

State of Missouri
Office of Secretary of State

Case No. AP-08-34

IN THE MATTER OF:

MARK GREENWAY,

Respondent.

Serve at:

4401 NE Courtney Drive
Lee's Summit, Missouri 64064

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

On December 15, 2008, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Division"), through its Chief Enforcement Counsel Lori J. Neidel, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why 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:

FINDINGS OF FACT

1. Mark Stephen Greenway ("Greenway") has an address of 4401 NE Courtney Drive, Lee's Summit, Missouri 64064.
2. At all times relevant to this order, Greenway was associated with the American Association of Christian Schools ("AACS") deferred compensation program. Teachers and employees of an AACS member school could participate in the deferred compensation plan. Greenway would, among other things, enroll the teachers and employees in the AACS deferred compensation plan with AIM Investments.
3. Two North Carolina residents ("NC1") and ("NC2") are sisters who, as a result of their father's death, were the beneficiaries of separate trusts established for the proceeds of a wrongful death civil cause of action.
4. In late 1996 or early 1997, NC1 and NC2 were introduced to Greenway by a member of their church who was associated with AACS. NC1 and NC2 were eighteen (18) and nineteen (19) years old respectively, at the time.
5. After meeting with Greenway, NC1 and NC2 understood that Greenway would invest the money distributed to them from the trusts to provide for NC1 and NC2's living expenses.
6. On March 5, 1997, NC2's initial distribution from the trust in the amount of two hundred seventy four thousand four hundred forty dollars and eighty one cents (\$274,440.81) was, at the suggestion of the Respondent, invested with Charles Greenway, Respondent's father, who at the time was an agent of Dain Rauscher Investment Services, f/k/a Dain Bosworth ("Dain Rauscher").
7. NC2's statements from Dain Rauscher showed that NC2 was invested in AIM Funds, Oppenheimer Funds, and treasury notes.
8. On November 30, 1998, NC1's distribution from the trust in the amount of three hundred sixty thousand dollars (\$360,000) was also invested, at the suggestion of the Respondent, with Charles Greenway at Dain Rauscher.
9. NC1's statements from Dain Rauscher showed that NC1 was invested in AIM Funds, Oppenheimer Funds, and Washington Mutual Funds.
10. In November 1998, without NC1's knowledge or approval, Greenway opened a joint checking/savings account in his name and NC1's name at Blue Ridge Bank & Trust in Independence, Missouri ("Blue Ridge Bank") by signing NC1's signature on the account opening card and using his local personal address as the mailing address for the account.
11. Beginning in February 1999, and continuing until March 2000, the securities in NC1's brokerage account at Dain Rauscher were liquidated without NC1's knowledge. Greenway wired these funds to his joint account with NC1 at Blue Ridge Bank without NC1's knowledge or approval.
12. Starting in March 2005, subsequent distributions from the trust that NC1 was to receive were wired directly from the trust account to the Greenway and NC1 joint account at Blue Ridge Bank.
13. In January 2003, without NC2's knowledge or approval, Greenway opened a joint checking/savings account in his name and NC2's name at Blue Ridge Bank by signing NC2's signature on the account opening card and using his local personal address

as the mailing address for the account.

14. Starting in February 2003, NC2's distributions from the trust were deposited into the Greenway and NC2 joint account at Blue Ridge Bank.
15. At all times relevant to this order, and unknown to NC1 and NC2, Greenway was depositing his own funds into the joint accounts with NC1 and NC2 and using the funds in the joint accounts for his own personal expenses.
16. Among other things, Greenway removed funds from the joint accounts with NC1 and NC2 to:
 - a. purchase classic cars for himself;
 - b. make payments for his other businesses;
 - c. pay his own household expenses, including his personal American Express bills; and
 - d. purchase certificates of deposit in his and his wife's name.
17. From December 1998, through August 2007, Greenway deposited approximately \$1,487,409 of his own funds into the Greenway and NC1 joint account at Blue Ridge Bank.
18. From May 2003, through August 2007, Greenway deposited approximately \$243,051 of his own funds into the Greenway and NC2 joint account at Blue Ridge Bank.
19. The Division's investigation revealed that during this time period specified in paragraphs 17 and 18, above, the amount of funds removed by Greenway from the subject accounts exceeded the amount of funds deposited by Greenway in the same, as follows:
 - a. Greenway removed from the Greenway and NC1 joint account \$991,429 in excess of the amount of funds he deposited therein; and
 - b. Greenway removed from the Greenway and NC2 joint account \$269,153 in excess of the amount of funds he deposited therein.
20. In April 2007, NC1 came to Missouri to discuss her investments with Greenway. At this meeting Greenway gave NC1 a memorandum titled "Investment Account Holdings and Market Values" that stated:

"As discussed, please find a portfolio overview as of 12-31-06;

 1. Euro Pacific Fund-TMV, **\$202,955.75** (emphasis in the original). The return on this fund was 21.87% for 2006. Your total contributions into this fund since 11-25-98 are \$90,000. Your actual gain is \$115,955.75. That equates to an average annual return of 10.8%. The value of this fund on December 31, 2005 was \$168,681.00.
 2. Washington Mutual Fund-TMV, **\$144,191.04** (emphasis in the original). The return on this fund was 18.04% for 2006. Your total contributions into this funds sinc [sic] 11-25-98 are \$90,000. Your actual gain is \$54,024.00. That equates to an average annual return of 5.92%. The valus [sic] of this fund on December 31, 2005 was \$122,009.00.
 3. Charter Fund-TMV, **\$112,293.09** (emphasis in the original) The return on this fund was 16.27% for 2006. The value of this fund on December 31, 2005 was \$97,247.00.
 4. Oppenheimer Main Street-TMV, **\$119,937.00**. (emphasis in the original) The return on this fund was 14.03% for 2006. The valus [sic] on December 31, 2005 was \$104,709.00
 5. Certificates of Deposits-TMV, **\$505,962.00** (emphasis in the original) including interest. Average maturity is 3 years and average yield is 3.75%.
 6. Cash and Equivalents-TMV, **\$426,567.72** (emphasis in the original). This is basically a money market fund. It is very liquid and safe. It is the account we can draw from for your income needs. The average yield is 2.2%.

Total market value as of December 31, 2006 is \$1,514,906.00. (emphasis in the original)
Total value as of December 31, 2005 was \$1,514,751.81. (emphasis in the original)"
21. At this meeting Greenway also provided a web-based brokerage statement to NC1 from Morningstar.com showing that NC1 had a portfolio with a current value of \$1,514,906.60.
22. NC1 did not have investments in Euro Pacific Fund, Washington Mutual Fund, Charter Fund, Oppenheimer Main Street, certificates of deposit or in money market funds.

23. In June 1993, The Securities and Exchange Commission ("Commission") entered an Order of the Commission Making Findings and Imposing Remedial Sanctions, against Greenway^[1] (the "SEC Settlement").
24. The SEC Settlement included findings by the Commission that Greenway:
 - a. engaged in a scheme to defraud his customers through the use of unauthorized margin trading in the accounts of customers;
 - b. executed unsuitable transactions in his customers' accounts;
 - c. executed transactions in customer accounts that were excessive in light of the customer's investment objectives;
 - d. made misrepresentations of material facts to investors and prospective investors;
 - e. placed or directed others to place on documents signatures of customers which he knew were not the signatures of the customers; and
 - f. directed that false information be placed on the broker-dealer's books and records.
25. In the SEC Settlement the Commission found that Greenway willfully violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that he, in connection with the purchase and sale of securities, employed devices, schemes and artifices to defraud; obtained money and property by means of untrue statements of material facts; omitted to state material facts; and engaged in transactions, practices and courses of business which would and did operate as a fraud or deceit.
26. Under the SEC Settlement Greenway was barred from association with any broker, dealer, investment company, investment adviser or municipal securities dealer.
27. In August 1993, the District Court for the Western District of Missouri entered an Order of Permanent Injunction and Other Equitable Relief Against Defendant Mark S. Greenway.
28. Greenway did not disclose the following material information to NC1 or NC2:
 - a. He would open and maintain a bank account with their names on it;
 - b. Greenway would use their money for his own personal use;
 - c. The SEC had found in 1993 that he had employed devices, schemes and artifices to defraud; obtained money and property by means of untrue statements of material facts; omitted to state material facts; and engaged in transactions, practices and courses of business which would and did operate as a fraud or deceit.; and
 - d. Greenway was barred from association with any broker, dealer, investment company, investment adviser or municipal securities dealer.
29. A check of the records maintained by the Missouri Commissioner of Securities revealed that Respondent was not registered to provide investment advice in or from the State of Missouri.

STATUTORY PROVISIONS

30. Section 409.6-601(a), RSMo. (Cum. Supp. 2007), provides that the Missouri Securities Act of 2003 "shall be administered by the commissioner of securities."
31. Section 409.1-102(16), RSMo. (Cum. Supp. 2007), defines "Investment adviser representative" as "an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investments advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing."
32. Section 409.1-102(28), RSMo. (Cum. Supp. 2007), defines "Security" to include, in part, "a note; stock; treasury stock; security future; . . . certificate of interest or participation in a profit-sharing agreement; . . . investment contract; . . . 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. . . ."
33. Section 409.4-404(a), RSMo. (Cum. Supp. 2007), provides that it is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this act as an investment adviser representative or is exempt from registration as an investment adviser under subsection (b).
34. Section 409.5-501, RSMo. (Cum. Supp. 2007), 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.
35. Section 409.5-502(a), RSMo. (Cum. Supp. 2007), provides, in part, that it is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:
1. To employ a device, scheme, or artifice to defraud another person; or
 2. To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

36. Section 409.6-604(a), RSMo. (Cum. Supp. 2007), states:

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 or a rule adopted or order issued under 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 and appropriate to comply with this act; or
2. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 409.4-401(b)(1)(D) or (F) or an investment advisor under section 409.4-403(b)(1)(C); or
3. Issue an order under section 409.2-204.

37. Section 409.6-604(b), RSMo. (Cum. Supp. 2007), states:

An order under subsection (a) is effective on the date of issuance . . . [i]f 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.

38. Section 409.6-604(d), RSMo. (Cum. Supp. 2007), states:

In a final order . . . the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation.

39. Section 409.6-604(e), RSMo. (Cum. Supp. 2007), states:

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.

CONCLUSIONS OF LAW

Multiple Violations of Engaging in an Act, Practice, or Course of Business that Operates or Would Operate as a Fraud or Deceit Upon NC1 and/or NC2

40. Paragraphs 1 through 39 are incorporated by reference as though fully set forth herein

41. In connection with advising others, Respondent Greenway engaged in an act, practice, or course of business that operated or would have operated as a fraud or deceit upon NC1 and/or NC2 by:

- a. not disclosing the SEC's prior disciplinary actions resulting in Greenway's bar from the industry;
- b. liquidating the securities in the Dain Rauscher brokerage account;
- c. opening a bank account by signing NC1's name to the account opening documents without NC1's knowledge or approval;
- d. opening a bank account by signing NC2's name to the account opening documents without NC2's knowledge or

approval;

- e. writing checks or otherwise obtaining funds from NC1's account for Greenway's personal use; and
 - f. writing checks or otherwise obtaining funds from NC2's account for Greenway's personal use.
42. Respondent repeatedly violated Section 409.5-502(2), RSMo. (Cum. Supp. 2007), when, he engaged in an act, practice, or course of business that operates or would operate as a fraud or deceit upon NC1 and/or NC2 as described in the paragraph immediately above.
43. Respondent's engagement in an act, practice, or course of business that operates or would operate as a fraud or deceit constitutes an illegal act, practice or course of business and is therefore subject to the Commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).

**Multiple Violations of Making an Untrue Statement of a Material Fact
in Connection with the Sale of a Security**

44. Paragraphs 1 through 39 are incorporated by reference as though fully set forth herein.
45. In connection with the sale of a security, Respondent Greenway made an untrue statement of a material fact to NC1 when he stated, among other things:
- a. As of December 31, 2006, NC1 had a portfolio consisting of mutual funds and certificates of deposit; and
 - b. NC1 had a portfolio value of \$1,514,906 as of December 31, 2006,

When, in fact, these statements were not true.

46. Respondent Greenway's actions in making untrue statements of a material fact are a violation of Section 409.5-501(2), RSMo. (Cum. Supp. 2007), and constitute an illegal act, practice, or course of business and are therefore subject to the Commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).

**Multiple Violations of Omitting to State a Material Fact
in Connection with the Sale of a Security**

47. Paragraphs 1 through 39 are incorporated by reference as though fully set forth herein.
48. In connection with the sale of a security, Respondent Greenway omitted to state a material fact necessary in order to make a statement made, in the light of the circumstances under which it was made, not misleading when he omitted to state to NC2, among other material facts, the following:
- a. He was not registered to provide investment advice or exempt from registration;
 - b. He had been barred from associating with any broker-dealer and investment adviser by the SEC;
 - c. He would open a joint account with NC2 without NC2's knowledge; and
 - d. He would use NC2's money for his personal expenses.
49. Respondent Greenway's actions in omitting to state a material fact necessary in order to make a statement made, in the light of the circumstances under which it was made, not misleading are a violation of Section 409.5-501(2), RSMo. (Cum. Supp. 2007), and constitute an illegal act, practice, or course of business and are therefore subject to the Commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2007).
50. This order is in the public interest and consistent with the purposes intended by the Missouri Securities Act of 2003. See Section 409.6-605(b), RSMo. (Cum. Supp. 2007).

ORDER

NOW THEREFORE, it is hereby ordered that Respondent, his agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this Order are prohibited from:

- A. violating or materially aiding in any violation of Section 409.5-502, RSMo. (Cum. Supp. 2007), by engaging in acts, practices or courses of business that operate or would operate as a fraud or deceit upon another person; and
- B. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2007), by making an untrue statement of material fact or omitting to state a material fact necessary in order to make a statement made, in the light of the circumstances under which it was made, not misleading.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2007), the Commissioner will

determine whether to grant the Enforcement Section's petition for imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent for multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2007), 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), RSMo. (Cum. Supp. 2007), the Commissioner will determine whether to grant the Enforcement Section's petition for imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent for multiple violations of Section 409.5-502, RSMo. (Cum. Supp. 2007), in a final order, unless Respondent 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 award for the costs of the investigation against Respondent in this proceeding, the Commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2007), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondent requests a hearing and shows 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 29TH DAY OF DECEMBER, 2008.

ROBIN CARNAHAN
SECRETARY OF STATE

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

State of Missouri
Office of Secretary of State

Case No. AP-08-34

IN THE MATTER OF:

MARK GREENWAY,

Respondents.

Serve at:

4401 NE Courtney Drive
Lee's Summit, Missouri 64064

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. 2007), 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:

A request for a hearing must be mailed or delivered, in writing, to:

Matthew Kitzi
Commissioner of Securities
Office of the Secretary of State
Missouri State Information Center, Room 229
600 West Main Street
Jefferson City, Missouri, 65102

CERTIFICATE OF SERVICE

I hereby certify that on this 29TH day of December, 2008, copies of the foregoing Order and Notice in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

Mark Greenway

4401 NE Courtney Drive
Lee's Summit, Missouri 64064

And hand delivered to:

Lori Neidel
Chief Enforcement Counsel
Securities Division

John Hale Specialist

[\[1\]](#) Administrative Proceeding File No. 3-7991, *In the Matter of Mark S. Greenway*.