



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
THE DAVIDAN CORPORATION, et al.,) Case No. AP-12-23b
)
 Respondents.)

**FINAL ORDER TO CEASE AND DESIST AND ORDER AWARDING RESTITUTION,
CIVIL PENALTIES, AND COSTS AS TO RESPONDENTS**

On March 24, 2015, the Enforcement Section of the Securities Division of the Office of the Missouri Secretary of State (the “Enforcement Section” or “Petitioner”), by and through Assistant Commissioner Mary S. Hosmer, and Respondents The Davidan Corporation and Lajobejo, LLC (both dba Bankcard Empire), by and through their attorney Stanford Richardson, David Adam Mersky, and Leslie Spencer Mersky (collectively, the “Respondents”), (the “Parties”), submitted a Joint Motion for an Order to Cease and Desist and Order Awarding Restitution, Civil Penalties, and Cost as to these Respondents.

I. PRODEDURAL BACKGROUND

1. On July 3, 2012, the Enforcement Section of the Securities Division of the Office of Secretary of State (the “Enforcement Section”), by and through Assistant Commissioner Mary S. Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed against all Respondents (the “Petition”). On July 11, 2012, the Commissioner issued an Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should not be Imposed (the “Order”) against the Respondents.
2. In a Joint Motion for Final Order to Cease and Desist and Order Awarding Restitution, Civil Penalties and Costs as to Respondents Davidan Corporation and Lajobejo, LLC (both dba Bankcard Empire), David Adam Mersky, and Leslie Spencer Mersky (“Joint Motion”). Respondents waived their right to a hearing in this matter, neither admitted nor denied the allegations made by the Enforcement Section but, for the purposes of resolving this proceeding, stipulated to the entry by the Commissioner of a Final Order in this matter. In addition, the Respondents also stipulated to the amount of restitution, costs

and penalties in this matter. Respondents' waiver of a hearing leaves only a final order to be issued in this matter.¹

II. FINDINGS OF FACT

A. Respondents and Related Parties

3. The Davidan Corporation ("Davidan") is a Delaware corporation organized on December 30, 2005. Davidan has an address of 2701 East Osborn Road, Phoenix, Arizona 85016. Davidan's registered agent is the Corporation Service Company located at 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.
4. Lajobejo LLC ("Lajobejo") is an Arizona limited liability company organized on January 5, 2006. Lajobejo has an address of 2338 West Royal Palm Road Suite J, Phoenix, Arizona 85021. Lajobejo's registered agent is the Corporation Service Company located at 2338 West Royal Palm Road Suite J, Phoenix, Arizona 85021.
5. David Adam Mersky ("D. Mersky") is the president, chief executive officer and director of Davidan. D. Mersky is a managing member of Lajobejo.
6. Leslie Spencer Mersky ("L. Mersky") is a managing member of Lajobejo and is the father of D. Mersky. L. Mersky is registered with the Central Registration Depository ("CRD") with CRD number 1374944. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, L. Mersky was not registered as a securities agent in the State of Missouri.
7. On September 12, 2007, Davidan and Lajobejo registered the Bankcard Empire as a Trade Name in the State of Arizona. Both Davidan and Lajobejo did business as the Bankcard Empire (collectively these entities will be referred to as the "Bankcard Empire").
8. Ultimate Business Solutions, LLC ("Ultimate") was a Nevada limited liability company formed on April 4, 2006. Ultimate's registered agent was Spiegel & Utrera, P.A., 1785 East Sahara Avenue, Suite 490, Las Vegas, Nevada 89104. Ultimate's status as a limited liability company was dissolved by Nevada on August 27, 2010. Ultimate registered as a foreign limited liability company in the state of Arizona on August 23, 2007. Ultimate's registered agent in Arizona is Nikki Kriens, 3741 East Leah Lane, Gilbert, Arizona 85234.

¹ See *Coleman v. Missouri Sec'y of State*, 313 S.W.3d 148, 156 (Mo. App. W.D. 2010) (stating that the respondent's "withdrawal of his request for a hearing was qualitatively identical to never having requested a hearing in the first place. Thus, pursuant to section 409.6-604(b), the Commissioner [of Securities] was free to take action to enter the Final Order without conducting a hearing or otherwise complying with the requirements of section 409.6-604(c)").

9. Nikki Kriens (“N. Kriens”) is a managing member of Ultimate and has an address of 3741 East Leah Lane, Higley, Arizona 85236.
10. At all times relevant, none of the above-mentioned entities were registered with the Missouri Corporations Division.
11. 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 issued by the Bankcard Empire and/or Ultimate.
12. At all times relevant, records maintained by the Commissioner contained no registration or granted exemption for any agents of Davidan, Lajobejo, the Bankcard Empire and/or Ultimate.
13. As used herein, the term “Respondents” refers to Davidan, Lajobejo, D. Mersky and L. Mersky.

B. Enforcement Section Investigation

14. In May of 2012, the Enforcement Section received a written complaint from a seventy-one-year-old² resident of Bertrand, Missouri (“MR”) regarding MR’s investments in the Bankcard Empire and Ultimate.
15. In May, June, and July 2012, representatives of the Enforcement Section spoke with MR several times via telephone and received documents from MR and MR’s attorney. This information revealed, among other things, that:
 - a. on or before January 5, 2009, MR was contacted via telephone at MR’s residence by an employee of AMSI, a licensee of Bankcard Empire (“Bankcard Licensee”), who told MR, among other things, that:
 - i. MR could make money by selling the Bankcard Empire’s credit card services; and
 - ii. MR could purchase the Bankcard Empire’s affiliate training manual for two hundred and fifty dollars (\$250) to learn how to sell these credit card services for the Bankcard Empire;
 - b. on January 5, 2009, MR purchased the Bankcard Empire’s affiliate training manual;

² MR was sixty-eight (68) years old at the time of the investment.

- c. MR understood that the Bankcard Empire made a percentage of each credit card transaction processed through one of the Bankcard Empire's credit card machines;
- d. after reading the Bankcard Empire's affiliate training manual, MR expressed concern to the Bankcard Representative about MR's ability to sell the credit card machines;
- e. MR was contacted by representative from AMSI ("AMSI Representative")³, who stated that MR could earn money by paying the Bankcard Licensee, "to market" the Bankcard Empire's credit card services for MR;
- f. on or before January 21, 2009, the AMSI Representative contacted MR and stated, among other things, that:
 - i. AMSI was in the business of marketing the Bankcard Empire's credit card machines;
 - ii. AMSI did this type of marketing regularly and the sales were virtually guaranteed;
 - iii. in addition to marketing the Bankcard Empire's credit card machines, AMSI specialized in helping people get rid of credit card debt;
 - iv. MR could generate "substantial income" by using AMSI's services;
 - v. MR could make money in AMSI without ever "leaving her house";
 - vi. MR's funds would be used to employ individuals to market the Bankcard Empire's credit card equipment in a national sales campaign;
 - vii. MR would receive five hundred dollars (\$500) every time AMSI signed a company up or when a company was cleared to use the Bankcard Empire's credit card machines;
 - viii. through AMSI's marketing efforts, MR would receive a significant financial return within as little as two to three months;
 - ix. MR could pay for AMSI's services by giving Ultimate permission to debit funds from and/or charge funds to MR's credit cards; and

³MR identified this representative as an Ultimate Representative. However, documents provided to the Enforcement Section indicated that this individual was an AMSI representative and a Bankcard Licensee. The funds paid by MR for AMSI's marketing of Bankcard Empire's services were processed by Ultimate.

- x. MR's returns would be enough to pay off MR's current credit card debt and the additional amounts MR incurred to pay for AMSI's services;
- g. MR told the AMSI Representative that the returns sounded too good to be true, and the AMSI Representative stated, "I understand, but it is true";
- h. before speaking with the AMSI Representative, MR had in excess of fifteen thousand dollars (\$15,000) in credit card debt;
- i. MR stated that the AMSI Representative knew the amount of MR's credit card debt before MR told the AMSI Representative about this debt. Because the AMSI Representative knew of MR's debt, MR felt that the AMSI Representative was truly concerned about MR's financial situation;
- j. MR stated that MR believed the AMSI Representative:
 - i. was "a young, caring, honest man who spoke as a Christian";
 - ii. was someone who could be trusted; and
 - iii. was sincere and had MR's best interests in mind;
- k. MR agreed to authorize Ultimate to debit MR's credit card accounts to pay for AMSI's marketing activities on MR's behalf;
- l. on January 20, 2009, MR authorized Ultimate to debit MR's credit card accounts for the amounts listed as follows:
 - i. a Platinum Plus MasterCard account for eleven thousand dollars (\$11,000);
 - ii. a second MasterCard account for three hundred dollars (\$300);
 - iii. a Discover account for ten thousand dollars (\$10,000);
 - iv. a second Discover account for eight thousand six hundred dollars (\$8,600);
 - v. a Visa account for eight thousand four hundred dollars (\$8,400); and
 - vi. a second Visa account for ten thousand eight hundred dollars (\$10,800);

- m. MR was assured by the AMSI Representative that a commitment of this amount would quickly result in a significant financial return to MR within as little as two to three months;
 - n. after MR's funds were transferred to AMSI, MR called AMSI several times and was told by representatives of AMSI, among other things, that:
 - i. "all is well, it will just take a little more time"; and
 - ii. "we are working on your account now";
 - o. in April of 2009, MR received a printout of marketing "blasts" from Ultimate. This report did not have Ultimate's name but reflected the file name of "BankCard" and "CallBlast reports." MR believed that these "blasts" were recorded telephone messages sent to various business telephone numbers to market the credit card machines on MR's behalf;
 - p. MR has not received any funds from AMSI, Ultimate or Bankcard Empire since MR's investment;
 - q. since at least May 2009, MR has submitted multiple written requests to Ultimate to refund MR's funds and MR has not received any refund of the amounts that were debited from MR's accounts. However, MR did not contact Bankcard Empire, D. Mersky or L. Mersky;
 - r. MR is on a fixed income and can no longer pay all of MR's monthly combined medical and living expenses; and
 - s. MR has spent all of MR's life savings to pay settlements reached with most of the credit card companies MR used to pay for AMSI's marketing service.⁴
16. On June 26, 2012, and July 2, 2012, representatives of the Enforcement Section contacted N. Kriens regarding Ultimate and the Bankcard Empire. N. Kriens stated, among other things, that:
- a. N. Kriens formed Ultimate as a limited liability company⁵;

⁴ As of May 2012, one credit card company was still pursuing a civil action against MR in the Circuit Court of Mississippi County, Missouri to collect funds MR owed the credit card company. These credit card debts were incurred by MR to pay for MR's investment in Ultimate and the Bankcard Empire. In June 2012, a representative from the Enforcement Section contacted counsel for the credit card company regarding the Enforcement Section's investigation. Soon after this contact by the Enforcement Section, the suit against MR to collect on this credit card debt was dismissed by the credit card company.

⁵ A review of the Arizona corporate records revealed that N. Kriens was the manager/member of at least three other limited liability companies.

- b. L. Mersky and D. Mersky contacted N. Kriens about using Ultimate's merchant account ("Ultimate's Merchant Account") as a third party processor for Bankcard Empire's credit card sales;
 - c. N. Kriens agreed to allow Bankcard Empire to use Ultimate's Merchant Account to process sales of Bankcard Empire's Affiliate program;
 - d. Bankcard Empire, L. Mersky and D. Mersky had control over the funds in Ultimate's Merchant Account;
 - e. N. Kriens and Ultimate were paid approximately one percent (1%) on all sales by Bankcard Empire that were processed through Ultimate's Merchant Account. All other funds in Ultimate's Merchant Account went to Bankcard Empire, L. Mersky and/or D. Mersky;
 - f. N. Kriens understood that Bankcard Empire also used other merchant accounts to process Bankcard Empire's credit card sales;
 - g. N. Kriens understood that when Bankcard Empire licensees used Ultimate's Merchant Account the customers' credit card statements would reflect purchases from Ultimate;
 - h. N. Kriens and Ultimate did not have sales agents, and N. Kriens was not aware of what Bankcard Empire sold through Ultimate's Merchant Account;
 - i. N. Kriens and Ultimate did not give Bankcard Empire, L. Mersky, and/or D. Mersky permission to use Ultimate's name in any other way;
 - j. N. Kriens could not recall how much money N. Kriens and Ultimate made through the sale of the Bankcard Empire program; and
 - k. N. Kriens did not want to answer any more questions regarding N. Kriens' involvement with the Bankcard Empire.
17. Before MR's purchases, neither AMSI nor the Ultimate Representative, among other things, advised MR the following:
- a. that the securities offered and/or sold to MR were not registered in the State of Missouri;
 - b. that the Ultimate Representative and the Bankcard Licensee were not registered to offer and sell securities in the State of Missouri;

- c. information about the contractual relationship between Ultimate, the Bankcard Licensee and Bankcard Empire;
 - d. information about Respondents' backgrounds and experiences in marketing and selling credit card machines;
 - e. that on October 9, 2008, the Secretary of State for the State of Illinois issued a Cease and Desist order against the Bankcard Empire and Ultimate for offering and/or selling business opportunities in Illinois, *In the matter of Epic Commerce, LLC, Bankcard Empire, Ultimate Business Solutions, their Officers, Directors, Employees, Agents, Affiliates, Successors and Assigns, Respondents*, Case Number 0800438 (Illinois Securities Department 2008) ("Illinois Cease and Desist");
 - f. financial and sales information from Bankcard Empire, AMSI, and/or Ultimate to support the claim that MR would receive "substantial income" from her purchase;
 - g. the risks of her investment in the business opportunity;
 - h. information about the background, experience, regulatory and/or criminal history of L. Mersky, including but not limited to, that:
 - i. in 1998, L. Mersky entered a plea of guilty to conspiracy to launder monetary instruments and was sentenced in January 2001, to forty-two (42) months of incarceration and three (3) years of supervised release in 'Operation Risky Business', the largest non-drug money laundering investigation ever conducted by U. S. Customs Service, *United States of America vs. Leslie Spencer Mersky*, Case Number 1:98CR52-001 (United States District Court, Northern District of Florida, Gainesville Division 1998) (the "L. Mersky Conviction"); and/or
 - ii. on July 31, 2006, L. Mersky was barred from participating in the offering of any penny stock and barred from association with any broker or dealer by the United States Securities and Exchange Commission ("SEC"), *In the matter of SEC v. Leslie Mersky, et al.*, Civil Action No. 93-CV-5200 (E.D. Pa. 2006) (the "L. Mersky SEC Bar").
18. In addition to obtaining records relating to the Illinois Cease and Desist, the L. Mersky Conviction, and L. Mersky SEC Bar mentioned-above, the investigator with the Enforcement Section reviewed records that revealed the following states have taken actions against Ultimate and/or the Bankcard Empire:
- a. on April 21, 2010, the Securities Administrator of the State of Washington entered into a Consent Order with Bankcard Empire, *In the matter of AIG*

Promotions, LLC; Davidan Corporation, d/b/a Bankcard Empire, Respondent, Case Number S-09-450-10-CO01 (Washington Department of Financial Institutions, Securities Division 2010). Bankcard Empire ceased doing business on or about April 13, 2010, when authorities in Arizona seized its records and bank accounts;

- b. on August 9, 2010, the Director of the Division of Securities for the State of South Dakota issued a Cease and Desist against Ultimate Business Solutions, *In the matter of Ultimate Business Solutions, LLC and all Officers, Directors, Brokers, Agents and Employees thereof, Respondent, Case Number 1634 (South Dakota Department of Revenue & Regulation, Division of Securities 2010); and*
- c. on May 12, 2011, the Commissioner of Securities for the State of Kansas issued a Cease and Desist against Leslie Spencer Mersky and Bankcard Empire, *In the matter of Leslie Spencer Mersky, and Bankcard Empire, Respondents, KSC Mo. 2011-5789 (Kansas Office of Securities Commissioner 2011). Bankcard Empire ceased doing business on or about April 13, 2010, when authorities in Arizona seized its records and bank accounts.*

III. CONCLUSIONS OF LAW

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

- 19. Respondents offered and sold a security through Ultimate and AMSI as those terms are defined in Sections 409.1-102(26) and (28), RSMo. (Cum. Supp. 2013).
- 20. An “investment contract” is enumerated in the list of items that are securities in Section 409.1-102(28), RSMo. (Cum. Supp. 2013). The investments offered and sold to MR are investment contracts in that:
 - a. MR paid funds to Ultimate and a portion of those funds were paid to AMSI and to Bankcard Empire;
 - b. MR’s funds were to be used by Ultimate and AMSI to market the Bankcard Empire’s credit card services;
 - c. MR expected a profit from the marketing of Bankcard Empire’s credit card services; and
 - d. MR’s expected profits were interwoven with and dependent upon the efforts of Ultimate, AMSI and the Bankcard Empire.

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 securities offered and sold.
22. Respondent Bankcard Empire violated Section 409.3-301, RSMo. (Cum. Supp. 2013), when it offered or sold securities through Ultimate and/or AMSI 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. 2013), or (3) registered under the Missouri Securities Act of 2003.
23. The offer and sale of unregistered securities constitutes an illegal act, practice, or course of business and such action is therefore subject to the Commissioner’s authority under Section 409.6-604, RSMo. (Cum. Supp. 2013).

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

24. In connection with the offer, sale, or purchase of a security, Respondents omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
 - a. that the securities offered and/or sold to MR were not registered in the State of Missouri;
 - b. that Respondents’ representatives were not registered to offer and sell securities in the State of Missouri;
 - c. information about the contractual relationship between Ultimate and the Bankcard Empire;
 - d. information about Respondents’ backgrounds and experiences in marketing and selling credit card machines;
 - e. that on October 9, 2008, the Secretary of State for the State of Illinois issued a Cease and Desist order against Bankcard Empire and Ultimate for offering and/or selling business opportunities in Illinois, *In the matter of Epic Commerce, LLC, Bankcard Empire, Ultimate Business Solutions, their Officers, Directors, Employees, Agents, Affiliates, Successors and Assigns, Respondents*, Case Number 0800438 (Illinois Securities Department 2008);
 - f. financial and sales information from the Bankcard Empire and/or Ultimate to support the claim that MR would receive “substantial income” from the investment;

- g. the risks associated with the purchase of an investment in a Business Opportunity;
 - h. information about the background, experience, regulatory and/or criminal history of L. Mersky, including but not limited to, that:
 - i. in 1998, L. Mersky entered a plea of guilty to conspiracy to launder monetary instruments and was sentenced in January 2001, to forty-two (42) months incarceration, and three (3) years supervised release in ‘Operation Risky Business’, the largest non-drug money laundering investigation ever conducted by U. S. Customs Service, *United States of America vs. Leslie Spencer Mersky*, Case Number 1:98CR52-001, (United States District Court, Northern District of Florida, Gainesville Division 1998); and/or
 - ii. on July 31, 2006, L. Mersky was barred from participating in the offering of any penny stock and barred from association with any broker or dealer by the United States Securities and Exchange Commission (“SEC”), *In the matter of SEC v. Leslie Mersky, et al.*, Civil Action No. 93-CV-5200 (E.D. Pa. 2006).
25. Respondents’ actions in omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and/or materially aiding such activities, constitute violations of Section 409.5-501, RSMo. (Cum. Supp. 2013) and constitute illegal acts, practices, or courses of business and such actions are therefore subject to the Commissioner’s authority under Section 409.6-604, RSMo. (Cum. Supp. 2013).
26. An 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. 2013).

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 shall be prohibited from:

- A. violating or materially aiding in any violation of Section 409.3-301, RSMo. (Cum. Supp. 2013), by offering or selling any securities as defined by Section 409.1-102(28), RSMo. (Cum. Supp. 2013), 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; and
- B. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2013), 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. 2013), Respondents D. Mersky and L. Mersky shall pay, jointly and severally, restitution in the amount of \$30,000 to the investor identified in Exhibit 1 of the Joint Motion for multiple violations of Sections 409.3-301 and 409.5-501, RSMo. (Cum. Supp. 2013). This amount shall be payable in 30 equal monthly installments of (\$1,000) due and payable on the first business day of each month commencing June 1, 2015. The final payment of \$1,000 shall be due and payable on December 1, 2017. If Respondents miss any payments, all remaining amounts then owing will be immediately due and payable. All payments as described above shall be paid to the Missouri Secretary of State's Investor Restitution Fund ("Restitution Fund") and sent to that Restitution Fund at 600 West Main Street, Jefferson City, Missouri 65101, and the Commissioner will take reasonable and necessary actions to distribute all such funds to the investor identified in Exhibit 1 of the Joint Motion; and

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2013), Respondents Davidan and Lajobejo shall pay, jointly and severally, restitution in the amount of four hundred fifty-one thousand nine hundred thirty-one dollars and eighty-eight cents (\$451,931.88) for multiple violations of Sections 409.3-301 and 409.5-501, RSMo. (Cum. Supp. 2013). This amount shall be payable to the Restitution Fund and sent to that Restitution Fund at 600 West Main Street, Jefferson City, Missouri 65101 and the Commissioner will take reasonable and necessary actions to distribute all such funds to the investors detailed in Exhibit 2 of the Joint Motion. Respondents Davidan and Lajobejo shall pay this amount in thirty (30) days from the execution of this order.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS THIRTIETH DAY OF MARCH, 2015.



JASON KANDER
SECRETARY OF STATE

Andrew M. Hartnett

Andrew M. Hartnett
Commissioner of Securities

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of March, 2015, a copy of the foregoing Final Order to Cease and Desist and Order Awarding Restitution, Civil Penalties, and Costs as to Respondents in the above styled case was **e-mailed and mailed U.S. mail to:**

Stanford Richardson
1033 Corporate Square Drive
St. Louis, Missouri 63132
Counsel for Respondents The Davidan Corporation
dba Bankcard Empire and Lajobejo LLC dba
Bankcard Empire

and by **e-mailed and Certified U.S. mail to:**

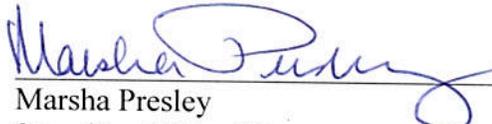
David Adam Mersky
8657 North Caballo Circle
Paradise Valley, Arizona 85253

and by **Certified U.S. mail to:**

Leslie Spencer Mersky
14304 East Thoroughbred Trail
Scottsdale, Arizona 85259-5509

and by **Hand Delivered to:**

Mary S. Hosmer
Assistant Commissioner
Securities Division



Marsha Presley
Securities Office Manager