

State of Missouri
Office of Secretary of State

Case No. AP-12-03

IN THE MATTER OF:

RICHARD K. JOHNSON,

Respondent.

Serve: Richard K. Johnson at
945 Des Peres Road
St. Louis, Missouri 63131

CONSENT ORDER

SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that Richard K. Johnson ("Johnson" or "Respondent") offered and sold unregistered securities in the State of Missouri in violation of Section 409.3-301, RSMo. (Cum. Supp. 2011), and that this constitutes grounds to issue an order pursuant to Section 409.6-604, RSMo. (Cum. Supp. 2011).
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 actions of selling unregistered securities.

CONSENT TO JURISDICTION

3. Respondent and the Enforcement Section stipulate and agree that the Missouri Commissioner of Securities ("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. 2011), 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, 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. Progress St. Louis, LLC ("PSL") was a Missouri limited liability company organized on September 13, 2006, by Delbert R. Loney ("Loney"), Raymond L. Bartle ("Bartle") and Johnson. PSL was created to engage in the development, marketing and sale of affordable housing. On or about October 21, 2008, PSL was dissolved.
13. Loney was the president of PSL and has a last known address of 1743 Blue Oak, Chesterfield, Missouri 63049.
14. Bartle was an organizer of PSL and has a last known address of 5751 Degiverville Avenue, St. Louis, Missouri 63112.
15. Johnson was vice-president of PSL and has an address of 945 Des Peres Road, St. Louis, Missouri 63131.
16. In the summer of 2006, a Missouri resident ("MR") heard about PSL from MR's relatives who did construction work for PSL. Later that summer, MR stated that MR met with representatives of PSL regarding an investment in PSL and was told, among other things, the following:
 - a. PSL intended to build new housing or purchase and rehabilitate old housing with the intent to sell the housing to low-income families; and
 - b. funds from MR's investment would be used for start up costs.
17. Johnson stated that in that summer of 2006 meeting, Johnson told MR that MR's investment would be used for property development.
18. On or about October 2006, MR signed a PSL Associate Agreement that stated, among other things, the following:
 - a. MR was granting PSL "access" to a line of credit between seventy thousand dollars (\$70,000) and one hundred and fifty thousand dollars (\$150,000) to be drawn at the discretion of PSL; and
 - b. MR would receive, upon successful closing of the twenty-first (21st) home, two percent (2%) ownership interest in PSL, plus: a) repayment in full of all funds drawn, plus interest, charges or carrying costs; and b) five thousand dollars (\$5,000) distribution upon the successful closing of each and every home credited to the associate.
19. On October 11, 2006, MR issued a check in the amount of sixty-nine thousand dollars (\$69,000.00) made payable to PSL from MR's line of credit account.
20. On March 30, 2007, MR received a promissory note signed by Loney as president of PSL. Pursuant to this promissory note MR was to receive interest as assessed by MR's bank for the line of credit and a return of MR's principal by April 1, 2008.
21. From November 10, 2006 through September 17, 2007, PSL made fourteen interest payments to MR pursuant to this promissory note.
22. MR has not received a return of MR's principal or any other interest payments on this PSL promissory note. MR has not received any funds from PSL pursuant to the Associate Agreement.
23. 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 and/or sold by PSL.

II. CONCLUSIONS OF LAW

24. The Commissioner finds that Respondent Johnson offered and sold unregistered securities in violation of Section 409.3-301, RSMo. (Cum Supp. 2011), and that this activity constitutes grounds to issue an order pursuant to Section 409.6-604, RSMo. (Cum Supp. 2011).
25. 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. 2011).

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent, his agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from offering and selling unregistered securities in violation of Section 409.3-301, RSMo. (Cum Supp. 2011);

2. Respondent shall pay to the Missouri Secretary of State's Investor Restitution Fund ("Missouri Investor Restitution Fund") the sum of thirty-four thousand dollars (\$34,000) in restitution. This amount shall be payable to the Missouri Investor Restitution Fund and shall be sent to the Enforcement Section at 600 W. Main Street, Jefferson City, Missouri 65101, in the following manner:
 - a. Respondent shall pay four thousand dollars (\$4,000) within fourteen (14) days following the execution of this consent;
 - b. Respondent shall pay the remaining thirty thousand dollars (\$30,000) by making twenty-four (24) equal monthly installments of one thousand two hundred fifty dollars (\$1,250.00) per month, which payment shall be due and payable on the first day of each month, beginning on May 1, 2012, continuing until this amount is paid in full;
 - c. this money will be distributed from that fund to the investor as identified in Exhibit A; and
 - d. if Respondent fails to make any payment described in Paragraph two (2), the full amount remaining shall be immediately due and payable. The Commissioner may refer this matter for enforcement as provided in Sections 409.6-603 and 409-6-604, RSMo. (Cum. Supp. 2011).
3. Respondent is ordered to pay three thousand dollars (\$3,000) as the cost of this investigation. This amount shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund and sent to the Enforcement Section. Payment of this amount will be suspended provided Respondent is in compliance with the provisions of this Order and with the Missouri Securities Act of 2003;
4. For two (2) years from the execution of this document, the suspended payment in paragraph 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 payment shall be in addition to all other penalties then available under the law; and
5. 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 19TH DAY OF MARCH, 2012.

ROBIN CARNAHAN
SECRETARY OF STATE

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

Consented to by:
THE ENFORCEMENT SECTION OF THE
MISSOURI SECURITIES DIVISION

Mary S. Hosmer
Assistant Commissioner of Securities

Richard K. Johnson