

State of Missouri  
Office of Secretary of State

Case No. AP-11-07

IN THE MATTER OF:

KOKHALA ENERGY, INC.; and  
KEVIN O'BRIEN,

Respondents.

Serve KOKHALA ENERGY, INC. at:  
7155 Stanford Avenue  
University City, Missouri 63130

Serve KEVIN O'BRIEN at:  
7155 Stanford Avenue  
University City, Missouri 63130

**CONSENT ORDER**

**SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS**

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") alleges that Kevin O'Brien ("O'Brien") and Kokhala Energy Inc. ("Kokhala"), (collectively "Respondents"), offered and sold unregistered securities in violation of Sections 409.3-301 RSMo. (Cum. Supp. 2009), and employed unregistered agents who transacted business in the State of Missouri in violation of Section 409.4-402(d) RSMo. (Cum. Supp. 2009), and that these activities constitute grounds to issue a cease and desist order against Respondents.
2. Respondents and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the alleged activity by Respondents.

**CONSENT TO JURISDICTION**

3. Respondents 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. Respondents 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. Respondents waive their rights to a hearing with respect to this matter.
6. Respondents waive any right that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever release and hold 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. Respondents and the Securities Division stipulate and agree that with this Consent Order, this matter is fully and finally resolved, and no further action shall be taken by the Securities Division against Respondents and their representatives and agents regarding any act or omission based upon or related to the conduct set forth in the Petition committed prior to the date hereof. Should the facts contained herein prove to be materially false, the Securities Division reserves the right to pursue any and all legal and administrative remedies at its disposal.

**CONSENT TO COMMISSIONER'S ORDER**

8. Respondents 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. Respondents agree 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 Respondents' (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. Respondents agree that they are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents neither admit nor deny 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. Kokhala is a Missouri corporation with a last known mailing address of 7155 Stanford Avenue, University City, Missouri 63130.
13. Kokhala was administratively dissolved by the Missouri Secretary of State on May 23, 2007, for failure to file a correct and current annual report.
14. Kokhala purportedly engaged in the business of forming and marketing a device to capture and convert heat into mechanical power from industrial or mechanical processes.
15. O'Brien is the founder and registered resident agent for Kokhala.
16. O'Brien has a mailing address of 7155 Stanford Avenue, University City, Missouri 63130.
17. In June 2004, O'Brien contacted a sixty-two (62) year-old Missouri resident ("MR1") from St. Louis, Missouri about an investment opportunity and made arrangements to meet with MR1.
18. At the meeting, O'Brien told MR1, among other things, that:
  - a. O'Brien incorporated a business in Missouri to the develop and market an energy saving device;
  - b. the device would capture car exhaust from vehicles and recycle this energy;
  - c. O'Brien wanted to develop a prototype of this device;
  - d. the device would improve gas mileage in vehicles;
  - e. this device would be developed by December 2004;
  - f. O'Brien was certain that the device "would work"; and
  - g. O'Brien needed investors to pay for the prototype;
19. On August 10, 2004, MR1 gave O'Brien a check payable to Kokhala in the amount of seventy-five thousand dollars (\$75,000) to purchase shares of stock in Kokhala.
20. Information obtained during the Enforcement Section's investigation shows that on August 19, 2004, O'Brien took MR1's investment of seventy-five thousand dollars (\$75,000) and opened an account in the name of Kokhala at National City Bank in Brentwood, Missouri ("Kokhala Bank Account").
21. In or around April 2005, O'Brien called MR1 to inform MR1 that O'Brien needed additional funds to develop the energy saving device.
22. On April 18, 2005, as a result of this request, MR1 gave O'Brien another check made payable to Kokhala in the amount of fifty thousand dollars (\$50,000).
23. Information obtained during the Enforcement Section's investigation shows that O'Brien deposited this money from MR1 into the Kokhala Bank Account.
24. Sometime in July of 2005, O'Brien asked MR1 to invest the amount of twenty-five thousand dollars (\$25,000) in Kokhala. MR1 refused to invest additional funds with O'Brien.
25. Since March 1, 2006, MR1 has not heard from O'Brien and has not received dividend payments or the return of MR1's principal.
26. In early 2006, O'Brien contacted a fifty-two (52) year-old person from St. Louis, Missouri (the "Employee"), a person O'Brien had not met previously.
27. Among other things, O'Brien told the Employee that:

- a. O'Brien was seeking to employ someone that could assist O'Brien in raising five million dollars (\$5,000,000) for O'Brien's company, Kokhala;
  - b. the duties for employment included identifying commercial users of a new alternative energy technology;
  - c. this technology was being developed through Kokhala;
  - d. Kokhala was developing a heat conversion technology built on a solar cell platform; and
  - e. O'Brien was seeking investors through a private placement memorandum in Kokhala.
28. On June 15, 2006, the Employee entered into an employment agreement with O'Brien and Kokhala.
  29. On or after June 15, 2006, O'Brien directed the Employee to use the Kokhala Private Placement Memorandum ("PPM") to raise capital from investors for Kokhala.
  30. On or before December 22, 2006, the Employee talked to a fifty-five (55) year-old St. Louis, Missouri resident ("MR2") about investing in Kokhala.
  31. MR2 understood that his funds would be used by Kokhala for the technological development and marketing of an energy saving device.
  32. On or before December 22, 2006, MR2 invested thirty thousand dollars (\$30,000) in Kokhala.
  33. On or before December 26, 2006, the Employee talked to a fifty-nine (59) year-old Missouri resident ("MR3") about investing fifty thousand dollars (\$50,000) in Kokhala.
  34. The Employee talked to MR3 about purchasing twelve thousand five hundred (12,500) shares of Series B Preferred Stock at four dollars (\$4.00) per share.
  35. MR3 understood that his funds would be used by Kokhala for the technological development and marketing of an energy saving device.
  36. The Employee provided MR3 with a copy of the PPM. The PPM stated that investor funds would be used for development and installations of energy saving prototypes, for recruitment and hiring personnel, for working capital and other general operational and corporate purposes.
  37. On December 26, 2006, MR3 invested fifty thousand dollars (\$50,000) in Kokhala.
  38. On December 28, 2006, the Employee received from Kokhala an employment check.
  39. To date, MR2 and MR3 have received neither dividend payments nor the return of their principal.
  40. Respondent O'Brien submitted a sworn affidavit certifying that he did not earn any income during the years 2008, 2009 and 2010 as well as a sworn affidavit certifying that he does not own any real estate property in the state of Missouri or any other state. Respondent O'Brien also submitted filed joint tax returns for the years 2008, 2009, and 2010 as evidence that his wife was the only income provider in their family.
  41. A review of the records maintained by the Missouri Commissioner of Securities indicates that, during all time relevant to this Order, the securities offered and sold by Respondents were not registered, were not exempt from registration and were not notice-filed as a federal-covered security.
  42. A review of the records maintained by the Missouri Commissioner of Securities indicates that, during all time relevant to this Order, none of Respondent O'Brien, Respondent Kokhala or the Employee were registered with the State of Missouri as a broker-dealer agent or issuer agent, and none were exempt from such registration.

## II. CONCLUSIONS OF LAW

43. The Commissioner finds Respondents offered and sold unregistered securities in violation of Section 409.3-301, RSMo. (Cum. Supp. 2009).
44. The Commissioner finds Respondents employed unregistered agents who transacted business in the State of Missouri in violation of Section 409.4-402(d) RSMo. (Cum. Supp. 2009).
45. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondents and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondents 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 O'Brien is BARRED from registering as a securities agent in the state of Missouri;
2. Respondents are ordered to cease and desist from offering and selling securities in violation of the provisions of Chapter 409, RSMo. (Cum Supp. 2009);
3. Respondents are ordered to cease and desist from employing unregistered agents who transact business in the State of Missouri in violation of Section 409.4-402(d) RSMo. (Cum. Supp. 2009);
4. Respondent O'Brien is ordered to pay a civil penalty in the amount of fifty thousand dollars (\$50,000). Forty-five thousand (\$45,000) of this amount will be suspended provided that Respondent O'Brien complies with the terms of this order and provided that Respondent O'Brien does not violate the Missouri Securities Act of 2003 for a period of five (5) years. The suspended payment shall, for five (5) years from the date of this Order, become immediately payable, under operation of law, upon Respondent O'Brien's failure to comply with the terms of this order, and such immediately due payment shall be in addition to all other penalties then available under the law. Respondent O'Brien shall pay the remaining, non-suspended five thousand dollars (\$5,000) in twenty (20) monthly installments of two hundred fifty dollars (\$250) each. The first payment will be due on June 1, 2011 and the final payment will be due on January 1, 2013. These payments shall be made payable to the State of Missouri and delivered to the Securities Division, 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102. The Securities Division shall forward these payments to the state treasury for the benefit of the county and township school funds as provided by Article IX, Section 7 of the Constitution of Missouri;
5. Respondents are ordered to pay five thousand dollars (\$5,000) as the cost of this investigation. This amount shall be suspended provided that Respondents each comply with the terms of this order with respect to their own obligations and provided that each Respondent does not violate the Missouri Securities Act of 2003 for a period of five (5) years. Respondents' suspended payment shall, for five (5) years from the execution of this document, become immediately payable, under operation of law, upon Respondents' failure to comply with the terms of this order;
6. The Commissioner may refer this matter for collection as provided in Section 409.6-604(g), RSMo. (Cumm. Supp. 2009); and
7. Respondents shall pay their own costs and attorney's fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 28<sup>TH</sup> DAY OF JUNE, 2011.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)

MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:  
MISSOURI SECURITIES DIVISION

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Roumen Manolov  
Deputy Chief Counsel

KEVIN O'BRIEN

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Kevin O'Brien

KOKHALA ENERGY, INC.

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By: Kevin O'Brien

