of the investigation against Respondent, the Commissioner will issue a final order pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2006), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondent requests a hearing and shows cause why an award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 6TH DAY OF APRIL, 2007.

ROBIN CARNAHAN
SECRETARY OF STATE

State of Missouri
Office of Secretary of State

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

Case No. AP-07-18

IN THE MATTER OF:

ROBERT J. KETCHUM,
CRD No. 2490769,

Respondent.

Serve: Robert J. Ketchum at:
4790 Oak Street, Apt. 214
Kansas City, MO 64112-2221

NOTICE

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

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to Section 409.6-604(b), RSMo. (Cum. Supp. 2006), and 15 CSR 30-55.020.

A request for a hearing must be mailed or delivered, in writing, to:

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

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of April, 2007, a copy of the foregoing ORDER TO CEASE AND DESIST, ORDER BARRING RESPONDENT FROM REGISTRATION PENDING ADMINISTRATIVE PROCEEDING, AND ORDER TO SHOW CAUSE WHY CIVIL PENALTIES AND COSTS SHOULD NOT BE IMPOSED, filed in the above styled case was mailed by certified U.S. Mail, postage prepaid to Respondent at the above listed address.

Robert J. Ketchum
4790 Oak Street, Apt. 214
Kansas City, MO 64112-2221

And hand-delivered to:

Lori Neidel,
Chief Enforcement Counsel

Diann Wingrath, Specialist