

State of Missouri
Office of Secretary of State

Case No. AP-12-16

IN THE MATTER OF:

BRANDON THORNTON,

Respondent.

Serve: Brandon Thornton at:
1602 Amber Place
Rolla, Missouri 65401-4684

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

On July 3, 2012, the Enforcement Section of the Securities Division of the Office of Secretary of State ("Enforcement Section"), through the Securities Division's 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 issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

1. Brandon Thornton ("Thornton") has a mailing address of 1602 Amber Place, Rolla, Missouri 65401-4684. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, Thornton was not registered as a securities agent in the State of Missouri.
2. As used herein, the term "Respondent" refers to Thornton.
3. In late 2011 and early 2012, an investigator with the Enforcement Section contacted a sixty-six (66)¹ year-old Rolla, Missouri resident ("MR") regarding MR's investment with Thornton. MR told the investigator that:
 - a. MR contacted Thornton regarding a real estate investment;
 - b. Thornton told MR that:
 - i. "property" would be a good investment for MR;
 - ii. Thornton had helped other people make money in the past; and
 - iii. there was no risk in this investment;
 - c. MR did not receive a prospectus or any financial information from Thornton regarding an investment;
 - d. MR understood that MR's money would be used to buy investment property in the Lake of the Ozarks area;
 - e. on January 15, 2008, MR invested fifteen thousand dollars (\$15,000) with Thornton by providing Thornton with a certified check for that amount;
 - f. MR received a promissory note from Thornton that stated, among other things, that:
 - i. MR was to receive a twelve percent (12%) return on MR's investment in ninety (90) days; and
 - ii. at the end of this ninety (90) days MR was to receive a total of seventeen thousand two hundred fifty dollars (\$17,250);
 - g. on July 1, 2008, MR received a letter titled, "Personal Loan from [MR]." This document was signed by Thornton. The letter stated that the proceeds from MR's loan went to purchase an existing six-unit apartment building in Kansas City, Missouri; and
 - h. since 2008, MR has received a few interest payments from Thornton on MR's investment.

¹ MR was sixty-three (63) years old at the time of the investment.

4. On April 2, 2012, pursuant to Section 409.6-602, RSMo. (Cum. Supp. 2011), an investigator with the Enforcement Section requested that Thornton appear for an on-the-record examination by representatives of the Enforcement Section.
5. On April 25, 2012, Thornton appeared at the Securities Division for the on-the-record examination ("Thornton OTR"). At the Thornton OTR, Thornton stated, among other things, that:
 - a. Thornton gave MR a promissory note stating that MR would receive a return of MR's principal and interest at twelve percent (12%) in ninety (90) days;
 - b. Thornton told MR that the money was to be used to purchase property;
 - c. Thornton used a portion of MR's money to obtain an appraisal of property that Thornton wanted to purchase. Thornton attempted to secure financing of approximately one million two hundred thousand dollars (\$1,200,000) to purchase this property;
 - d. Thornton planned to pay MR back when Thornton obtained financing on the purchase of the property;
 - e. Thornton did not receive the funds to finance the purchase of the property;
 - f. Thornton sent MR a letter that stated that Thornton had purchased property in Kansas City, Missouri;
 - g. Thornton had not purchased property and the letter Thornton sent to MR contained untrue information; and
 - h. Thornton used the remainder of MR's funds for Thornton's personal expenses.
6. In connection with the offer and sale of securities in Missouri, Thornton did not tell MR, among other things:
 - a. that Thornton was not registered to offer and/or sell securities in the State of Missouri;
 - b. that the securities offered and/or sold to MR were not registered in the State of Missouri; and
 - c. that MR's investment funds would be used to pay Thornton's personal expenses.

II. STATUTORY PROVISIONS

7. 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."
8. Section 409.1-102(17), RSMo. (Cum. Supp. 2011), defines "Issuer" as "a person that issues or proposes to issue a security . . ."
9. 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."
10. 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."
11. 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.
12. 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).

13. 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.

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

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.

15. 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.

16. 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 . . . 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.

17. 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/or Selling an Unregistered, Non-Exempt Security

18. Paragraphs 1 through 17 are incorporated by reference as though fully set forth herein.

19. Respondent offered and sold a security as those terms are defined in Sections 409.1-102(26) and (28), RSMo. (Cum Supp. 2011).

20. A "note" is enumerated 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.

21. 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 the security offered and sold by Respondent.

22. Respondent violated Section 409.3-301, RSMo. (Cum Supp. 2011), when he offered and sold a security in Missouri without the security 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.

23. MR was over the age of sixty (60) years old and was an elderly person as that term is defined under Section 409.6-604(d)(3)(B), RSMo. (Cum Supp. 2011), at the time of Respondent's offer and sale of this security.

24. Respondent's actions of offering and selling a security that was 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

25. Paragraphs 1 through 17 are incorporated by reference as though fully set forth herein.
26. At all times relevant, records maintained by the Commissioner contained no registration or granted exemption for Respondent Thornton to transact business as an agent in the State of Missouri.
27. Respondent Thornton violated Section 409.4-402(a), RSMo. (Cum. Supp. 2011), when he offered and sold a security to an investor in Missouri without being registered or exempt from registration as a securities agent.
28. MR was over the age of sixty (60) years old and was an elderly person as that term is defined under Section 409.6-604(d)(3)(B), RSMo. (Cum. Supp. 2011), at the time of Respondent Thornton's offer and sale of this security.
29. Respondent Thornton'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 Making an Untrue Statement or Omitting to State Material Facts in Connection with the Offer or Sale of a Security

30. Paragraphs 1 through 17 are incorporated by reference as though fully set forth herein.
31. In connection with the offer, sale or purchase of a security, Respondent Thornton made untrue statements of material fact to MR, including but not limited to, the following:
 - a. that the funds MR invested would be used to purchase property;
 - b. that Respondent had used MR's invested funds to purchase property in Kansas City, Missouri; and/or
 - c. that there were no risks with the investment;
32. In connection with the offer, sale or purchase of a security to MR, Respondent Thornton 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. that Respondent Thornton was not registered to offer and/or sell securities in the State of Missouri;
 - b. that the securities Respondent Thornton offered and/or sold were not registered in the State of Missouri; and/or
 - c. that MR's investment funds would be used to pay Respondent Thornton's personal expenses.
33. MR was over the age of sixty (60) years old and was an elderly person as that term is defined under Section 409.6-604(d)(3)(B), RSMo. (Cum. Supp. 2011), at the time of Respondent Thornton's offer and sale of these securities.
34. Respondent Thornton violated Section 409.5-501, RSMo. (Cum. Supp. 2011), when he made untrue statements of material fact and omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.
35. Respondent Thornton's actions in making untrue statements and omitting to state material facts 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).
36. 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;
- 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.

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 Thornton for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2011), in a final order, unless Respondent Thornton 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)(3)(B), 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 five thousand dollars (\$5,000) against Respondent Thornton for violation of Section 409.3-301, RSMo. (Cum. Supp. 2011), against an elderly person, in a final order, unless Respondent Thornton 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 Thornton for multiple violations of Section 409.4-402(a), RSMo. (Cum. Supp. 2011), in a final order, unless Respondent Thornton 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)(3)(B), 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 five thousand dollars (\$5,000) against Respondent Thornton for violation of Section 409.4-402(a), RSMo. (Cum. Supp. 2011), against an elderly person, in a final order, unless Respondent Thornton 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 for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2011), in a final order, unless Respondent 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)(3)(B), 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 five thousand dollars (\$5,000) against Respondent Thornton for violation of Section 409.5-501, RSMo. (Cum. Supp. 2011), against an elderly person, in a final order, unless Respondent Thornton 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 Respondent Thornton to pay restitution for any loss, possibly to include the amount of any actual damages that may have been caused by the conduct of Respondent Thornton and interest at the rate of eight percent (8%) 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 Respondent Thornton requests a hearing and shows 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 Respondent Thornton 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 Respondent Thornton requests a hearing and shows cause why an award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 10TH DAY OF JULY, 2012.

ROBIN CARNAHAN
SECRETARY OF STATE

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

Case No. AP-12-16

IN THE MATTER OF:

BRANDON THORNTON,

Respondent.

Serve: Brandon Thornton at:
1602 Amber Place
Rolla, Missouri 65401-4684

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 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 10th day of July, 2012, a copy of the foregoing Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed in the above styled matter was **mailed by Certified U.S. mail to:**

Brandon Thornton
1602 Amber Place
Rolla, Missouri 65401

And via hand-delivery to:

Mary Hosmer
Assistant Commissioner
Missouri Securities Division

John Hale, Specialist