

State of Missouri
Office of Secretary of State

Case No. AP-10-38

IN THE MATTER OF:

FINANCIAL NETWORK INVESTMENT
CORPORATION, CRD #13572;
OLEKSIY STETSURA, CRD #5701018; and
DEREK ROBERTSON, CRD #5369180,

Respondents.

Serve Financial Network Investment Corporation at:
200 N. Sepulveda Boulevard
El Segundo, California 90245-5672

Serve Oleksiy Stetsura at:
250 E 63rd Street
New York, New York 10065

Serve Derek Robertson at:
511 E 73rd Street, Apartment 13
New York, New York 10021

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

On November 22, 2010, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through the Securities Division's Assistant Commissioner, Mary Hosmer, 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. Financial Network Investment Corporation ("FNIC"), is a Missouri-registered broker-dealer with a main address of 200 N. Sepulveda Boulevard, El Segundo, California 90245-5672. FNIC is registered through the Central Registration Depository System ("CRD") with CRD number 13572.
2. Oleksiy Stetsura ("Stetsura") is a New York resident with a last known address of 250 E 63rd Street, New York, New York 10065. For the period March 2, 2010, to present, Stetsura has been with FNIC as an agent registered in New York. Stetsura is registered through the CRD with number 5701018. Stetsura is not, nor has he ever been, a registered agent in Missouri.
3. Derek Robertson ("Robertson") is a New York resident with a last known address of 511 E 73rd Street Apartment 13, New York, New York 10021. For the period May 15, 2010, to present, Robertson has been with FNIC as an agent registered in New York. Robertson is registered through the CRD with number 5369180. Robertson is not, nor has he ever been, a registered agent in Missouri.
4. As used herein, the term "Respondents" refers to FNIC, Stetsura, and Robertson.
5. On two separate occasions in August and November of 2010, Stetsura and Robertson, respectively on behalf of FNIC, offered to sell securities to a Missouri resident.
6. In early August 2010, a registration/licensing specialist with the Missouri Securities Division ("MR1") received a cold call¹ from Stetsura while MR1 was at work. During that call, Stetsura:
 - a. offered to sell MR1 an unidentified security;
 - b. asked MR1 if MR1 could afford to invest; and
 - c. hung up on MR1 when MR1 interrupted Stetsura and requested details regarding Stetsura's identity.
7. On November 4, 2010, MR1 received a call from Robertson while MR1 was at work. MR1 stated to the Enforcement Section, among other things, that during that November 4, 2010, call:
 - a. MR1 could hear noise in the background that sounded like a busy office;

- b. Robertson identified himself and his employer as Financial Network;
 - [1] A method used by agents of broker-dealers to obtain new business by making unsolicited calls to potential customers who have no connection to the broker-dealer or agent.
 - c. Robertson confirmed that Financial Network was FNIC;
 - d. Robertson began a sales pitch, which MR1 stated appeared to be scripted;
 - e. Robertson spoke loudly and quickly;
 - f. Robertson occasionally stopped to answer questions from MR1 before breaking back into the sales pitch;
 - g. Robertson did not, at any point during the conversation, offer any details regarding his registration status;
 - h. Robertson did not ask MR1 any questions regarding MR1's age, income, or investment objectives; and
 - i. Robertson offered to sell a security to MR1.
8. At the end of the November 4, 2010, conversation, MR1 told Robertson that MR1 needed to consult with his wife before making any investment decisions and offered to return the call.
 9. On November 5, 2010, MR1 and a securities investigator with the Missouri Securities Division ("MR2") called Robertson. MR1 and MR2 asked Robertson additional questions about the investment opportunity.
 10. During this November 5 call, Robertson asserted he was a broker working for FNIC.
 11. Robertson offered to sell MR1 and MR2 shares of a Multi Strategy Income and Growth fund that traded under the symbol JQC.²
 12. In addition, Robertson told MR1 and MR2, among other things, that:
 - a. the market price of the fund had not yet caught up to its net asset value;
 - b. the spread between the market price and the net asset value meant that JQC was trading at a deep discount;
 - c. the market price would "catch up" to the net asset value in 6 to 8 months;
 - d. the net asset value was what JQC was actually worth;
 - [2] A method used by agents of broker-dealers to obtain new business by making unsolicited calls to potential customers who have no connection to the broker-dealer or agent.
 - e. MR1 and MR2 could expect a twenty to twenty-five percent (20-25%) return during that six to eight (6-8) month period. Robertson characterized this as a "realistic" and "very conservative" estimate;
 - f. Robertson worked for a high quality investment firm;
 - g. JQC had increased its dividend twice this year; and
 - h. JQC had been trading since 2003.
 13. Robertson told MR1 and MR2 that Robertson would do the first trade commission-free.
 14. Robertson explained what MR1 and MR2 would need to do to purchase this security. Among other things, Robertson stated that:
 - a. FNIC was a full service broker;
 - b. MR1 and MR2 could set up the basic account information through Pershing clearing house.³ Robertson stated that the check would be made out directly to Pershing;
 - c. Robertson could take care of everything that evening and send MR1 and MR2 all the information for their review overnight in order to make sure Robertson wasn't "making any misrepresentations;" and
 - d. MR1 and MR2 could buy the investment "today and sell tomorrow."
 15. Robertson told MR1 and MR2 that Robertson worked with a team of talented brokers, but he could be their broker if they wanted to deal only with him.

II. STATUTORY PROVISIONS

16. Section 409.6-601(a), RSMo. (Cum. Supp. 2009), provides that the Missouri Securities Act of 2003 “shall be administered by the commissioner of securities”
17. Section 409.1-102(1), RSMo. (Cum. Supp. 2009), defines “Agent” as an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this act.”

[3] A method used by agents of broker-dealers to obtain new business by making unsolicited calls to potential customers who have no connection to the broker-dealer or agent.

18. Section 409.1-102(26), RSMo. (Cum. Supp. 2009), 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.”
19. Section 409.1-102(28), RSMo. (Cum. Supp. 2009), defines “Security” as “a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest of participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.”
20. Section 409.4-402(a), RSMo. (Cum. Supp. 2009), states:

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).

21. Section 409.4-402(d), RSMo. (Cum. Supp. 2009), states:

It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

22. Section 409.5-501, RSMo. (Cum. Supp. 2009), states:

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, 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.

. . . .

23. Section 409.6-604, RSMo. (Cum. Supp. 2009), states:

(a)

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 or appropriate to comply with this act

(b)

An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The

order must include a statement whether the commissioner will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. 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. 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 it until final determination.

(c)

If a hearing is requested or ordered pursuant to subsection (b), a hearing before the commissioner must be provided. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536, RSMo, and procedural rules promulgated by the commissioner. The final order may make final, vacate, or modify the order issued under subsection (a).

(d)

In a final order under subsection (c), the commissioner may:

(1)

Impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation;

(2)

Order a person subject to the order to pay restitution for any loss, including the amount of any actual damages that may have been caused by the conduct and interest at the rate of eight percent per year from the date of the violation causing the loss or disgorge any profits arising from the violation;

(3)

In addition to any civil penalty otherwise provided by law, impose an additional civil penalty not to exceed five thousand dollars for each such violation if the commissioner finds that a person subject to the order has violated any provision of this act and that such violation was committed against an elderly or disabled person. For purposes of this section, the following terms mean:

(A)

“Disabled person”, a person with a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment, or being regarded as having such an impairment;

(B)

“Elderly person”, a person sixty years of age or older.”

(e)

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

Violation of Transacting Business as an Unregistered Agent

24. Paragraphs 1 through 23 are incorporated by reference as though fully set forth herein.

25. At all times relevant, records maintained by the Missouri Commissioner of Securities contained no registration or granted exemption for Respondent Stetsura or Respondent Robertson to transact business as agents in the State of Missouri.

26. Respondent Stetsura and Respondent Robertson violated Section 409.4-402(a), RSMo. (Cum. Supp. 2009), when Respondent Stetsura and Respondent Robertson transacted business in this State, through the offer of securities to investors, without being registered or exempt from registration as agents.
27. Respondent Stetsura and Respondent Robertson's actions in transacting business as unregistered agents constitute illegal acts, practices, or courses of business and thus such actions are subject to the commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2009).

Multiple Violations of Employing an Unregistered Agent

28. Paragraphs 1 through 23 are incorporated by reference as though fully set forth herein.
29. Respondent FNIC employed Respondent Stetsura and Respondent Robertson who transacted business on behalf of FNIC by calling a Missouri resident and offering to sell the Missouri resident a security.
30. Respondent Stetsura and Respondent Robertson were not registered as agents of FNIC in Missouri.
31. Respondent FNIC violated Section 409.4-402(d) RSMo. (Cum. Supp. 2009), when it employed agents who transacted business in the State of Missouri without being registered or exempt from registration as agents.
32. Respondent FNIC's actions in employing unregistered agents who transacted business in this state constitute an illegal act, practice, or course of business and thus such actions are subject to the commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2009).

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

33. Paragraphs 1 through 23 are incorporated by reference as though fully set forth herein.
34. In connection with the offer, sale or purchase of a security Respondent Stetsura and Respondent Robertson omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
 - a. In connection with the offer of these securities in Missouri, Stetsura omitted to disclose that:
 - i. Stetsura was not registered to offer or sell securities in the State of Missouri;
 - ii. FNIC employed unregistered agents who transacted business in the State of Missouri; or
 - iii. in offering securities in the State of Missouri, Stetsura was in violation of FNIC policies and procedures.
 - b. In connection with the offer of these securities in the State of Missouri, Robertson omitted to disclose that:
 - i. Robertson was not registered to offer or sell securities in the State of Missouri;
 - ii. FNIC employed unregistered agents who transacted business in the State of Missouri; or
 - iii. in offering securities in the State of Missouri, Robertson was in violation of FNIC policies and procedures.
35. Respondent Stetsura and Respondent Robertson violated section 409.5-501(2), RSMo. (Cum. Supp. 2009), when, in connection with the offer, sale or purchase of a security, they omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.
36. The actions of Respondent Stetsura and Respondent Robertson in omitting to state material facts constitute illegal acts, practices, or courses of business and thus such actions are subject to the commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2009).
37. This order is in the public interest and is consistent with the purposes of the Missouri Securities Act of 2003. See Section 409.6-605(b), RSMo. (Cum. Supp. 2009).

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. violating or materially aiding in any violation of Section 409.4-402(a), RSMo. (Cum. Supp. 2009), by transacting business as unregistered agents;
- B. violating or materially aiding in any violation of Section 409.4-402(d), RSMo. (Cum. Supp. 2009), by employing unregistered agents; and/or

C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2009), by, in connection with the offer or sale of securities, omitting to state a material fact necessary in order to make statements made, in light of the circumstances under which they are made, not misleading.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of civil penalties of up to one thousand dollars (\$1,000) against Respondent Stetsura for violation of Section 409.4-402(a), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Stetsura 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. 2009), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of civil penalties of up to one thousand dollars (\$1,000) against Respondent Robertson for violation of Section 409.4-402(a), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Robertson 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. 2009), 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 Respondent FNIC for multiple violations of Section 409.4-402(d), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent FNIC 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. 2009), 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 Respondent Stetsura for multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Stetsura 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. 2009), 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 Respondent Robertson for multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2009), in a final order, unless Respondent Robertson 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 for the costs of the investigation against Respondents in this proceedings, the commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2009), 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 award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 23rd DAY OF NOVEMBER, 2010.

ROBIN CARNAHAN
SECRETARY OF STATE

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

State of Missouri
Office of Secretary of State

Case No. AP-10-38

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IN THE MATTER OF:

FINANCIAL NETWORK INVESTMENT
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OLEKSIY STETSURA, CRD #5701018; and
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250 E 63rd Street
New York, New York 10065

Serve Derek Robertson at:
511 E 73rd Street, Apartment 13
New York, New York 10021

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. 2009), 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. Kitzl, Commissioner of Securities
Office of the Secretary of State, Missouri
600 West Main Street, Room 229
Jefferson City, Missouri, 65102.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 2010, a copy of the foregoing Order in the above styled case was **mailed by Certified U.S. mail to:**

Financial Network Investment Corporation
200 N. Sepulveda Boulevard
El Segundo, California 90245-5672

Oleksiy Stetsura
250 E 63rd Street
New York, New York 10039

Derek Robertson
511 E 73rd Street, Apartment 13
New York, New York 10021

John Hale, Specialist