

State of Missouri
Office of Secretary of State

Case No. AP-07-40

IN THE MATTER OF:

CAPITAL FUNDING MANAGEMENT, INC.;
DELBERT R. HUELLE;
STEVEN EDWARD GWIN; and
ERIC KRAUSE,

Respondents.

Serve Capital Funding Management, Inc., and
Delbert Huelle at:

955 South Virginia Street
Reno, Nevada 89502

Serve Steven Edward Gwin at:

406 Castlegate Drive
Ozark, Missouri 65721

Serve Eric Krause at:

405 S. Jefferson
Raymore, Missouri 65082

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

On July 12, 2007, the Enforcement Section of the Securities Division (the "Division") of the Office of Secretary of State, through its Assistant Commissioner of Securities Mary S. Hosmer, filed a Petition for Order to Cease and Desist 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. Capital Funding Management, Inc. ("Capital Funding"), is a Nevada corporation and has a business address of 955 South Virginia Street, Reno, Nevada 89502.
2. Delbert R. Huelle ("Huelle") is the president, secretary, treasurer, and director of Capital Funding. Huelle was an Arkansas-licensed insurance agent until April 8, 2004. Huelle's last known address is 955 South Virginia Street, Reno, Nevada 89502.
3. Steven Edward Gwin ("Gwin") was a Missouri-licensed insurance agent with license number PR250357. Gwin's Missouri insurance license expired on July 1, 2003. Gwin was an agent of Capital Funding. On June 15, 2007, the Missouri Commissioner of Securities issued an order against Gwin and others prohibiting the continued offer and sale unregistered securities, transaction of business as an unregistered agent, omission of material facts in connection with the offer or sale of a security, and engaging in an act, practice, or course of business that would operate as a fraud or deceit upon another person. See In the matter of First Nevada Marketing, Inc, et al. File No. AP-07-35, June 15, 2007 (Mo. Div. Sec.). Gwin's last known address is 406 Castlegate Drive, Ozark, Missouri 65721.
4. Eric Krause ("Krause") was an employee of Capital Funding. Krause worked part-time assisting Gwin with client account updates. Krause has a current address of 405 S. Jefferson, Raymore, Missouri, 65082.
5. Millennium Trust Company ("Millennium"), is a non-bank trust company that provides non-discretionary custodial services on self-directed individual retirement accounts ("IRAs"). Millennium has a business address of 820 Jorie Blvd., Suite 420, Oak Brook, Illinois 60523.
6. As used herein, the term "Respondents" refers to Capital Funding, Huelle, Gwin and Krause.
7. In or around 2004, a Missouri Resident ("MR1") purchased several insurance products from Gwin. In early May 2007, MR1 contacted Gwin to request updated insurance statements and to discuss withdrawals from several of MR1's accounts. Gwin told MR1 that Gwin had hired Krause, an insurance agent, who would be working on client update reports for Gwin.
8. In early May 2007, Gwin contacted MR1 to discuss a new investment. Gwin told MR1, in part, that:

- a. The investment would be in an annuity in the amount of nineteen thousand, three hundred ninety-six dollars and six cents (\$19,396.06);
 - b. The investment would yield 7-9% interest with a 2% minimum guarantee;
 - c. The investment money would be transferred to Millennium where it would remain in a money market account and then an annuity would be purchased; and
 - d. The investment was risk free.
9. In May 2007, Gwin brought papers to MR1's home for MR1 to sign. MR1 recalled signing a document titled, Self Directed IRA Adoption Agreement to transfer MR1's IRA account to Millennium.
10. In July 2007, MR1 learned of the Missouri Commissioner's June 15, 2007, Cease and Desist Order against Gwin.
11. In July 2007, MR1 contacted Millennium to check the status of MR1's IRA. During this telephone call, MR1 was told by a Millennium representative, among other things, that:
- a. Five hundred and thirteen dollars (\$513.00) remained in MR1's money market account with Millennium;
 - b. The account included a promissory note dated June 15, 2007. This June 15, 2007, note stated, in part, the following:
"Capital Funding Management, Inc., promises to pay to the order of Millennium Trust Company LLC, Custodian FBO: [MR1 Account #] the following:
 - 1) The sum of \$17,400.00, for the value received with interest at the annual rate of 9% payable at maturity.
 - 2) Payment in full will be made on or before June 15, 2009, at the offices of Millennium Trust Company LLC, currently at 820 Jorie Blvd. Suite 420, Oak Brook, IL. 60523"
12. This June 15, 2007, note was signed by Huelle as a representative of Capital Funding. MR1 stated that MR1 did not sign the promissory note although MR1's signature appears to be affixed to that document.
13. On July 9, 2007, a Missouri resident ("MR2"), and spouse ("MR3") told an investigator with the Division, in part, the following:
- a. In late spring 2007, Gwin contacted MR2 and MR3 about rolling over their IRAs to Millennium;
 - b. Gwin told MR2 and MR3 that Krause would be working with Gwin on the paperwork associated with the transfer of MR2 and MR3's funds;
 - c. MR2 and MR3 understood that the money would remain at Millennium and draw 14% interest;
 - d. In late May 2007, MR2 wrote two personal checks made payable to Millennium to set up MR2 and MR3's IRAs in the amounts of seventeen thousand six hundred dollars (\$17,600.00) for MR2's account and two thousand nine hundred ninety seven dollars and fifty six cents (\$2,997.56) for MR3's account;
 - e. On July 9, 2007, MR2 discovered, among other things, that:
 - i. seventeen thousand, six hundred dollars (\$17,600.00) from MR2's account and two thousand, four hundred fifty dollars (\$2,450.00) from MR3's account had been wired to a Capital Funding account with Cole Taylor Bank in Illinois to purchase a promissory note;
 - ii. The promissory notes contained in their IRA files at Millennium were signed by Huelle;
 - iii. MR2's promissory note stated, among other things, the following:
"Capital Funding Management, Inc., promises to pay to the order of Millennium Trust Company LLC, Custodian FBO: [MR2 Account #] the following:
 - 1). The sum of \$17,600.00 for the value received with interest at the annual rate of 9% payable at maturity.
 - 2). Payment in full will be made on or before May 30, 2009, at the offices of Millennium Trust Company LLC, currently at 820 Jorie Blvd. Suite 420, Oak Brook, IL. 60523"
 - iv. MR3's promissory note stated, among other things, the following:
"Capital Funding Management, Inc. promises to pay to the order of Millennium Trust Company LLC, Custodian FBO: [MR3 Account #] the following:

- 1). The sum of \$2,450.00 for the value received with interest at the annual rate of 9% payable at maturity.
 - 2). Payment in full will be made on or before May 30, 2009, at the offices of Millennium Trust Company LLC, currently at 820 Jorie Blvd. Suite 420, Oak Brook, IL. 60523”
- f. MR2 and MR3 had never seen the promissory notes that were placed in their Millennium files. MR2 and MR3 did not sign these promissory notes although their signatures appear to be affixed to those documents.
14. To date, MR2 and MR3 have not received a return of their investment money.
 15. On July 7, 2007, Krause met with an investigator with the Division. During this meeting Krause stated, among other things, the following:
 - a. Krause met Gwin through Gwin’s stepson, Nathan Schollmeyer;
 - b. Krause began working as an intern for Gwin in October 2006. Krause worked out of Gwin’s office located at Gwin’s residence in Ozark, Missouri;
 - c. Krause did paperwork for Gwin and was paid eight dollars (\$8.00) an hour. From October 2006, to June 2007, Krause received checks totaling over four thousand dollars (\$4,000.00) from Gwin;
 - d. At Gwin’s urging, Krause became licensed with the Missouri Department of Insurance, Financial Institutions and Professional Registration on October 23, 2006, with license number PR381035. Krause was only licensed to sell life insurance products. Krause stated that he has never sold an insurance product;
 - e. In December 2006, Gwin asked Krause to open a post office box in Ozark, Missouri under Krause’s name. Krause stated he opened this post office box in December 2006;
 - f. In May 2007, Krause gave Gwin permission to use Krause’s name on investment documents and Gwin had a signature stamp made for Krause’s signature; and
 - g. Krause established an email account through hotmail.com to be used for correspondence relative to Krause’s position as an agent with Gwin’s clients and their investments and to communicate with Gwin.
 16. A check of the records maintained by the Missouri Commissioner of Securities confirmed that:
 - a. The promissory notes sold by Capital Funding have never been registered as securities in the State of Missouri;
 - b. Gwin was not registered as an agent of an issuer in the State of Missouri;
 - c. Huelle was not registered as an agent of an issuer in the State of Missouri; and
 - d. Krause was not registered as an agent of an issuer in the State of Missouri.
 17. Millennium had the following documents, among others, on file for MR1, MR2 and MR3’s accounts:
 - a. a document titled, The Self Directed IRA Adoption Agreement. This was a three-page document that established a self-directed IRA at Millennium for these investors. This document stated, among other things, that:
 - i. the investor, “acknowledges and agrees that it is their sole responsibility to direct the investment of the assets of my IRA;”
 - ii. Millennium, as the custodian of the IRA, “has no liability for any losses in the account . . . does not provide any investment management or advice . . . and is not responsible for the performance of any asset in the account”
 - b. a two-page document reflecting that Krause was the servicing agent for the investments held in the IRA. As servicing agent Krause was to perform “all duties and exercise all discretions . . . to protect the rights of the Account Owner and assure timely collection of payments;”
 - c. a document titled, The Private Placement Investment Direction. This was a two- page document that authorized Millennium to “execute the purchase of a Capital Funding Management, Inc. promissory note” for the IRA. This document contains among other things, an investor acknowledgement that the investor understands all offering information pertaining to the purchase of the investment;
 - d. a Capital Funding promissory note signed by Huelle that promised to pay to the order of Millennium for the benefit of the investor the invested amount with interest at the annual rate of 9% payable at maturity; and
 - e. a document indicating that funds in the IRA were debited from the account and wired to a Capital Funding account at Cole Taylor Bank in Illinois.

18. A check of the records revealed that Gwin was convicted and sentenced on conspiracy to defraud, a class D felony, on February 11, 1992, in the Northern District of Ohio, Eastern Division (Case # 1:91CR0192-001). [\[1\]](#)
19. Under this court's order, Gwin was sentenced to serve 20 months in the Seymour Johnson Federal Prison Camp in North Carolina. The court also ordered Gwin to pay restitution to the victims of that fraud in the amount of thirty thousand dollars (\$30,000.00).
20. A check of the records revealed that on April 8, 2004, Huelle's insurance license with the Arkansas Insurance Department was revoked. In this April 8, 2004, revocation order the Arkansas Insurance Commissioner found, among other things, that Huelle had signed his name to insurance applications solicited by someone he knew to be unlicensed in violation of Arkansas insurance law. In the matter of Delbert R. Huelle and Senior Advisors, Inc., A.I.D. No. 2004-003A, April 8, 2004 (Ark. Insurance Department).
21. In early July 2007, a representative of the Division spoke to MR1, MR2, and MR3 regarding their investments with Respondents. These investors stated that prior to the time that the investors made their investments, Respondents did not tell these investors the following:
 - a. that the Respondents were not registered to offer or sell securities in the State of Missouri;
 - b. that the securities were not registered in the State of Missouri;
 - c. that Huelle was the president of Capital Funding;
 - d. that Huelle's insurance license in Arkansas had been revoked;
 - e. that there were risks associated with the investment;
 - f. that Gwin had been convicted of a felony; or
 - g. that Gwin had served time in prison.
22. 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. STATUTORY PROVISIONS

23. Section 409.6-601(a), RSMo. (Cum. Supp. 2006), provides that the Missouri Securities Act of 2003 "shall be administered by the commissioner of securities"
24. Section 409.1-102(26), RSMo. (Cum. Supp. 2006), 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."
25. Section 409.1-102(28), RSMo. (Cum. Supp. 2006), provides the definition of a "Security," and in that definition includes a "note" and "evidence of indebtedness."
26. Section 409.3-301, RSMo. (Cum. Supp. 2006), 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.
27. Section 409.4-402, RSMo. (Cum. Supp. 2006), provides:

It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this act as an agent or is exempt from registration as an agent under subsection (b).
28. Section 409.5-501, RSMo. (Cum. Supp. 2006), provides:

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 to state a material fact necessary in order to make the statement made,

(3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

29. Section 409.6-604(a), RSMo. (Cum. Supp. 2006), provides:

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 . . . an act, practice or course of business constituting a violation of 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 and appropriate to comply with this act;

(2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an investment advisor under section 409.4-403(b)(1)(C); or

(3) Issue an order under section 409.2-204.

30. Section 409.6-604(d), RSMo. (Cum. Supp. 2006), provides:

In a final order . . . the commissioner may impose a civil penalty up to one thousand dollars (\$1,000.00) for a single violation or up to ten thousand dollars (\$10,000.00) for more than one violation.

31. Section 409.6-604(e), RSMo. (Cum. Supp. 2006), provides:

In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

III. CONCLUSIONS OF LAW

Multiple Violations of Offering or Selling Nonexempt, Unregistered Securities

32. Paragraphs 1 through 31 are incorporated by reference as though fully set forth herein.

33. The investments, in the form of promissory notes, sold by Respondents Gwin, Huelle, and Capital Funding, to MR1, MR2 and MR3, come under the definition of "securities" contained in Section 409.1-102(28), RSMo. (Cum. Supp. 2006), which states that security means, among other things, a "note" or "evidence of indebtedness."

34. Respondents Gwin, Huelle, and Capital Funding's actions in offering securities to Missouri residents are 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 an "offer to sell" under Section 409.1-102(26), RSMo. (Cum. Supp. 2006). The Respondents' actions in selling securities to Missouri residents constitute a "contract to sell, or disposition of, a security or interest in a security for value," which satisfies the definition of a "Sale" under Section 409.1-102(26), RSMo. (Cum. Supp. 2006).

35. 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 allegedly offered or sold by Respondents.

36. The Respondents Gwin, Huelle, and Capital Funding violated Section 409.3-301, RSMo. (Cum. Supp. 2006), 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. 2006), or (3) registered under the Missouri Securities Act of 2003.

37. Respondents Gwin, Huelle, and Capital Funding's actions in offering or selling unregistered securities, constitute an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2006).

38. Respondent Krause's actions in acting as a servicing agent materially aided Gwin, Huelle and Capital Funding in offering and selling securities to MR1, MR2 and MR3, and constitutes the act of materially aiding an act, practice or course of business constituting a violation of the Missouri Securities Act of 2003.

Multiple Violations by Respondent Gwin of Transacting Business as an Unregistered Agent

39. Paragraphs 1 through 31 are incorporated by reference as though fully set forth herein.

40. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration or granted exemption for Respondent Gwin to transact business as an agent in the State of Missouri.

41. Respondent Gwin violated Section 409.4-402, RSMo. (Cum. Supp. 2006), when he offered or sold securities in the State of Missouri without being registered or exempt from registration as an agent, as described in paragraphs 7, 8, 9 and 13, above.

42. Respondent Gwin's actions in transacting business as an unregistered agent, constitute an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2006).

Multiple Violations of Making an Untrue Statement or Omitting to State Material Facts in Connection with the Offer or Sale of a Security

43. Paragraphs 1 through 31 are incorporated by reference as though fully set forth herein.

44. In connection with the offer or sale of securities, Respondents Gwin, Huelle and Capital Funding made untrue statements of material fact to MR1 that the investment was risk free, when, in fact, this was not true.

45. Respondents Gwin, Huelle, and Capital Funding violated Section 409.5-501(2), RSMo. (Cum Supp. 2006), when they made the untrue statement of material fact as described immediately above.

46. Respondents Gwin, Huelle, and Capital Funding's actions in making an untrue statement of material fact, in connection with the offer, sale or purchase of a security, constitute a violation of Section 409.5-501, and is an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2006).

47. In connection with the offer or sale of securities to MR1, MR2, or MR3, Respondents Gwin, Huelle and Capital Funding 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 sell securities in the State of Missouri;
- b. that the securities were not registered in the State of Missouri;
- c. that Huelle was the president of Capital Funding;
- d. that Huelle's insurance license in Arkansas was revoked;
- e. that there were risks associated with the investment;
- f. that Gwin had been convicted of a felony; or
- g. that Gwin had served time in prison.

48. Respondents Gwin, Huelle, and Capital Funding violated Section 409.5-501(2), RSMo. (Cum. Supp. 2006), when they omitted to state the material facts described above and when stating such facts were necessary to make the statements made not misleading.

49. Respondents Gwin, Huelle, and Capital Funding's actions in omitting to state these material facts, in connection with the offer, sale or purchase of a security, constitute an illegal act, practice, or course of business under Section 409.6-604(a), RSMo. (Cum. Supp. 2006).

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 any securities as defined by Section 409.1-102(28), RSMo. (Cum. Supp. 2006), or materially aiding in the offer and sale of such securities, 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; and
- B. transacting business as an unregistered agent;
- C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2006), by, in connection with the offer or sale 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 engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

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 (\$10,000.00) against each Respondent for more than one violation of Section 409.3-301, RSMo. (Cum. Supp. 2006), 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. 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 (\$10,000.00) against Respondent Gwin for multiple violations of Section 409.4-402, RSMo. (Cum. Supp. 2006), in a final order, unless Respondent Gwin requests a hearing and shows cause why the penalty should not be imposed.

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 (\$10,000.00) against each of Respondents Gwin, Huelle, and Capital Funding, for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2006), 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 Division has petitioned for an award for the 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. 2006), 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 18TH DAY OF JULY, 2007.

State of Missouri
Office of Secretary of State

ROBIN CARNAHAN
SECRETARY OF STATE

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

Case No. AP-07-40

IN THE MATTER OF:

CAPITAL FUNDING MANAGEMENT, INC.;
DELBERT R. HUELLE;
STEVEN EDWARD GWIN; and
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Serve Capital Funding Management, Inc., and
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406 Castlegate Drive
Ozark, Missouri 65721

Serve Eric Krause at:

405 S. Jefferson
Raymore, Missouri 65082

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 § 409.6-604(b), RSMo Supp. 2005, 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 18th day of July, 2007, copies of the foregoing Order in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

Capital Funding Management, Inc.
955 South Virginia Street
Reno, Nevada 89502

Delbert Huelle
955 South Virginia Street
Reno, Nevada 89502

Steven Edward Gwin
406 Castlegate Drive
Ozark, Missouri 65721

Eric Krause
405 S. Jefferson
Raymore, Missouri 65082

And hand delivered to:

Mary S. Hosmer
Assistant Commissioner
Securities Division

John Hale
Specialist

[1] The judgment of sentence and conviction stated that the date of imposition of sentence was February 11, 1991 instead of 1992. This judgment, however, stated that Gwin was delivered to the Seymour Johnson Correction Federal Prison on April 10, 1992. Records obtained from the Bureau of Prisons confirmed that the sentence was imposed on February 11, 1992, and that Gwin was received by the prison on April 10, 1992 and served over one year in that facility.