

State of Missouri
Office of Secretary of State

Case No. AP-06-30

IN THE MATTER OF:

MARK L. HENRY, CRD 2363168

Respondent.

Serve at:

7163 Brandi Lane
Joplin, MO 64804

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

On November 7, 2006, the Enforcement Section of the Securities Division ("Division") of the Office of Secretary of State, through its Assistant Commissioner of Securities, 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. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

A. Respondent, Related Parties and Summary

1. Mark L. Henry ("Henry") was a Missouri-registered agent and investment adviser representative for Investment Centers of America, Inc. ("ICA") from October 6, 1994 until his termination on September 2, 2005. Henry was registered in Missouri with ICA through the Central Registration Depository System ("CRD") and has a CRD number of 2363168. Henry has a residence address of 7163 Brandi Lane, Joplin, Missouri, 64804 and an office address of 201 East 3rd Street, Carthage, Missouri, 64836.
2. Yvonne Raczkowski ("Raczkowski") purports to be Henry's wife and has an address of 7163 Brandi Lane, Joplin, Missouri, 64804.
3. ICA is a Missouri-registered broker-dealer and is a North Dakota corporation with a mailing address of PO Box 5097, Appleton, Wisconsin 54912-5097. ICA is registered in Missouri through the CRD and has a CRD number of 16443.
4. As used in this matter, the term "Respondent" refers to Henry.
5. While working for ICA, Henry opened a bank account under his name doing business as Investment Centers of America ("Henry's ICA Bank Account"). This account was not authorized by ICA. At various times Henry would accept funds from investors and place the money into Henry's ICA Bank Account. Henry would then use the funds for personal use, including but not limited to making payments to other investors, paying personal expenses, and paying for adult websites.
6. Henry also set up investment accounts at ICA for two elderly Missouri customers' funds. Along with these customers, Henry listed his wife, Raczkowski, on one account and Henry and his wife on the other account as joint owners of the accounts. Numerous checks were written bearing the signature of "Raczkowski" and/or "Henry" from these investment accounts at ICA depleting the ICA investment accounts to zero. After he was terminated from ICA in September 2005, Henry continued to collect investors' funds and placed these funds into Henry's ICA Bank Account.
7. Around September 2005, Henry contacted another brokerage firm, Harbour Investments, Inc. ("Harbour Investments")^[1] to obtain a recruitment packet. Harbour Investments sent the packet to Henry, but no relationship between the two ensued. At no time did Henry become registered or affiliated with Harbour Investments in Missouri. However, in June 2006, Henry opened a bank account doing business as Harbour Investments ("Henry's Harbour Bank Account"). Henry then began accepting investors' funds, representing himself as an agent for Harbour Investments, and placing these investor funds into Henry's Harbour Bank Account.
8. At least 8 Missouri residents lost over eight hundred thousand dollars (\$800,000) from their intended investments with Henry.
9. A review of Henry's bank records revealed, among other things, that Henry had signatory authority on numerous bank accounts including, but not limited to, three accounts through the Hometown Bank in Carthage, Missouri. The accounts consisted of:
 - a. one personal account, opened in June 2003, with Henry and Raczkowski as the signatories;

- b. an account for Henry's ICA Bank Account with Henry as the only signatory; and
 - c. an account for Henry's Harbour Bank Account with Henry as the only signatory.
10. A review of both Henry's ICA Bank Account and Henry's Harbour Bank Account reveals that Henry used investor funds in these accounts for his personal expenditures and in making "Ponzi"^[2] payments to investors. Henry's personal expenditures from these accounts included, but were not limited to, over nine thousand dollars (\$9,000) in payments to adult websites.

B. Missouri Resident 1

11. On October 26, 2005, a Missouri resident ("MR1") visited Henry at his office in Carthage, Missouri. MR1 asked Henry to assist MR1 in purchasing Empire District Electric stock ("Empire Stock").
12. During this October 26, 2005 visit, Henry completed a check for MR1 to sign that was made payable to "Investment Centers of America." Henry wrote the check in the amount of twelve thousand dollars (\$12,000) and MR1 signed the check. Henry told MR1 that Henry would purchase the Empire Stock for MR1.
13. Henry provided MR1 a receipt for the investment. The receipt indicated, among other things, that:
 - a. Twelve thousand dollars (\$12,000) was collected by Henry on October 26, 2005;
 - b. The check was made payable to "Investment Centers;"
 - c. The description of the received funds was "Deposit to Acct. . .purchase ede [Empire Stock];"
 - d. The "Investment Centers" account number was 4pw190021.
14. In February 2006, Henry provided MR1 an "Account Statement" that purported to reflect MR1's portfolio holdings with Harbour Investments for the period of February 1, 2006 to February 28, 2006. The Account Statement indicated, among other things, that:
 - a. Henry was the "Investment Representative" of MR1's account at Harbour Investments;
 - b. MR1 had 575 shares of Empire Stock in this account;
 - c. These shares of Empire Stock were worth twelve thousand seven hundred and nineteen dollars (\$12,719); and
 - d. The purported account number was 6AV-497697.
15. From November 2005 through June 2006, MR1 made numerous telephone calls to Henry requesting delivery of MR1's Empire Stock certificates.
16. In June 2006, Henry explained to MR1 that Henry would overnight the stock certificates to MR1. MR1 never received these stock certificates.
17. On or around July 3, 2006, MR1 received a cashier's check drawn from the Hometown Bank in Carthage, Missouri, made payable to MR1, dated June 30, 2006, in the amount of twelve thousand five hundred and ten dollars and fourteen cents (\$12,510.14). This check purported to be remitted by "Investment Centers" for the purported sale of MR1's Empire Stock. MR1 had never authorized Henry to sell the Empire Stock. ICA does not have an account at the Hometown Bank in Carthage.

C. Division Investigation

18. On July 17, 2006, the Division received a complaint from MR1 regarding MR1's dealings with Henry.
19. On August 7, 2006, the Division sent a letter of inquiry to Henry asking for him to provide additional information regarding any Missouri residents he solicited to purchase securities after his termination from ICA. In addition, the letter asked Henry to identify the firm with whom he was affiliated. To date, Henry has not responded to this letter.
20. On August 8, 2006, the Division sent letters of inquiry to ICA and Harbour Investments.
21. On August 21, 2006, the Division received a response from Harbour Investments stating, among other things: "Mark Henry has never had any affiliation with Harbour Investments, Inc. He inquired about our services in September 2005, was sent a recruiting kit and no affiliation ever materialized."
22. On August 28, 2006, the Division received a response from ICA that stated among other things, that Henry was terminated from employment with the firm on September 2, 2005, due to Henry's lack of production.
23. Also provided in the ICA response was a copy of the last internal audit conducted on Henry's office by ICA. The audit was

completed on September 23, 2004 and asked, in part, the following:

- a. "Do you or any of your Representatives maintain a checking account which includes the firm's name or a derivation of the firm's name in its title?"
- b. "To your knowledge, have you or any Representatives engaged in any conduct that is in violation of any firm or industry rule?"

24. Henry responded to both questions described in paragraphs 23.a and 23.b hereof by checking the box "No."

25. Attached to this ICA response was a section from ICA's 1999 and 2004 compliance manuals which stated in part:

"No employee, associated person or registered representative may open any banking or brokerage account in the name of the Firm or a name similar to the name of the Firm without written authorization from Financial Accounting."

"No employee, associated person or registered representative may open any banking or brokerage account in the name of the Firm or a name similar to the name of the Firm without written authorization from General Counsel and the Chief Compliance Officer."

"No employee, associated person or registered representative may use customer funds or securities for their own benefit or for any purpose other than the intended investment through ICA."

"No employee, associate or representative may accept a client check made payable to themselves or any entity under their control, or accept cash or other prohibited forms of payment for any transaction or obligation."

D. Missouri Resident 2

26. In October 2006, an investigator with the Division contacted an 80 year-old Missouri resident ("MR2"). MR2 had been a customer of Henry and ICA since at least March 2001. MR2 stated, among other things, that:

- a. MR2 utilized the services of Henry as a registered representative at ICA;
- b. While at ICA, Henry assisted MR2 in placing MR2's deceased wife's IRA into an account under MR2's name with ICA;
- c. Henry provided MR2 with a receipt reflecting this IRA rollover;
- d. MR2 did not know Raczkowski;
- e. MR2 did not authorize Henry to list Raczkowski as a joint owner on MR2's account nor was MR2 aware that Raczkowski was on MR2's account at ICA; and
- f. MR2 did not authorize Henry or Raczkowski to remove funds from MR2's account at ICA.

27. On March 1, 2004, an account application was completed for Raczkowski and MR2 at ICA. The ICA account was to be held by Raczkowski and MR2 as joint tenants with right of survivorship^[3] ("JTWRROS"). The application and supplemental documents to the application reflected, among other things;

- a. Raczkowski's address was listed as Henry's office address;
- b. MR2's address was listed as Henry's office address. MR2's telephone number was listed as a fax number used by Henry;
- c. Henry was listed as the registered representative on the account for Raczkowski and MR2.

28. A review of the MR2's ICA account statements revealed among other things that:

- a. The account was a money market account which allowed withdrawal of funds by check;
- b. The opening deposit of the account was eighty-six thousand thirty-eight dollars and fifty-two cents (\$86,038.52), deposited on July 2, 2004;

- c. Between July 2, 2004 and November 5, 2004, numerous checks were written from this account depleting the account to a zero balance. These checks from MR2's money market account reflected a signature of "Raczkowski" and were deposited into one of the bank accounts used and controlled by Henry.

E. Missouri Resident 3

29. In October 2006, an investigator with the Division contacted a 74 year-old Missouri resident ("MR3"). MR3 had been a client of Henry's and ICA since at least 1998. MR3 stated, among other things, that:
 - a. Henry was MR3's investment adviser, but MR3 was not familiar with Raczkowski;
 - b. MR3 was receiving monthly interest distributions from his ICA accounts;
 - c. MR3 received a letter dated March 7, 2002 indicating that the address for one of his accounts had changed to Henry's office mailing address; MR3 did not notice the change until reviewing his paperwork with the Division investigator;
 - d. MR3 did not receive statements for this account after March 2002;
 - e. MR3 stated that he believes that without his knowledge or permission over two hundred thousand dollars (\$200,000) has been removed from MR3's accounts at ICA;
30. A review of the ICA account statements for this account revealed among other things that:
 - a. The account was held by MR3, Henry and Raczkowski as JTWROS;
 - b. The mailing address of the account owner was listed as Henry's office address;
 - c. The account was set up as a money market account with the ability to withdraw funds by writing checks;
 - d. In 2002 and 2003, almost three hundred thousand dollars (\$300,000) was deposited into this joint account from MR3's funds;
 - e. Between March 19, 2002 and May 31, 2004, numerous checks were written from the account, depleting the balance to zero. Checks written from MR3's money market account reflected a signature of "Henry" and were placed into one of the bank accounts used or controlled by Henry; and
 - f. In November of 2004, MR3 requested and was paid sixty thousand dollars (\$60,000) from his investments with Henry. Henry paid MR3 this \$60,000 from Henry's ICA Bank Account. Subsequently MR3 requested and received ten thousand dollars (\$10,000) from his investments with Henry. [4]

F. Missouri Resident 4

31. In or around 1996, a 59 year-old Missouri resident ("MR4"), and his wife became friends with Henry and Raczkowski. The two couples vacationed together and had similar interests and hobbies.
32. Sometime in January 2002, Henry became MR4's registered representative at ICA.
33. Around June 10, 2004, Henry solicited a personal loan from MR4. MR4 loaned Henry fifteen thousand dollars (\$15,000). Henry made payments to MR4 by personal checks dated August 10, 2004, for ten thousand dollars (\$10,000) and a check dated November 20, 2004, for three thousand six hundred forty dollars (\$3,640). Henry paid the remaining amount due to MR4 by giving various personal property items to MR4.
34. On November 5, 2004, MR4 gave a check to Henry in the amount of one hundred thousand dollars (\$100,000) for the purpose of investing the funds into a certificate of deposit. A receipt for the payment, prepared by Henry, reflected the check was made payable to "Investment Centers" and purportedly went into MR4's account at ICA with account number 4pw-00111. In fact, these funds were deposited into Henry's ICA Bank Account.
35. On April 8, 2005, MR4 gave a check to Henry in the amount of one hundred four thousand dollars (\$104,000) for the purpose of investing MR4's funds into a municipal bond. A receipt for the payment, prepared by Henry, reflected that the check was made payable to ICA, but no account number was listed. These funds were deposited in Henry's ICA Bank Account.
36. From May 2005 to August 2005, MR4 received statements for these investments that purported to be from ICA. These statements listed the investment representative was listed as "Henry" and the account number was listed as "4pw-00111."
37. The August 2005 and September 2005 statements had no letterhead but continued to reflect the account number as "4pw-00111". The value of the account at the end of September 2005 was listed as two hundred five thousand four hundred ninety-seven dollars (\$205,497).

38. Sometime in early 2006, MR4 received an annual statement that purported to be from Harbour Investments. This statement listed the account number as "6AV-497697" and listed "Henry" as the investment representative on this account.
39. In February 2006, March 2006, April 2006, and June 2006, MR4 received similar statements that were purportedly sent by Harbour Investments. The final statement received in June 2006 valued MR4's account at two hundred fourteen thousand nine hundred sixty-six dollars and two cents (\$214,966.02).

G. Missouri Resident 5

40. On October 2, 2006, an investigator from the Division contacted a 53 year-old Missouri resident ("MR5"), who stated that he had been a client of Henry's and ICA for approximately ten years, holding various stocks and his IRA with them.
41. On January 2, 1997, MR5 purchased a variable annuity product from Henry and ICA. The investment advisor representative used by MR5 was Henry and the broker-dealer was ICA.
42. On March 17, 2006, Henry approached MR5 to "switch his IRA into a new IRA." At that time the account value was over eighty-eight thousand dollars (\$88,000). Henry explained to MR5 that there would be no penalties or fees for the move.
43. On March 17, 2006, MR5's variable annuity policy was fully surrendered.
44. On March 22, 2006, MR5 wrote a check payable to ICA for over eighty-eight thousand dollars (\$88,000) to effect this switch. The check was given to Henry who deposited the funds into Henry's ICA Bank Account.

H. Missouri Resident 6

45. On October 6, 2006 and October 12, 2006, an investigator from the Division contacted a Missouri resident ("MR6").
46. MR6 met with Henry on May 8, 2006, June 16, 2006, June 23, 2006, and July 12, 2006, to discuss the financial plan that Henry prepared for MR6.
47. Henry provided MR6 with a business card which reflected the Harbour Brokerage insignia, Henry as "Investment Advisor Representative," Henry's office address of 201 East 3rd Street, PO Box 763, Carthage, Missouri 64836, Henry's phone numbers of (800) 353-3284 and (417) 237-0044, and Henry's fax number of (417) 358-2228.
48. During the July 12, 2006, meeting with Henry, MR6 wrote a check to "Harbour Investments" for one hundred thousand dollars (\$100,000), and gave it to Henry to invest into a variable annuity product with Allstate Life Insurance Company.
49. Henry generated a receipt for the July 12, 2006, payment on that date, reflecting that he accepted the check from MR6 made payable to "Harbour." The description of the funds received from Henry was listed as "Allstate Advisor VA."
50. A review of bank records revealed in part that the check written by MR6 was deposited into Henry's Harbour Bank Account.

I. Missouri Resident 7

51. On October 2, 2006 and October 13, 2006, an investigator from the Division contacted a Missouri resident ("MR7").
52. MR7 met with Henry on June 23, 2006, and gave Henry a check payable to "Harbour Investments" in the amount of eighteen thousand dollars (\$18,000). MR7 stated that he told Henry that MR7 wanted to invest in something that would allow MR7 easy access to his funds.
53. A review of the bank records indicate that Henry deposited the check written by MR7 into Henry's Harbour Bank Account on June 27, 2006.

J. Additional Investigation by the Securities Division

54. At no time was Henry an officer or owner of ICA. Henry did not have any corporation registration or fictitious name registration for ICA with the Business Services Division of the Missouri Secretary of State.
55. A copy of the Joplin, Missouri area yellow pages for October 2006 lists Henry's office address and phone number under the name of ICA.
56. In addition, to the above listed Missouri residents, the Division has received information from two other investors with Henry and ICA. These investors have claimed losses in their accounts.
57. On June 27, 2006, Henry filed for a fictitious name registration for "Harbour Investments," representing that he was the owner of "Harbour Investments."

58. At no time was Henry affiliated or registered with Harbour Investments or any other Missouri-registered broker-dealer by the name of Harbour.
59. In connection with the offer and sale of securities in the State of Missouri, Respondent Henry told MR1 that Henry would purchase Empire Stock for MR1's account but omitted to disclose that:
- At the time of MR1's investment, Henry was not registered to offer or sell securities in the State of Missouri;
 - MR1's funds were never sent to a broker-dealer;
 - MR1's funds were not used to purchase Empire Stock;
 - MR1's funds were deposited into a bank account controlled by Henry; or
 - the account statements sent to MR1 were not generated by a registered broker-dealer.
60. In connection with the offer and sale of securities in the State of Missouri, Respondents engaged in an act, practice, or course of business that would operate as a fraud or deceit on MR2 and MR3 by:
- changing or setting up an elderly investor's account at ICA to be held as a joint account with right of survivorship with Henry and/or Henry's wife;
 - sending elderly investors' account statements to Henry and/or Raczkowski; or
 - writing checks or otherwise obtaining funds from the securities accounts of elderly investors for Henry's and/or Raczkowski's personal use.
61. In connection with the offer and sale of securities in the State of Missouri, Respondent Henry engaged in an act, practice, or course of business that would operate as a fraud or deceit on investors by:
- obtaining investor funds meant for the investors' ICA accounts by:
 - opening a bank account for his own use and without ICA's approval/consent under the name "Investment Centers of America" in violation of ICA firm policy;
 - filing false information with ICA regarding Henry's ICA Bank Account;
 - accepting and depositing customer's funds for investments at ICA into Henry's ICA Bank Account;
 - sending account statements to investors that purported to be from ICA, when, in fact, they were not ICA account statements and did not represent the amount of the investors' funds at ICA; or
 - converting investor funds in Henry's ICA Bank Account to Henry's personal use;
 - failing to tell investors that Henry had violated ICA policy by opening Henry's ICA Bank Account;
 - failing to tell investors that Henry had filed false information with ICA regarding Henry's ICA Bank Account;
 - obtaining investor funds by purporting to represent a broker-dealer by:
 - obtaining information from Harbour Investments, a Missouri-registered broker-dealer;
 - obtaining a fictitious name registration under the name "Harbour Investments" that was not associated with the registered broker-dealer;
 - setting up a bank account under the name "Harbour Investments" that was owned and controlled by Henry;
 - commingling investor funds in Henry's Harbour Bank Account;
 - sending investors account statements that purported to represent the investor's funds at a broker-dealer when, in fact, these statements were not from a broker-dealer, and did not represent the investor's funds at a broker-dealer; or
 - converting investor funds intended for investments at a broker-dealer to Henry's own use; or
 - failing to tell these investors that Henry had never been registered in Missouri with Harbour Investments or any other broker-dealer with the name Harbour.
62. This Order is in the public interest.

II. STATUTORY PROVISIONS

63. Section 409.1-102, RSMo. (Cum. Supp. 2005), includes “stock” and “investment contract” within the definition of a security. Pursuant to Section 409.1-102(28)(D) RSMo. (Cum. Supp. 2005), investment contract includes “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.”
64. Section 409.4-402(a,) RSMo. (Cum. Supp. 2005), provides that it is unlawful for any person to transact business in this state as an agent unless the person is registered under the act or exempt from registration.
65. Section 409.5-501, RSMo. (Cum. Supp. 2005), provides that it is unlawful for a person, in connection with the offer, sale or purchase of any security, directly or indirectly (1) to employ a device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are 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.
66. Section 409.6-604(a), RSMo. (Cum. Supp. 2005), provides:

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;
- (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

67. Section 409.6-604(d), RSMo. (Cum. Supp. 2005), provides:

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.

68. Section 409.6-604(e), RSMo. (Cum. Supp. 2005), provides:

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.

III. CONCLUSIONS OF LAW

Multiple Violations of Transacting Business as an Unregistered Agent

69. Paragraphs 1 through 68 are incorporated by reference as though fully set forth here.
70. From September 2, 2005, through the date of this Order, the records maintained by the Commissioner of Securities contained no registration or granted exemption for Henry as an agent of a broker-dealer agent.
71. Respondent Henry transacted business as an agent with MR1, MR6, and MR7 in the State of Missouri after Henry’s termination from ICA on September 2, 2005.
72. Respondent Henry repeatedly violated Section 409.4-402(a), RSMo. (Cum. Supp. 2005), when he transacted business with MR1, MR6, and MR7 when Henry was not registered as a broker-dealer agent under the act or exempt from such registration.

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

73. Paragraphs 1 through 68 are incorporated by reference as though fully set forth here.
74. In connection with the offer or sale of securities, Respondent Henry told MR1 that Henry would purchase Empire Stock for MR1’s account but he omitted to state to MR1 the following material facts:
- a. That at the time of MR1’s investment, Henry was not registered to offer or sell securities in the State of Missouri;
 - b. That MR1’s funds were never sent to a broker-dealer;
 - c. That MR1’s funds were not used to purchase Empire stock;

- d. That MR1's funds were deposited into a bank account controlled by Henry; or
 - e. That the account statements sent to MR1 were not generated by a registered broker-dealer.
75. Respondent Henry repeatedly violated Section 409.5-501(2), RSMo. (Cum. Supp. 2005), when he omitted to state, in connection with the offer or sale of a security, the material facts described in the paragraph 74 immediately above.

Multiple Violations of Engaging in an Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit Upon MR2 and MR3

76. Paragraphs 1 through 68 are incorporated by reference as though fully set forth here.
77. In connection with the offer or sale of securities, Respondent Henry engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR2 and MR3 by:
- a. changing or setting up MR2's and MR3's account at ICA to be held as a joint account with right of survivorship with Henry and/or Henry's wife;
 - b. sending MR2's and MR3's account statements to Henry and/or Raczkowski; or
 - c. writing checks or otherwise obtaining funds from MR2's and MR3's securities accounts for Henry's personal use.
78. Respondent repeatedly violated Section 409.5-501(3), RSMo. (Cum. Supp. 2005), when, in connection with the offer and sale of a security, he engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR2 or MR3 as described in paragraph 77 immediately above.

Multiple Violations of Engaging in an Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit upon MR4

79. Paragraphs 1 through 68 are incorporated by reference as though fully set forth here.
80. In connection with the offer or sale of securities, Respondent Henry engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR4 by:
- a. obtaining investor funds meant for MR4's ICA accounts by:
 - 1. opening a bank account under the name "Investment Centers of America" in violation of ICA firm policy; and
 - 2. filing false information with ICA regarding Henry's ICA Bank Account;
 - 3. accepting and depositing MR4's funds for investments at ICA into Henry's ICA Bank Account;
 - 4. sending account statements to MR4, that purported to be from ICA, when, in fact, they were not ICA account statements and did not represent the amount of the investors' funds at ICA; or
 - 5. converting MR4's investor funds in Henry's ICA Bank Account to Henry's personal use; or
 - b. failing to tell MR4 that Henry had violated ICA policy by opening Henry's ICA Bank Account;
 - c. failing to tell MR4 that Henry had filed false information with ICA regarding Henry's ICA Bank Account; or
 - d. failing to tell MR4 that Henry had never been registered in Missouri with Harbour Investments or any other broker-dealer with the name Harbour.
81. Respondent Henry repeatedly violated Section 409.5-501(3), RSMo. (Cum. Supp. 2005), when, in connection with the offer and/or sale of a security he engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR4 as described in the paragraph 80 immediately above.

Multiple Violations of Engaging in an Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit upon MR5

82. Paragraphs 1 through 68 are incorporated by reference as though fully set forth here.
83. In connection with the offer or sale of securities, Respondent Henry engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR5 by:
- a. obtaining MR5's funds meant for MR5's ICA accounts by:
 - 1. opening a bank account under the name "Investment Centers of America" in violation of ICA firm policy;

2. filing false information with ICA regarding Henry's ICA Bank Account;
 3. accepting and depositing customer's funds for investments at ICA into Henry's ICA Bank Account;
 4. sending account statements to the investor, that purported to be from ICA, when, in fact, they were not ICA account statements and did not represent the amount of MR5's funds at ICA; or
 5. converting MR5's funds in Henry's ICA Bank Account to Henry's personal use; or
- b. failing to tell MR5 that Henry had violated ICA policy by opening Henry's ICA Bank Account; or
 - c. failing to tell MR5 that Henry had filed false information with ICA regarding Henry's ICA Bank Account.
84. Respondent Henry repeatedly violated Section 409.5-501(3), RSMo. (Cum. Supp. 2005), when, in connection with the offer and/or sale of a security he engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR5 as described in the paragraph 83 immediately above.

Multiple Violations of Engaging in an Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit upon MR6

85. Paragraphs 1 through 68 are incorporated by reference as though fully set forth here.
86. In connection with the offer and sale of securities, Respondent Henry engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR6 by:
- a. obtaining MR6's funds by purporting to represent Harbour Investments, a Missouri-registered broker-dealer by:
 1. obtaining a fictitious name registration under the name "Harbour Investments" that was not associated with the Missouri-registered broker-dealer;
 2. setting up a bank account under the name "Harbour Investments" that was owned and controlled by Henry;
 3. commingling MR6's funds in Henry's Harbour Bank Account;
 4. sending MR6's account statements that purported to represent the investor's funds at a broker-dealer when, in fact, these statements were not from a broker-dealer, and did not represent the investor's funds at a broker-dealer; or
 5. converting MR6's funds in Henry's Harbour Bank Account intended for investments at a broker-dealer to Henry's own use; or
 - b. failing to tell the MR6 that Henry had never been registered as an agent in Missouri with Harbour Investments or any other broker-dealer with the name Harbour.
87. Respondent Henry repeatedly violated Section 409.5-501(3), RSMo. (Cum. Supp. 2005), when, in connection with the offer and/or sale of a security he engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR6 as described in the paragraph 86 immediately above.

Multiple Violations of Engaging in an Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit upon MR7

88. Paragraphs 1 through 68 are incorporated by reference as though fully set forth here.
89. In connection with the offer and sale of securities, Respondent Henry engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR7 by:
- a. obtaining MR7's funds by purporting to represent Harbour Investments, a Missouri-registered broker-dealer by:
 1. obtaining a fictitious name registration under the name "Harbour Investments" that was not associated with the Missouri-registered broker-dealer;
 2. setting up a bank account under the name "Harbour Investments" that was owned and controlled by Henry;
 3. commingling MR7's funds in Henry's Harbour Bank Account;
 4. sending MR7 account statements that purported to represent MR7's funds at a broker-dealer when, in fact, these statements were not from a broker-dealer, and did not represent MR7's funds at a broker-dealer; or
 5. converting MR7's funds intended for investments at a broker-dealer to Henry's own use; or

- b. failing to tell MR7 that Henry had never been registered as an agent in Missouri with Harbour Investments or any other broker-dealer with the name Harbour.

90. Respondent Henry repeatedly violated Section 409.5-501(3), RSMo. (Cum. Supp. 2005), when, in connection with the offer and/or sale of a security he engaged in an act, practice, or course of business that would operated as a fraud or deceit upon MR7 as described in paragraph 89 immediately above.

IV. 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 409.4-402(a) RSMo. (Cum. Supp. 2005), by transacting business in this state as a broker-dealer without being registered under the act or exempt from such registration;
- b. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2005), by, in connection with the offer or sale of securities, as defined by Section 409.1-102(28), RSMo, making an untrue statement of a material fact or omitting 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
- c. engaging in the acts, practices or courses of business described in 6, 7, 9-17, 26-30, 34-39, 42-44, 47-50, and 52-53.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2005), the Commissioner will determine whether to grant the Enforcement Division's petition for imposition of a civil penalty of up to one thousand dollars for a single violation, or up to ten thousand dollars for more than one violation, against Respondent Henry for violation of Section 409.4-402, RSMo. (Cum. Supp. 2005), in a final order, unless Respondent Henry 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. 2005), the Commissioner will determine whether to grant the Enforcement Division's petition for imposition of a civil penalty of up to one thousand dollars for a single violation, or up to ten thousand dollars for more than one violation, against Respondent Henry for violation of Section 409.5-501(2), RSMo. (Cum. Supp. 2005), in a final order, unless Respondent Henry 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. 2005), that the Commissioner will determine whether to grant the Enforcement Division's petition for imposition of a civil penalty of up to one thousand dollars for a single violation, or up to ten thousand dollars for more than one violation against Respondent Henry for violation of Section 409.5-501(3), RSMo. (Cum. Supp. 2005), in a final order, unless Respondent Henry 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 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. 2005), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondent 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 15TH DAY OF NOVEMBER, 2006.

ROBIN CARNAHAN
SECRETARY OF STATE

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

State of Missouri
Office of Secretary of State

Case No. AP-06-30

IN THE MATTER OF:

MARK L. HENRY, CRD 2363168

Respondents.

Serve at:

7163 Brandi Lane
Joplin, MO 64804

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 § 409.6-604(b), RSMo Supp. 2005, and 15 CSR 30-55.020.

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
Kirkpatrick State Information Center
600 West Main Street, Jefferson, Room 229
Jefferson City, Missouri, 65102**

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2006, a copy of the foregoing Notice, Order and Petition filed the above styled case was mailed by certified U.S. Mail, postage prepaid to:

Beth Perkins
Administrative Aide

[1] Harbour Investments, Inc. is a Missouri-registered broker-dealer and is a Wisconsin corporation with a business address of One Odana Court, Madison, Wisconsin 53719. Harbour is registered in Missouri through the CRD and has a CRD number of 19258.

[2] Payments not created by the success of the underlying business venture but instead are derived fraudulently from the capital of other later investors. Named after Charles Ponzi who in the 1920s collected over 9 million dollars from investors by offering high rates of return on invested funds.

[3] A tenancy with two or more coowners who take identical interests simultaneously by the same instrument and with the same right of possession. A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share. . ." *Black's Law Dictionary* 1477 (7th ed. 1999).

[4] This is from a statement of MR3; no documents reflecting this payment have been located.