

State of Missouri
Office of Secretary of State

Case No. AP-08-35

IN THE MATTER OF:

MIKE BALL,

Respondent.

Serve at: 1517 West Walnut
Nevada, Missouri 64772

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

On December 19, 2008, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through its Chief Enforcement Counsel Lori J. Neidel, submitted 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. Michael W. Ball ("Ball") is an individual with an address of 1517 West Walnut, Nevada, Missouri 64772.
2. For purposes of this order, the term "Respondent" refers to Ball.
3. On or about October 15, 2007, the Missouri Division of Securities received information that Respondent had solicited a Missouri resident ("MR1") about an investment opportunity in August 2003.
4. Respondent told MR1 about an investment opportunity while the two were at work. Both MR1 and Respondent are employed at a manufacturing plant in Nevada, Missouri. Respondent works in plant maintenance.
5. Respondent stated to MR1, among other things, that:
 - a. the investment proceeds were to be used to finance the construction of a new bank building in Alabama;
 - b. the investment would be short-term (30 days to 1 year);
 - c. the investment would pay interest at 30.5%;
 - d. the investment was guaranteed by government bonds;
 - e. MR1 would receive a return of MR1's original investment upon completion of the bank's construction; and
 - f. the investment was offered in blocks of \$10,000.
6. According to MR1, after MR1 told Respondent that MR1 had only six thousand dollars (\$6,000) to invest, not the ten thousand dollars (\$10,000) that was required, Respondent stated he would invest four thousand dollars (\$4,000) of his own money so that MR1 could participate in the investment opportunity.
7. On August 21, 2003, Respondent went to MR1's home in Missouri to collect a check for the investment. MR1 made the check payable to Respondent personally in the amount of six thousand dollars (\$6,000). The memo line of the check reads "Investment certificate ALA3540."
8. Respondent provided MR1 with a handwritten, signed receipt stating:

"08/21/03 ----Friday----I Mike Ball received 6000.00 from check of moneys to purchase certificate of bond ALA354XXXXXX for guaranteed funds for 30.5% on minimum 30 day at B.R. Investments NKC Mo. To be purchased on 8-22-03."
9. On or about August 25, 2003, Respondent cashed MR1's check at MR1's bank.
10. An analysis of the records maintained by the Missouri Commissioner of Securities confirmed that:
 - a. there was no registration or notice filing indicating status as a "federal covered security" for the securities offered by Respondent to MR1; and

- b. Respondent is not a registered securities agent in Missouri.
11. To date, MR1 has not received a certificate, or a return of principal or interest.
 12. On April 23, 2008, Respondent provided a recorded statement regarding the allegations in the complaint filed by MR1 with the Enforcement Section. In the recorded statement, Respondent stated, among other things, that:
 - a. Respondent didn't really know who BR Investments was but a man named Brian Rich ("Rich") called Respondent on the telephone approximately two (2) weeks prior to the date MR1 invested money and asked Respondent if he was looking for an investment with a good return to which Respondent replied "yeah";
 - b. Respondent met with Rich shortly thereafter in a restaurant across the street from Respondent's employer in Nevada, Missouri, and Rich told Respondent about an investment with a good return;
 - c. Rich told Respondent the investment was available only in "blocks" of \$10,000 each, and Respondent could "co-own" the blocks with others but the total amount would have to be \$10,000 per block;
 - d. Respondent understood the investment to be such that investors would lend money to someone in exchange for payments and Rich's company made money by connecting people like Respondent to people like "them";
 - e. Respondent did not keep any paperwork related to the investment and Rich did not have a business card;
 - f. Respondent provided MR1 with a handwritten receipt in exchange for the investment check on the same date;
 - g. Approximately two days after receiving the check from MR1, Respondent personally went to MR1's bank to cash the investment check;
 - h. Respondent invested \$14,000 of his own money along with the money from MR1 to purchase two "blocks" of certificates with Rich;
 - i. Respondent did not have any evidence to show that he invested because the funds Respondent used to personally invest came out of his safe deposit box;
 - j. Respondent told several other individuals about the investment; however, MR1 was the only person that actually invested with Rich other than Respondent;
 - k. Respondent took a total of \$20,000 in cash which represented both his and MR1's investment to a meeting with Rich at Gates BBQ in Olathe, Kansas within several days of receiving MR1's investment money;
 - l. In exchange for the \$20,000 cash, Respondent received a handwritten receipt from Rich that was similar to the one Respondent wrote out to MR1;
 - m. Respondent did not save the receipt;
 - n. Respondent never received any documents, certificates, or any other evidence of his investment but did not express much concern until after a year;
 - o. Respondent spoke with Rich on the telephone several times to inquire about the money and Rich always told Respondent that Rich would get Respondent something, but that never happened;
 - p. After one year, when Respondent was no longer able to contact Rich, Respondent went to Kansas City, Missouri to find Rich's office but could not locate it; and
 - q. To date, neither Respondent nor MR1 have received their investment money or promised interest.
 13. On May 22, 2008, an investigator with the Division received a telephone call from a Missouri resident who was formerly a Kansas resident ("MR2"), who in 2002 also invested money with the Respondent.
 14. MR2 also worked at the same employer as the Respondent in Nevada, Missouri.
 15. MR2 stated that in April 2002, the Respondent approached MR2 at work with an investment opportunity and stated, among other things, that:
 - a. in exchange for a \$10,000 investment, MR2 could receive interest at 1.5% monthly, compounded yearly;
 - b. the investment was to be in a paycheck loan business; and
 - c. if MR2 wanted out, then MR2 could get his money back at any time.
 16. On April 16, 2002, MR2 wrote a check payable to Respondent for \$5,000.

17. Respondent cashed MR2's investment check at MR2's bank on the same date.
18. MR2 did not receive any documentation of his investment from Respondent.
19. To date, MR2 has not received a return of principal or the promised interest payments.
20. An analysis of the records maintained by the Missouri Commissioner of Securities confirmed that:
 - a. there was no registration or notice filing indicating status as a "federal covered security" for the securities offered by the Respondent to MR2; and
 - b. Respondent is not a registered securities agent in Missouri.

II. STATUTORY PROVISIONS

21. Section 409.1-102(28), RSMo. (Cum. Supp. 2007), defines a "security," in part, as a bond, debenture, evidence of indebtedness, or certificate of interest or participation in a profit-sharing agreement.
22. Section 409.1-102(28)(D), RSMo. (Cum. Supp. 2007), states that the term "security" includes an "investment contract" and defines "investment contract" as 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, and defines a "common enterprise" as an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investor.
23. Section 409.1-102(20), RSMo. (Cum. Supp. 2007), defines "person" in part, as an individual, corporation, business trust, partnership, limited liability company, or any other legal or commercial entity.
24. Section 409.1-102(26), RSMo. (Cum. Supp. 2007), 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 409.3-301, RSMo. (Cum. Supp. 2007), states:

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.
26. Under Section 409.4-402(a), RSMo. (Cum. Supp. 2007), 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 exempt from registration.
 27. Section 409.5-501, RSMo. (Cum. Supp. 2007), states:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) 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.
28. Section 409.5-503, RSMo. (Cum. Supp. 2007), states that "[i]n a[n] . . . administrative proceeding under this act, a person claiming an exemption, exception, preemptions, or exclusion has the burden to prove the applicability of the claim"
 29. Section 409.6-601(a), RSMo. (Cum. Supp. 2007), provides that the Missouri Securities Act of 2003 "shall be administered by the commissioner of securities"
 30. Section 409.6-604(a), RSMo. (Cum. Supp. 2007), states:

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) 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

31. Section 409.6-604(b), RSMo. (Cum. Supp. 2007), states:

An order under subsection (a) is effective on the date of issuance If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law.

32. Section 409.6-604(c), RSMo. (Cum. Supp. 2007), reads in part as follows: “The final order may make final, vacate, or modify the order issued unless under subsection (a).”

33. Section 409.6-604(d), RSMo. (Cum. Supp. 2007), states: “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.”

34. Section 409.6-604(e), RSMo. (Cum. Supp. 2007), states: “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.”

III. CONCLUSIONS OF LAW

Multiple Violations of Offering or Selling an Unregistered Security

35. Paragraphs 1 through 34 are incorporated by reference as though fully set forth herein.

36. Respondent offered or sold MR1 a security in the form of a “certificate of bond.”

37. Respondent offered or sold MR2 a security in the form of an “investment contract.”

38. At all times relevant, records maintained by the Commissioner of Securities contained no registration, granted exemption or notice filing indicating status as a “federal covered security” for the certificate of bond offered to MR1 by the Respondent.

39. At all times relevant, records maintained by the Commissioner of Securities contained no registration, granted exemption or notice filing indicating status as a “federal covered security” for the investment contract offered to MR2 by the Respondent.

40. Respondent violated Section 409.3-301, RSMo. (Cum. Supp. 2007), when he 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. 2007), or (3) registered under the Missouri Securities Act of 2003.

41. Respondent’s actions in offering and selling unregistered, nonexempt securities in Missouri constitute an illegal act, practice, or course of business and such action is therefore subject to the Commissioner’s authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).

Multiple Violations of Transacting Business as an Unregistered Agent

42. Paragraphs 1 through 34 are incorporated by reference as though fully set forth herein.

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

44. Respondent violated Section 409.4-402(a), RSMo. (Cum. Supp. 2007) when he offered or sold securities to MR1 in the state of Missouri without being registered or exempt from registration as an agent.

45. Respondent violated Section 409.4-402(a), RSMo. (Cum. Supp. 2007) when he offered or sold securities to MR2 in the state of Missouri without being registered or exempt from registration as an agent.

46. Respondent Ball’s actions in offering or selling a security without registration as an agent constitute an illegal act, practice, or course of business and such action is therefore subject to the Commissioner’s authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).

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

47. Paragraphs 1 through 34 are incorporated by reference as though fully set forth herein.

48. Respondent Ball made untrue statements of material fact in connection with the offer or sale of a security to MR1 when he stated, among other things, that:

a. MR1 would receive certificates for a short-term investment (30 days to 1 year), that would pay interest at 30.5%;

- b. MR1's investment was guaranteed by government bonds; and
- c. MR1 would receive a return of MR1's original investment upon completion of the bank building in Alabama,

When, in fact, these statements were not true.

49. Respondent Ball made untrue statements of material fact in connection with the offer or sale of a security to MR2 when he stated, among other things, that:
- a. MR2 would receive interest in a paycheck loan business;
 - b. would receive at 1.5% monthly interest, compounded yearly; and
 - c. MR2 would be able to get MR2's money back at any time,

When, in fact, these statements were not true.

50. Respondent Ball violated Section 409.5-501(2), RSMo. (Cum. Supp. 2007), when he made untrue statements of material fact in connection with the offer or sale of securities.
51. Respondent Ball's actions in making an untrue statement of a material fact constitute an illegal act, practice, or course of business and such action is therefore subject to the Commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).

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

52. Paragraphs 1 through 34 are incorporated by reference as though fully set forth herein.
53. In the connection with the offer or sale of a security, Respondent Ball omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, when he omitted to state to MR1, among other things, that:
- a. security offered was not a registered security in the State of Missouri;
 - b. Respondent was not registered to offer securities in the State of Missouri;
 - c. Respondent would not purchase a bond with MR1's funds;
 - d. Respondent had offered or sold securities to MR2 without registration; and
 - e. MR2 had not received a return of MR2's investment in the security Respondent had offered MR2.
54. Respondent Ball violated Section 409.5-501(2), RSMo. (Cum. Supp. 2007), when, in connection with the offer or sale of a security, he omitted to state material facts necessary to make statements made, in the light of the circumstances under which they were made, not misleading.
55. Respondent Ball's actions in omitting to state material facts constitute an illegal act, practice, or course of business and such action is therefore subject to the Commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).
56. This order is in the public interest and consistent with the purposes intended by the Missouri Securities Act of 2003. See Section 409.6-605(b), RSMo. (Cum. Supp. 2007).

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 409.3-301, RSMo. (Cum. Supp. 2007), by, offering or selling securities 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 the Missouri Securities Act of 2003;
- B. violating or materially aiding in any violation of Section 409.4-402(a), RSMo. (Cum. Supp. 2007), by transacting business in this state as an agent unless registered under this act as an agent or exempt from registration as an agent; and
- C. violating or materially aiding in any violation of Section 409.5-501(2), RSMo. (Cum. Supp. 2007), 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.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2007), in a final order, unless Respondent 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. 2007), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent for multiple violations of Section 409.4-402(a), RSMo. (Cum. Supp. 2007), in a final order, unless Respondent 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. 2007), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2007), in a final order, unless Respondent requests a hearing and shows cause why the civil penalty should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an award for the costs of the investigation against Respondent in this proceeding, the Commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2007), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondent requests a hearing and shows cause why such an award should not be made.

SO ORDERED.

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 14TH DAY OF JANUARY, 2009.

ROBIN CARNAHAN
SECRETARY OF STATE

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

State of Missouri
Office of Secretary of State

Case No. AP-08-35

IN THE MATTER OF:

MIKE BALL,

Respondent.

Serve at:

1517 West Walnut
Nevada, Missouri 64772

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. 2007), and 15 CSR 30-55.020.

Within fifteen (15) days after receipt of a request in a record from a person or persons subject to this order, the Commissioner will schedule this matter for a hearing.

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

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

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2009, copies of the foregoing Order and Notice in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

Mike Ball
1517 West Walnut
Nevada, Missouri 64772

And hand delivered to:

Lori Neidel
Chief Enforcement Counsel
Securities Division

John Hale, Specialist