

State of Missouri
Office of Secretary of State

Case No. AP-10-38

IN THE MATTER OF:

DEREK ROBERTSON

Respondents.

Serve Derek Robertson

at:

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

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that Derek Robertson ("Respondent"), as an employee of Financial Network Investment Corporation, transacted business as an unregistered agent in Missouri in violation of Section 409.4-402(d); and that this constitutes grounds to discipline and to impose civil penalties pursuant to Sections 409.4-412(d)(2), 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 Respondent's activities as an unregistered agent.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondents 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 rights 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 consent 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. 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.
13. 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 the 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.
14. As used herein, the term Respondent refers to Robertson.
15. In November 2010, Robertson, on behalf of FNIC, offered to sell securities to a Missouri resident. Robertson was not a registered agent in Missouri at the time of solicitation.
16. On November 4, 2010, MR1 received a call at the Securities Division of the Secretary of State's Office, Jefferson City, Missouri, from Robertson.
17. During that November 4, 2010, call MR1 stated, among other things, that:
 - a. MR1 could hear noise in the background that sounded like a busy office;
 - b. Robertson identified himself and his employer as Financial Network;
 - 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.
18. 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.
19. 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.
20. During this call, Robertson asserted he was a broker working for FNIC.
21. Robertson offered to sell MR1 and MR2 shares of a Multi Strategy Income and Growth fund that traded under the symbol JQC.¹
22. 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;
 - 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.
23. Robertson told MR1 and MR2 that Robertson would do the first trade commission-free.

24. Robertson explained that FNIC was a full service broker and described what MR1 and MR2 needed to do to purchase this security. Among other things, Robertson stated that:
 - a. MR1 and MR2 could set up the basic account information through Pershing clearing house.² Robertson stated that the check would be made out directly to Pershing;
 - ^[1] Records obtained by the Enforcement Section indicate that the investment was in Nuveen Multi-Strategy and Income Growth Fund 2.
 - b. 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
 - c. MR1 and MR2 could buy the investment "today and sell tomorrow."
25. Robertson told MR1 and MR2 that Robertson worked with a team of talented brokers, but he could be MR1 and MR2's broker if they wanted to deal only with Robertson.
26. According to Robertson, he made these solicitations under the guidance of his branch supervisors, and was told by those supervisors that he did not need to be registered in Missouri to solicit the sale of a security in Missouri.

II. CONCLUSIONS OF LAW

27. The Commissioner finds Respondent transacted business as an unregistered agent in violation of Section 409.4-402(d) and that this conduct constitutes grounds to discipline Respondent under Sections 409.4-412(d)(2), RSMo. (Cum. Supp. 2009).
28. 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 is prohibited from applying as a securities agent or an investment adviser representative in Missouri for two (2) months;
2. Respondent shall pay five thousand dollars (\$5,000) to the Missouri Secretary of State's Investor Protection Fund, with four thousand four hundred dollars of that amount suspended provided Respondent is in compliance with the provisions of this Consent Order and with the Missouri Securities Act. Respondent shall send the remaining six hundred dollars (\$600) to the Securities Division in six (6) equal monthly installments of one hundred dollars (\$100) each. The first installment will be due on April 1, 2011, and all other installments will be due on the first of each month with the last installment due on September 1, 2011.
- ^[2] On its CRD record, FNIC listed Pershing LLC of Jersey City, New Jersey, as its clearing broker. Pershing LLC has CRD number 7560.
3. Respondent is ordered to pay two thousand two hundred and sixty dollars (\$2,260.00) as the cost of this investigation; however this amount will also be suspended provided Respondent is in compliance with the provisions of this Consent Order and with the Missouri Securities Act;
4. For two (2) years from the execution of this document, the suspended payments in paragraph two (2) and three (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 due under this Consent Order shall be sent to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101 and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund; The Division will send the money to the Missouri Secretary of State's Investor Education and Protection Fund; and
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 16TH
DAY OF MARCH, 2011.

ROBIN CARNAHAN
SECRETARY OF STATE

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

Consented to by:
MISSOURI SECURITIES DIVISION

Mary S. Hosmer
Assistant Commissioner of Securities

Derek Robertson, Respondent