

State of Missouri
Office of Secretary of State

Case No. AP-10-30

IN THE MATTER OF:

JAMES S. MCCLELLAN, JR.,
CRD No. 325492,

Respondent.

Serve: James S. McClellan, Jr. at:
15400 South Outer Forty - Ste 201
Chesterfield, Missouri 63017

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that James S. McClellan, Jr., ("McClellan" or "Respondent"), offered and sold investments in Meadow Ridge of Door County, LLC, ("Meadow Ridge") to at least eighteen (18) Missouri residents who invested over four million, four hundred forty thousand dollars (\$4,440,000) in Meadow Ridge. The investments were not registered or exempt from registration in Missouri, and Respondent failed to disclose material facts to these investors about the risks of the investment and the financial condition of the issuer. At least five (5) of these Missouri residents were over the age of eighty (80) at the time of their investment in Meadow Ridge. These activities constitute violations of Section 409.3-301, RSMo. (Cum. Supp. 2009) and Section 409.5-501, RSMo. (Cum. Supp. 2009) and are grounds to bar, condition, or limit Respondent's registration in Missouri pursuant to Sections 409.4-412 (d)(2), and (d)(13), RSMo. (Cum. Supp. 2009).
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Respondent's alleged sales of unregistered securities and failure to disclose material facts to investors.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2009), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

WAIVER AND EXCEPTION

5. Respondent waives his right to a hearing with respect to this matter.
6. Respondent waives any right that he may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondent stipulates and agrees with the Enforcement Section that, should the facts contained herein prove to be false or incomplete, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

8. Respondent and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (b) right to take legal or factual position in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

11. Respondent neither admits nor denies the allegations made by the Enforcement Section, but consents to the Commissioner's Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

COMMISSIONER'S FINDINGS OF FACT
CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

12. Huntleigh is a Missouri-registered broker-dealer and is registered in Missouri through the Central Registration Depository ("CRD") with CRD number 7456. Huntleigh has a main office address of 7800 Forsyth Boulevard, 5th Floor, St. Louis, Missouri 63105.
13. James S. McClellan, Jr. ("McClellan") was registered in Missouri as an agent of Huntleigh from April 2003 until August 2010. McClellan is registered in Missouri through the CRD with CRD number 325492. McClellan worked out of a Huntleigh branch office located at 15400 South Outer Forty, Suite 201, Chesterfield, Missouri 63017.
14. Wells Fargo Advisors, LLC ("Wells") is registered in Missouri through the Central Registration Depository ("CRD") with CRD number 19616. Wells has a main office address of One North Jefferson Avenue, St. Louis, Missouri 63103. From October 2001 to April 2003, McClellan was registered in Missouri as an agent with a broker-dealer now known as Wells.¹
15. Meadow Ridge of Door County, LLC ("Meadow Ridge") is a Wisconsin limited liability company with an address of 7573 State Hwy. 42, Egg Harbor, Wisconsin 54209. Meadow Ridge was organized on January 4, 2002, and McClellan was one of the original managing members of Meadow Ridge and as of the date of this order continues to be a managing member of Meadow Ridge. McClellan also purported to be the CEO of Meadow Ridge.
16. As used in this document the term Respondent refers to McClellan.
17. On August 20, 2008, the Enforcement Section requested information from Wells regarding McClellan's offer and sale of securities in Meadow Ridge.
18. On September 15, 2008, a representative of Wells sent a letter responding to the Enforcement Section's August 20, 2008, request. In this response Wells stated, among other things, that:

[1] In 2001, McClellan was registered with First Union Securities, Inc. According to CRD records First Union Securities, Inc. subsequently became Wachovia Securities, Inc. Wachovia Securities, Inc. subsequently became Wachovia Securities, LLC and Wachovia Securities, LLC subsequently became Wells.
 - a. McClellan had requested Wells approve McClellan's outside business activity ("OBA") in Meadow Ridge;
 - b. Wells prohibited McClellan from selling time share units of Meadow Ridge;
 - c. McClellan advised Wells that McClellan would not sell Meadow Ridge time share units; and
 - d. Wells was not aware of any customer who had purchased shares of Meadow Ridge through McClellan.
19. Included with the letter to the Enforcement Section was McClellan's OBA Approval Form submitted to Wells relating to McClellan's investment in Meadow Ridge. The form indicated, among other things, that McClellan would receive no compensation other than a return on his investment and that "some investors [in Meadow Ridge] may have accounts with [Wells]." McClellan stated that a list of these investors would be provided at a later time.
20. Wells provided a letter from McClellan sent via email on May 10, 2002. In this letter McClellan stated, among other things:

"Most of [the investors in Meadow Ridge] live in St. Louis and vacation in Door County. Several investors are clients of mine who have heard me talk of Door County for many years... Over 70% of the investors in [Meadow Ridge] are not clients, yet you can be assured that I will make every effort to secure them as clients..."
21. In addition, Wells provided an inter-office memorandum dated June 7, 2002, that Wells sent to McClellan regarding Meadow Ridge. In this memorandum Wells stated, among other things, that Wells understood that:
 - a. Meadow Ridge sold timeshare units;
 - b. McClellan was a passive investor in Meadow Ridge;
 - c. McClellan would act as an individual and not as a representative or agent of Wells in his dealings with Meadow Ridge; and
 - d. McClellan would not to be involved in the day to day activities of Meadow Ridge.

22. On November 12, 2009, McClellan stated to a Division Auditor and Enforcement Section Investigator that many of the individuals that invested in Meadow Ridge during his affiliation with Wells were also customers of Wells.
23. From at least April 5, 2002, until April 5, 2008, McClellan offered and sold investments in Meadow Ridge to at least eighteen (18) Missouri residents of the St. Louis area, six of whom were over the age of eighty (80).
24. Most of these eighteen (18) residents were also customers of Wells and/or Huntleigh. These eighteen residents invested in excess of four million four hundred forty thousand dollars (\$4,440,000) in Meadow Ridge through McClellan.
25. While employed by Wells, McClellan offered and sold non-voting A shares in Meadow Ridge to eleven (11) Missouri residents, most of whom were also customers of Wells.
26. On April 21, 2003, McClellan left Wells and on April 24, 2003, McClellan registered as an agent of Huntleigh.
27. From at least April 24, 2003, until April 5, 2008, McClellan offered and sold investments in Meadow Ridge to at least twelve (12) Missouri residents, six of whom were over the age of eighty (80). Most of these twelve (12) residents were also customers of Huntleigh.
28. On May 5, 2008, the Enforcement Section sent a letter to McClellan requesting information regarding McClellan's sales of Meadow Ridge.
29. In McClellan's response dated May 29, 2008, McClellan stated, among other things, the following:
 - a. "From 2002 thru [sic] March 2007, I have been *primarily* engaged in raising funds for the operation and development of Meadow Ridge Timeshare Resort;" (Emphasis added) and
 - b. "In March of 2007, I became . . . *fully engaged* in the operations of Meadow Ridge. Today, I am involved in each and every decision and work closely with an outside marketing company to promote sales at the resort." (Emphasis added)
30. A review of McClellan's CRD on November 11, 2009, revealed that McClellan listed Meadow Ridge as an OBA. In this CRD filing, McClellan stated, among other things, that:

"Meadow Ridge of Door County 7573 hwy 42, Egg Harbor, WI 54209 business: resort real estate and time shares investment related position: managing member **time: minimal to none.**" (Emphasis added)
31. On November 12, 2009 and November 13, 2009, the Audit Section of the Securities Division and two members of the Enforcement Section completed an unannounced audit of Huntleigh. Information gathered from the audit included, among other things, the following:
 - a. A June 1, 2006, memo sent to Huntleigh compliance from McClellan stating that McClellan anticipated making several sales of "C" units in Meadow Ridge;
 - b. On June 6, 2006, Huntleigh compliance sent a memo to McClellan stating that Huntleigh approved and gave consent for the sale of Meadow Ridge "C" shares. The memo also stated "Pursuant to NASD Conduct Rule 3040, you are required to keep this office informed of any future private securities transactions in which you wish to engage or facilitate for your clients;" and
 - c. In an interview with the Chief Compliance Officer of Huntleigh, Catherine Marshall ("Marshall") indicated that Huntleigh did not supervise McClellan's sales of Meadow Ridge based on Huntleigh's interpretation of Financial Industry Regulatory Authority ("FINRA") Rule 3040.
32. FINRA Rule 3040 states as follows:

"No person associated with a member shall participate in any manner in a private securities transaction except in accordance with the requirements of this Rule...

...In the case of a transaction in which an associated person has received or may receive selling compensation, a member which has received notice... shall advise the associated person in writing stating whether the member:

 - 1) approves the person's participation in the proposed transaction; or
 - 2) disapproves the person's participation in the proposed transaction."

"If the member approves a person's participation in a transaction... the transaction shall be recorded on the books and records of the member and the member shall supervise the person's participation in the transaction as if the transaction were executed on behalf of the member...

... "selling compensation" shall mean any compensation paid directly or indirectly from whatever source in connection with or as a result of the purchase or sale of a security... not limited to, commissions; finder's fees;

securities or rights to acquire securities; rights of participation in profits, tax benefits, or dissolution proceeds, as a general partner or otherwise; or expense reimbursements.”

33. As the managing member and CEO of Meadow Ridge, McClellan had a right to participate in the profits, tax benefits, dissolution proceeds, and expense reimbursements at Meadow Ridge.
34. A check of the records maintained by the Missouri Commissioner of Securities confirmed that there was no registration or notice filing indicating status as a “federal covered security” for any securities offered or sold by Meadow Ridge and McClellan.
35. Based upon its investigation, the Enforcement Section alleges, among other things, that McClellan engaged in unethical and dishonest practices in the securities business by failing to disclose, among other things, the following:
 - a. that the investments in Meadow Ridge were not registered in the State of Missouri;
 - b. that sales of Meadow Ridge were not under the supervision and control of McClellan’s employing broker-dealer;
 - c. that Meadow Ridge was in financial difficulty; and
 - d. that McClellan failed to follow the policies and procedures of his employing broker-dealer in the sales of securities in Meadow Ridge.

II. CONCLUSIONS OF LAW

36. The Commissioner finds Respondent sold unregistered securities and failed to disclose material facts to investors in violation of Sections 409.3-301 and 409.5-501 RSMo. (Cum. Supp. 2009) and that this conduct constitutes grounds to discipline Respondent under Section 409.4-412, (d)(2) and (d)(13), RSMo. (Cum. Supp. 2009).
37. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409, RSMo. (Cum. Supp. 2009).

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent’s registration is hereby BARRED;
2. Respondent shall pay a civil penalty of one hundred thousand dollars (\$100,000). This payment will be suspended provided Respondent is in compliance with the provisions of this Consent Order and with the Missouri Securities Act;
3. Respondent is ordered to pay ten thousand dollars (\$10,000) as the cost of this investigation. Eight thousand dollars (\$8,000) of this amount will be suspended provided Respondent is in compliance with the provisions of this Consent Order and with the Missouri Securities Act. Respondent shall send the remaining two thousand dollars (\$2,000) to the Securities Division within ten (10) days of the execution of this Consent Order;
4. For two (2) years from the execution of this document, the suspended payments in paragraphs two and three (2 & 3) immediately above shall become payable, under operation of law, upon Respondent’s failure to comply with the terms of this Consent Order or the Missouri Securities Act following reasonable notice, and such payments shall be in addition to all other penalties then available under the law;
5. Any payments under this Consent Order shall be mailed to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101. All penalties will be made payable to the State of Missouri. The Secretary of State shall forward all penalties received 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. Any payment for costs will be made payable to the Missouri Secretary of State’s Investor Education and Protection Fund;
6. Respondent shall pay his own costs and attorneys’ fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 13TH DAY OF DECEMBER, 2010.

ROBIN CARNAHAN
SECRETARY OF STATE

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

Mary S. Hosmer
Assistant Commissioner of Securities

James S. McClellan, Jr.
Respondent

Approved as to Form:

Jonathan F. Dalton
Attorney for Respondent