

State of Missouri
Office of Secretary of State

Case No. AP-12-11

IN THE MATTER OF:

DELBERT R. LONEY and RAYMOND L. BARTLE,

Respondents.

Serve: Delbert R. Loney at:

1018B South Vancouver Street
Kennewick, Washington 99337-339

Serve: Raymond L. Bartle at:

5751 DeGiverville Avenue
St. Louis, Missouri 63112

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

On April 2, 2012, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through Assistant Commissioner Mary S. Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed. After reviewing the petition, the Commissioner issued the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

1. Progress St. Louis, LLC ("PSL"), was a Missouri limited liability company organized on September 13, 2006. PSL was created to engage in the development, marketing, and sale of affordable housing. PSL had a last known address of 12015 Manchester Road, Suite 94LL, Des Peres, Missouri 63131. On or about October 21, 2008, PSL was dissolved.
2. Delbert R. Loney ("Loney") was the president of PSL and has a last known address of 1018B South Vancouver Street, Kennewick, Washington 99337. A check of the records maintained by the Commissioner indicates that Loney has never been registered as a securities agent with the State of Missouri.
3. Raymond L. Bartle ("Bartle") was an organizer of PSL and has a last known address of 5751 DeGiverville Avenue, St. Louis, Missouri 63112. A check of the records maintained by the Commissioner indicates that Bartle has never been registered as a securities agent with the State of Missouri.
4. As used herein, the term "Respondents" refers to Loney and Bartle.
5. The Enforcement Section contacted a St. Louis, Missouri resident ("MR") regarding MR's investment in PSL. At the time of the investment, MR was forty-nine (49) years old. MR told an Enforcement Section investigator, among other things, that:
 - a. MR heard about PSL from MR's brothers, who were subcontractors for PSL;
 - b. in the summer of 2006, MR met with Loney and other representatives of PSL. During this meeting, MR was told, among other things, the following:
 - i. PSL intended to build new housing or purchase and rehabilitate old housing to sell to low-income families;
 - ii. funds from MR's investment would be used for business startup costs;
 - iii. in three to six months after MR made an investment, PSL would be fully functional and MR would start receiving returns on the investment; and
 - iv. after the completion of ten houses, MR would receive one-tenth (1/10) of the profit from each property sold;
 - c. MR was not provided background or financial information regarding PSL or its officers and directors and no risks were disclosed to MR;
 - d. on or about October 2006, MR signed a document titled "Associate Agreement" that stated, among other things, the following:

- i. MR was granting PSL "access" to a line of credit up to one hundred and fifty thousand dollars (\$150,000) to be drawn at the discretion of PSL; and
 - ii. 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;
 - e. MR was not told that MR was to perform any services for PSL and MR did not perform any services for PSL relating to this Associate Agreement;
 - f. on or about October 11, 2006, MR issued a check in the amount of sixty-nine thousand dollars (\$69,000) made payable to PSL from MR's line of credit account;
 - g. after MR's investment, MR was concerned about PSL's inactivity and arranged to meet with PSL representatives. In late 2006 or early 2007, MR met with, among others, Loney and Bartle. At this meeting, MR advised Loney and Bartle about MR's concerns;
 - h. on or about March 30, 2007, approximately five (5) months after MR's investment in PSL, MR received a promissory note that was signed by Loney as the president of PSL. In this promissory note, PSL promised to pay MR sixty-nine thousand dollars (\$69,000) by April 1, 2008. The promissory note stated, among other things, that the promissory note canceled and superseded any prior agreement between the MR and PSL. Pursuant to this promissory note MR was to receive interest as assessed by MR's bank for the line of credit; and
 - i. MR had not received any funds from PSL pursuant to the Associate Agreement and MR had not received a return of MR's principal on the PSL promissory note.
6. A review of bank records revealed that on or about October 12, 2006, MR's funds in the amount of sixty-nine thousand dollars (\$69,000) were deposited into PSL's bank account at Bank of America in St. Louis, Missouri ("PSL Account"). After the deposit of MR's funds in the PSL Account, MR's funds were used, among other things, to pay more than:
- a. nine thousand two hundred dollars (\$9,200) to Loney;
 - b. eight thousand seven hundred dollars (\$8,700) for payments and condo fees for property owned by Bartle;
 - c. five thousand nine hundred dollars (\$5,900) for cash withdrawals and credit card payments;
 - d. five thousand nine hundred dollars (\$5,900) for payments and condo fees for property owned and/or controlled by Loney; and
 - e. one thousand seven hundred dollars (\$1,700) to Loney's spouse.
7. The Enforcement Section's investigation revealed, among other things, that from November 10, 2006 through September 17, 2007, PSL made fourteen (14) interest payments to MR pursuant to the promissory note.
8. A check of the records maintained by the Commissioner confirmed that there was no registration or notice filing indicating status as a "federal covered security" for any securities offered or sold by PSL.
9. In connection with the offer and/or sale of the securities (to wit: Associate Agreement and the promissory note), Loney omitted to disclose to MR, among other things, the following:
- a. that Loney was not registered to offer or sell securities in Missouri;
 - b. that the securities were not registered in Missouri;
 - c. the financial condition of PSL; and/or
 - d. the risks associated with an investment in PSL.

II. STATUTORY PROVISIONS

10. Section 409.1-102(1), RSMo. (Cum. Supp. 2011), 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."
11. Section 409.1-102(25), RSMo. (Cum. Supp. 2011), defines "Record" as "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form."

12. Section 409.1-102(26), RSMo. (Cum. Supp. 2011), defines "Sale" as "every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and 'offer to sell' includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.
13. Section 409.1-102(28), RSMo. (Cum. Supp. 2011), 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. The term

...
(D)Includes as an 'investment contract' an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a 'common enterprise' means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; and

(E)May include as an "investment contract", among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement."

14. Section 409.3-301, RSMo. (Cum. Supp. 2011), states:

It is unlawful for a person to offer or sell a security in this state unless:

- (1)The security is a federal covered security;
- (2)The security, transaction, or offer is exempted from registration under sections 409.2-201 to 409.2-203; or
- (3)The security is registered under this act.

15. Section 409.4-402(a), RSMo. (Cum. Supp. 2011), 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).

16. Section 409.5-501, RSMo. (Cum. Supp. 2011), 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.

17. Section 409.6-601, RSMo. (Cum. Supp. 2011), states:

(a)This act shall be administered by the commissioner of securities who shall be appointed by and act under the direction of the secretary of state, and shall receive compensation as provided by law.

18. Section 409.6-602, RSMo. (Cum. Supp. 2011), states:

(a)The commissioner may:

- (1)Conduct public or private investigations within or outside of this state which the commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this act or a rule adopted or

order issued under this act, or to aid in the enforcement of this act or in the adoption of rules and forms under this act;

(2)Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted;

(3)Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the commissioner determines it is necessary or appropriate in the public interest and for the protection of investors;

(b)For the purpose of an investigation under this act, the commissioner or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation.

19. Section 409.6-604, RSMo. (Cum. Supp. 2011), 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, is materially aiding, or is about to materially aid 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;

(2)Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted;

(3)Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this act or a rule adopted or order issued under this act if the commissioner determines it is necessary or appropriate in the public interest and for the protection of investors;

(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.

20. Section 409.6-605(b), RSMo. (Cum. Supp. 2011), states:

Under this act, a rule or form may not be adopted or amended, or an order issued or amended, unless the commissioner finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this act. In adopting, amending, and repealing rules and forms, section 409.6-608 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

III. CONCLUSIONS OF LAW

Multiple Violations of Offering and Selling Unregistered, Non-Exempt Securities

21. Paragraphs 1 through 20 are incorporated by reference as though fully set forth herein.

22. Respondent Loney offered and/or sold MR the "Associate Agreement" and a promissory note.

23. The Associate Agreement was an investment contract and a security under Section 409.1-102(28), RSMo. (Cum. Supp. 2011). The Associate Agreement was an investment contract for, among others, the following reasons:

- a. under the terms of the Associate Agreement, MR obtained a two percent (2%) interest in a limited liability company, and under the definition of "investment contract," an investment contract may include an interest in a limited liability company;
- b. MR made an investment in this limited liability company;
- c. MR expected profits from this investment;
- d. these profits were to be derived primarily from the efforts of the promoters and the company, and not MR;
- e. MR was to share in the profits of company; and
- f. MR's fortunes with respect to the investment were interwoven with those of the company and its officers and directors.

24. A "note" is included in the list of items that are securities in Section 409.1-102(28), RSMo. (Cum. Supp. 2011). The promissory note at issue in this matter was a note and a security.

25. Respondent Loney has presented no evidence that the promissory note issued to MR was not a security.

26. Respondent Loney solicited MR to invest in PSL and PSL received funds from MR for this investment. MR received an Associate Agreement and, subsequently, a promissory note as evidences of MR's investments in PSL. This activity constitutes the offer and sale of securities as those terms are defined in Section 409.1-102(26), RSMo. (Cum. Supp. 2011).

27. At all times relevant, records maintained by the Commissioner contained no registration, granted exemption, or notice filing indicating status as a "federal covered security" for any securities of PSL offered and/or sold by Respondent Loney.

28. Respondent Loney violated Section 409.3-301, RSMo. (Cum. Supp. 2011), when he offered and sold securities in Missouri without the securities being (1) a federal covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-203, RSMo. (Cum. Supp. 2011), or (3) registered under the Missouri Securities Act of 2003.

29. Respondent Loney's actions of offering and selling securities that were not registered, exempt from federal covered security 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. 2011).

Materially Aiding the Offer and Sale of Unregistered Securities

30. Paragraphs 1 through 20 are incorporated by reference as though fully set forth herein.

31. In 2006 and/or 2007, Respondent Loney violated Section 409.3-301, RSMo. (Cum. Supp. 2011), on multiple occasions when he offered and sold securities in Missouri without these securities being (1) a federal covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-203, RSMo. (Cum. Supp. 2011), or (3) registered under the Missouri

Securities Act of 2003.

32. Respondent Bartle materially aided at least one of Respondent Loney's violations of Section 409.3-301, RSMo. (Cum. Supp. 2011), by, among other things, the following:
 - a. organizing PSL with Respondent Loney;
 - b. allowing Respondent Loney to serve as the president of PSL;
 - c. meeting with Loney and MR regarding MR's investment in PSL;
 - d. allowing Loney to issue a PSL promissory note to MR after this meeting; and
 - e. receiving over eight thousand dollars in payments from the PSL Account.
33. Respondent Bartle's actions in materially assisting Respondent Loney's actions in offering and selling securities that were not registered, exempt or a federal covered security 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. 2011).

Multiple Violations of Transacting Business as an Unregistered Agent

34. Paragraphs 1 through 20 are incorporated by reference as though fully set forth herein.
35. At all times relevant, records maintained by the Commissioner contained no registration or granted exemption for Respondent Loney to transact business as an agent in the State of Missouri.
36. Respondent Loney violated Section 409.4-402(a), RSMo. (Cum. Supp. 2011), when he offered and/or sold a security to an investor in Missouri without being registered or exempt from registration as an agent.
37. Respondent Loney's actions in transacting business as an unregistered agent 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. 2011).

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

38. Paragraphs 1 through 20 are incorporated by reference as though fully set forth herein.
39. In connection with the offer, sale or purchase of a security, Respondent Loney 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:
 - a. that Loney was not registered to offer or sell a security in Missouri;
 - b. that the security was not registered in Missouri;
 - c. the financial condition of PSL; and
 - d. the risks associated with the investment.
40. Respondent Loney violated Section 409.5-501, RSMo. (Cum. Supp. 2011), when he omitted to state material facts necessary in order to make statements made, in light of the circumstances under they were made, not misleading.
41. Respondent Loney's actions 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. 2011).
42. 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. 2011).

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 be prohibited from:

- A. violating or materially aiding in any violation of Section 409.3-301, RSMo. (Cum. Supp. 2011), by offering or selling any securities as defined by Section 409.1-102(28), RSMo. (Cum. Supp. 2011), in the State of Missouri unless those securities are registered with the Securities Division of the Office of the Secretary of State in accordance with the provisions of Section 409.3-301;
- B. violating or materially aiding in any violation of Section 409.4-402(a), RSMo. (Cum. Supp. 2011), by transacting business as an unregistered agent; and

C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2011), by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2011), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Loney for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2011), in a final order, unless Respondent Loney 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)(1), RSMo. (Cum. Supp. 2011), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to one thousand dollars (\$1,000) against Respondent Bartle for materially assisting Respondent Loney's violations of Section 409.3-301, RSMo. (Cum. Supp. 2011), in a final order, unless Respondent Bartle 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. 2011), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Loney for multiple violations of Section 409.4-402(a), RSMo. (Cum. Supp. 2011), in a final order, unless Respondent Loney 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. 2011), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent Loney for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2011), in a final order, unless Respondent Loney 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 order of restitution, the Commissioner will determine whether to order Respondents to pay restitution for any loss, possibly to include the amount of any actual damages that may have been caused by the conduct of Respondents, 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 of Sections 409.3-301, 409.4-402, and 409.5-501, RSMo. (Cum. Supp. 2011), in a final order, unless Respondents request a hearing and show cause why this restitution or disgorgement 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 proceeding, the commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2011), 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 an award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 6TH DAY OF APRIL, 2012.

ROBIN CARNAHAN
SECRETARY OF STATE

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

State of Missouri
Office of Secretary of State

Case No. AP-12-11

IN THE MATTER OF:

DELBERT R. LONEY and RAYMOND L. BARTLE,

Respondents.

Serve: Delbert R. Loney at:
1018B South Vancouver Street
Kennewick, Washington 99337-339

Serve: Raymond L. Bartle at:
5751 DeGiverville Avenue
St. Louis, Missouri 63112

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. 2011), 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. Kitz, 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 6th day of April, 2012, a copy of the foregoing Order to Cease and Desist in the above styled case was **mailed by Certified U.S. mail to:**

Delbert R. Loney
1018B South Vancouver Street
Kennewick, Washington 99337-339

Raymond L. Bartle
5751 DeGiverville Avenue
St. Louis, Missouri 63112

And hand-delivery to:

Mary S. Hosmer
Assistant Commissioner
Missouri Securities Division

John Hale, Specialist