

State of Missouri
Office of Secretary of State

Case No. AP-09-33

IN THE MATTER OF:

ARMOD L. HINKLE; *and*
GINA M. HINKLE,

Respondents.

Serve both: Armod L. Hinkle and
Gina M. Hinkle at:
1629 Mowbry Lane
St. Louis, Missouri 63136

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

On September 3, 2009, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through its Chief Enforcement Counsel, Nathan Soendker, 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. Direcutec, LLC ("Direcutec"), was a Missouri limited liability company with last known business address of 1529 Amber Way Drive, Catawissa, Missouri 63015. Direcutec was organized in the state of Missouri on May 5, 2006. Direcutec filed for Articles of Termination on October 29, 2007.
2. Armod L. Hinkle ("A. Hinkle") was the Senior Vice President and Chief Operating Officer of Direcutec and has a last known address of 1629 Mowbry Lane, St. Louis, Missouri 63136.
3. Gina M. Hinkle ("G. Hinkle") was the President and Chief Executive Officer of Direcutec and has a last known address of 1629 Mowbry Lane, St. Louis, Missouri 63136.
4. As used in this Petition, the term "Respondents" refers to A. Hinkle and G. Hinkle.
5. Direcutec was purportedly organized for the purposes of developing, marketing and selling handheld hardware devices ("PDAs") and software products to law enforcement and health care and restaurant services industries.
6. From May 2006 to February 2007, Respondents offered and sold "membership units"

- in Direcutec to at least fourteen (14) investors. At least ten (10) of these investors were Missouri residents.
7. The funds received by Direcutec from the sale of the membership interests totaled at least three hundred fifteen thousand dollars (\$315,000).
 8. A check of the records maintained by the Missouri Commissioner of Securities confirmed that:
 - a. the membership units offered and sold by Respondents were not registered under the Missouri Securities Act of 2003 (the "Act");
 - b. there has been no notice filed indicating the membership units offered and sold by Respondents are federal covered securities; and
 - c. Respondents were not registered to offer or sell securities in the State of Missouri.
 9. In November 2006, an Arizona resident ("AR") was contacted by A. Hinkle about investing in Direcutec.
 10. A. Hinkle told AR, among other things, that:
 - a. Direcutec was looking for individuals to invest in Direcutec so that it could market and sell hardware and software products to be used by health care providers, restaurants, and law enforcement agencies, through the use of handheld devices, specifically personal digital assistants;
 - b. Direcutec was seeking investors to purchase Class B membership units at eighty dollars (\$80.00) per membership unit;
 - c. Direcutec would employ seven (7) sales professionals in seven (7) states to sell Direcutec products; and
 - d. AR would receive a return on AR's investment in one (1) year and that it could be large.
 11. On or about November 11, 2006, A. Hinkle sent AR an email that contained the following attachments:
 - a. Private Placement Memorandum (the "PPM");
 - b. PowerPoint presentation on Direcutec's purported products; and
 - c. Document indicating "anticipated scenario, worst case scenario and best case scenario" titled "Direcutec, LLC Profit and Loss (Income) Statement For the Third Twelve Months of Operations (Projected)" (the "Profit Projections").
 12. According to the Profit Projections, the "worst case scenario" provided for a Net Profit Before Taxes of nineteen million nineteen thousand dollars (\$19,019,000).
 13. On November 28, 2006, AR wired thirty thousand dollars (\$30,000) to Respondents

to invest in Direcutec.

14. On or about December 5, 2006, A. Hinkle provided AR a subscription agreement for the purchase of three hundred seventy five (375) shares of Class B membership units in Direcutec.
15. On or about December 5, 2006, A. Hinkle provided AR a membership certificate for three hundred seventy five (375) shares of Class B membership units in Direcutec.
16. Shortly after AR's investment, A. Hinkle offered AR an employment position with Direcutec, which AR accepted.
17. Approximately one (1) month after AR's move to Missouri, G. Hinkle told AR that G. Hinkle was folding the business and that Direcutec was unable to meet employee payroll.
18. Concerned about the financial condition and business prospects of Direcutec, sometime in early March 2007, AR and other investors requested that Respondents produce financial statements and an accounting of the expenditures in Direcutec.
19. Respondents failed to respond to the investors' request for production of Direcutec records.
20. AR repeatedly attempted to contact Respondents regarding Direcutec and the investments, but was unsuccessful.
21. To date, AR has not had AR's principal returned.
22. A. Hinkle discussed an investment opportunity in Direcutec with a Missouri resident ("MR") in late 2006. Among other things, A. Hinkle told MR that:
 - a. Direcutec was looking for investors to invest in Direcutec so that it could market and sell hardware and software products to be used by health care providers, restaurants, and law enforcement agencies, through the use of handheld devices, specifically, PDAs;
 - b. Direcutec projected that the company would make fifty million dollars (\$50,000,000) in its first year in business;
 - c. MR would receive a return of two million dollars (\$2,000,000) to three million dollars (\$3,000,000) on MR's investment of ten thousand dollars (\$10,000);
 - d. MR could be employed as an Assistant Vice President under A. Hinkle and G. Hinkle and be paid \$30-\$40 an hour if MR decided to invest in Direcutec; and
 - e. MR would receive Class A¹ shares in Direcutec.
23. On or about October 2, 2006, MR invested ten thousand dollars (\$10,000) in Direcutec with the understanding that the funds were to be used to purchase PDA inventory for Direcutec.
24. On or about November 2006, MR began employment² in Direcutec.

25. During MR's employment, MR requested on numerous occasions that Respondents provide MR with evidence of MR's investment.
26. On December 7, 2006, MR and A. Hinkle, on behalf of Direcutec, entered into an agreement rescinding MR's purchase of Direcutec stock. Under the terms of the agreement, Direcutec agreed to return MR's \$10,000 investment within 60-120 days.
27. On December 7, 2006, A. Hinkle and MR executed a subscription agreement. The agreement was back-dated to September 27, 2006.
28. On December 7, 2006, A. Hinkle provided MR a membership certificate for one hundred twenty five (125) units of Class B shares in Direcutec. The certificate was dated September 27, 2006.
29. MR waited over one hundred twenty (120) days and became concerned that MR had not received MR's principal.
30. On numerous occasions, MR telephoned A. Hinkle concerning MR's request to return the original investment. During one conversation, A. Hinkle informed MR that he was making efforts to pay MR back.
31. To date, MR has not had MR's principal returned.
32. Information obtained during the Division's investigation show that at least three hundred fifteen thousand dollars (\$315,000) in investors' funds were placed in four (4) separate bank accounts at The Private Bank.
33. An analysis of The Private Bank records indicate at least one hundred seventy-eight thousand dollars (\$178,000) of investor funds was spent by Respondents on expenses unrelated to the business in which Direcutec was purportedly engaged, including mortgage payments on G. Hinkle's private residence, Avon products, personal insurance, and unaccounted for cash withdrawals.
34. Records obtained by the Division indicate that an American Express account was opened under the name of Direcutec. Both A. Hinkle and G. Hinkle were authorized users of the Direcutec American Express account.
35. An analysis of the American Express records show that certain expenses charged to this account by Respondents were unrelated to the business in which Direcutec was purportedly engaged. From October 19, 2006 through January 28, 2007, at least twenty-one thousand dollars (\$21,000) was spent at establishments such as restaurants, discount stores, grocery stores, and clothing and fashion stores.
36. Information obtained during the Division's investigation revealed that no sales were made by A. Hinkle or G. Hinkle relating to the development and marketing of products and product software to be used by health care providers, restaurants, and law enforcement agencies, through the use of handheld devices, specifically PDAs.
37. Despite stating to investors that Direcutec would sell hardware and software products to third parties, Respondents failed to provide investors with any information showing that steps were taken to procure inventory, licensing agreements, or client prospects.

38. Respondents admitted in statements to the Division that Direcutec funds were used for the personal expenses of the Respondents' and that such use was not disclosed to investors.

II. STATUTORY PROVISIONS

39. Section 409.1-102(26), RSMo. (Cum. Supp. 2008), 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."
40. Section 409.1-102(28), RSMo. (Cum. Supp. 2008), includes, in part, "any note, stock, certificate of interest or participation in a profit-sharing agreement," and "investment contract" within the definition of a security.
41. Section 409.3-301, RSMo. (Cum. Supp. 2008), 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.

42. Section 409.4-402(a), RSMo. (Cum. Supp. 2008), reads in part, 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.
43. Section 409.5-501, RSMo. (Cum. Supp. 2008), 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.

44. Section 409.5-503(a), RSMo. (Cum. Supp. 2008), reads in part, "[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."

45. Section 409.6-601(a), RSMo. (Cum. Supp. 2008), provides that the Missouri Securities Act of 2003 "shall be administered by the commissioner of securities"

46. Section 409.6-604(a), RSMo. (Cum. Supp. 2008), 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) 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....

47. Section 409.6-604(b), RSMo. (Cum. Supp. 2008), 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.

48. Section 409.6-604(c), RSMo. (Cum. Supp. 2008), reads in part as follows: "The final order may make final, vacate, or modify the order issued unless under subsection (a)."

49. Section 409.6-604(d), RSMo. (Cum. Supp. 2008), 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.

50. Section 409.6-604(e), RSMo. (Cum. Supp. 2008), 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

51. Paragraphs 1 to 50 are incorporated by reference as though fully set forth herein.

52. Respondents offered or sold securities to at least fourteen (14) investors.

53. Respondents offered or sold AR securities as described in paragraphs 9 to 21.

54. Respondents offered or sold MR securities as described in paragraphs 22 to 31.

55. At all times relevant, records maintained by the Commissioner of Securities contained no registration, granted exemption or notice filing indicating the status as a "federal

covered security" for the securities offered to AR and MR.

56. The Respondents violated Section 409.3-301, RSMo. (Cum. Supp. 2008), when they offered or sold securities without these securities being registered, exempt or a federal covered security.
57. Respondents' actions in offering or selling unregistered securities constitute an illegal act, practice, or course of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).

Multiple Violations by Respondents of Transacting Business as an Unregistered Agent

58. Paragraphs 1 through 50 are incorporated by reference as though fully set forth herein.
59. At all times relevant, records maintained by the Commissioner of Securities contained no registration for Respondents to transact business as an agent in the state.
60. Respondents violated Section 409.4-402(a), RSMo. (Cum. Supp. 2008), when they offered and sold Direcutec securities to AR, MR and at least twelve other investors without being registered or exempt from registration as an agent.
61. Respondents' actions in transacting business as an unregistered agent constitute an illegal act, practice, or course of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).

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

62. Paragraphs 1 through 50 are incorporated by reference as though fully set forth herein.
63. In connection with the offer and sale of a security, Respondents made multiple untrue statements of material fact, including, but not limited to, the following:
 - a. That investor funds were to be used for the purpose of buying products and software, when, in fact, funds were used to pay Respondents' personal expenses, among other things;
 - b. That Direcutec would make fifty million dollars (\$50,000,000) in its first year in business; and
 - c. MR would receive a return of two million dollars (\$2,000,000) to three million dollars (\$3,000,000) on MR's investment of ten thousand dollars (\$10,000), when, in fact, this was not true.
64. Respondents violated Section 409.5-501(2), RSMo. (Cum. Supp. 2008), when, in connection with the offer and sale of securities, they made untrue statements of material fact.
65. Respondents' actions in making untrue statements of material fact, in connection with

the offer, sale or purchase of a security, constitute an illegal act, practice, or course of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).

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

66. Paragraphs 1 through 50 are incorporated by reference as though fully set forth herein.
67. In connection with the offer and sale of securities, Respondents 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 Respondents omitted to state:
 - a. The securities offered, as described in paragraphs 9-31, above, were not registered securities in the State of Missouri, not exempt from registration, and not federal covered securities;
 - b. Respondents were not registered as agents in the State of Missouri; and
 - c. Facts or information regarding the financial condition of Direcutec.
68. The Respondents violated Section 409.5-501(2), RSMo. (Cum. Supp. 2008), when they omitted to state material facts necessary to make statements made not misleading, in connection with the offer, sale or purchase of a security.
69. Respondents' actions in omitting to state material facts in connection with the offer, sale or purchase of a security, constitute illegal acts, practices, or courses of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).

Multiple Violations of Employing a Device, Scheme or Artifice to Defraud

70. Paragraphs 1 through 50 are incorporated by reference as though fully set forth herein.
71. In connection with the offer, sale or purchase of a security, Respondents employed a device, scheme or artifice to defraud when they:
 - a. Offered AR and MR employment opportunities with Direcutec, with a promise to pay substantial salaries, thereby fostering confidence and inducing AR and MR to invest in Direcutec;
 - b. After receiving AR's and MR's money, Respondents failed to provide AR and MR with the employment opportunities they were promised; and
 - c. Neither AR nor MR were returned the principal they invested in Direcutec as they were promised by Respondents.
72. Respondents' promises of employment induced AR and MR to invest in Direcutec and constitute a violation of Section 409.5-501(1), RSMo. (Cum. Supp. 2008), in that they

operated as a fraud or deceit upon AR and MR.

73. Respondents' employment of a device, scheme, or artifice to defraud investors constitutes an illegal act, practice or course of business and is therefore subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).
74. 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. 2008).

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:

- A. offering or selling any securities, as defined by Section 409.1-102(26), RSMo. (Cum. Supp. 2008), in the State of Missouri unless those securities are registered with the Securities Division of the Office of the Secretary of State in conformance with the provisions of Section 409.3-301, RSMo. (Cum. Supp. 2008);
- B. violating or materially aiding in any violation of Section 409.4-402, RSMo. (Cum. Supp. 2008), by transacting business as an unregistered agent;
- C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2008), 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 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. 2008), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of civil penalties of up to ten thousand dollars (\$10,000) against each Respondent for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2008), 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. 2008), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of civil penalties of up to ten thousand dollars (\$10,000) against each Respondent for multiple violations of Section 409.4-402, RSMo. (Cum. Supp. 2008), 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. 2008), 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 each Respondent for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2008), 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 Section has petitioned for an award for the costs of the investigation against Respondents in these proceedings, the commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2008), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and show 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 22ND DAY OF SEPTEMBER, 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-09-33

IN THE MATTER OF:

ARMOD L. HINKLE; *and*
GINA M. HINKLE,

Respondents.

Serve: Armod L. Hinkle and
Gina M. Hinkle at:
1629 Mowbry Lane
St. Louis, Missouri 63136

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.

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 Kitzi, 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 this 22nd day of September, 2009, copies of the foregoing Order and Notice in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

Armod L. Hinkle
1629 Mowbry Lane
St. Louis, Missouri 63136

Gina M. Hinkle
1629 Mowbry Lane
St. Louis, Missouri 63136

And hand delivered to:

Nathan Soendker
Acting Chief Enforcement Counsel
Securities Division

John Hale
Specialist

1 MR was told that a Class A shareholder possessed the right to vote in Direcutec.

2 MR received a compensation check in the amount of six hundred dollars (\$600.00) from Direcutec dated January 12, 2007. This check was later returned to MR due to insufficient funds.