

State of Missouri
Office of Secretary of State

Case No. AP-12-23

IN THE MATTER OF:

THE DAVIDAN CORPORATION dba BANKCARD EMPIRE;
LAJOBEJO LLC dba BANKCARD EMPIRE;
ULTIMATE BUSINESS SOLUTIONS, LLC;
DAVID ADAM MERSKY;
LESLIE SPENCER MERSKY, CRD # 1374944;
BRUCE KRIENS, JR.; AND NIKKI KRIENS,

Respondents.

Serve: The Davidan Corporation dba Bankcard Empire at:
c/o Registered Agent: Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

Lajobejo LLC dba Bankcard Empire at:
c/o Registered Agent: Corporation Service Company
2338 West Royal Palm Road, Suite J
Phoenix, Arizona 85021

Ultimate Business Solutions, LLC at:
c/o Registered Agent: Spiegel & Utrera, P.A.
1785 East Sahara Avenue - Suite 490
Las Vegas, Nevada 89104

and

c/o Registered Agent: Nikki Kriens at:
3741 East Leah Lane
Gilbert, Arizona 85234

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

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

Bruce Kriens, Jr. at:
3741 East Leah Lane
Gilbert, Arizona 85236

Nikki Kriens at:
3741 East Leah Lane
Gilbert, Arizona 85236

**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. 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.

2. 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.
3. David Adam Mersky ("D. Mersky") is the president, chief executive officer and director of Davidan. D. Mersky is a managing member of Lajobejo. D. Mersky has an address of 8657 North Caballo Circle, Paradise Valley, Arizona 85253.
4. Leslie Spencer Mersky ("L. Mersky") is a managing member of Lajobejo and is the father of D. Mersky. L. Mersky has an address of 14304 East Thoroughbred Trail, Scottsdale, Arizona 85259-5509. 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.
5. 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").
6. 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., located at 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, at 3741 East Leah Lane, Gilbert, Arizona 85234.
7. Bruce Kriens, Jr. ("B. Kriens") is a managing member of Ultimate and has an address of 3741 East Leah Lane, Higley,¹ Arizona 85236.
8. Nikki Kriens ("N. Kriens") is a managing member of Ultimate and has an address of 3741 East Leah Lane, Higley, Arizona 85236.
9. At all times relevant, none of the above-mentioned entities were registered with the Missouri Corporations Division.
10. 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.
11. 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.
12. As used herein, the term "Respondents" refers to Davidan, Lajobejo, Ultimate, D. Mersky, L. Mersky, B. Kriens, and N. Kriens.
13. In May of 2012, the Enforcement Section received a written complaint from a seventy-one (71)² year-old resident of Bertrand, Missouri ("MR"), regarding MR's investments in the Bankcard Empire and Ultimate.

^[1] In 2010, the city of Gilbert, Arizona annexed the unincorporated subdivision of Higley, Arizona and the address at 3741 East Leah Lane is now in Gilbert, Arizona.

^[2] MR was sixty-eight (68) years old at the time of the investment.
14. 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 a representative of the Bankcard Empire ("Bankcard Representative"). The Bankcard Representative told MR, among other things, that:
 - i. MR could make money by selling the Bankcard Empire's credit card machines; 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 machines for the Bankcard Empire;
 - b. on January 5, 2009, MR purchased the Bankcard Empire's affiliate training manual;
 - 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. The Bankcard Representative stated that MR could earn money by paying Ultimate, the Bankcard Empire's affiliate, "to market" the Bankcard Empire's credit card machines for MR;

- e. on or before January 21, 2009, a representative of Ultimate ("Ultimate Representative") contacted MR and stated, among other things, that:
- i. Ultimate was in the business of marketing the Bankcard Empire's credit card machines;
 - ii. Ultimate did this type of marketing regularly and the sales were virtually guaranteed;
 - iii. in addition to marketing the Bankcard Empire's credit card machines, Ultimate specialized in helping people get rid of credit card debt;
 - iv. MR could generate "substantial income" by using Ultimate's services;
 - v. MR could make money in Ultimate 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 Ultimate signed a company up or when a company was cleared to use the Bankcard Empire's credit card machines;
 - viii. through Ultimate's marketing efforts, MR would receive a significant financial return within as little as two to three months;
 - ix. MR could pay for Ultimate's services by giving Ultimate permission to debit funds from and/or charge funds to MR's credit cards; and
 - 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 Ultimate's services;
- f. MR told the Ultimate Representative that the returns sounded too good to be true, and the Ultimate Representative stated, "I understand, but it is true;"
- g. before speaking with the Ultimate Representative, MR had in excess of fifteen thousand dollars (\$15,000) in credit card debt;
- h. MR stated that the Ultimate Representative knew the amount of MR's credit card debt before MR told the Ultimate Representative about this debt. Because the Ultimate Representative knew of MR's debt, MR felt that the Ultimate Representative was truly concerned about MR's financial situation;
- i. MR stated that MR believed the Ultimate 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;
- j. MR agreed to authorize Ultimate to debit MR's credit card accounts to pay for Ultimate's marketing activities on MR's behalf;
- k. 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);
- l. MR was assured by the Ultimate 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;
- m. after MR's funds were transferred to Ultimate, MR called Ultimate several times and was told by representatives of Ultimate, 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;"
 - n. 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;
 - o. MR has not received any funds from Ultimate or the Bankcard Empire since MR's investment;
 - p. 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;
 - q. MR is on a fixed income and can no longer pay all of MR's monthly combined medical and living expenses;
 - r. 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 Ultimate's marketing service; and
 - s. MR is currently selling homemade breads at a local farmer's market "to get by."
15. 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 and B. Kriens formed Ultimate as a limited liability company;
 - 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 conduct Bankcard Empire sales;
 - 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 the Bankcard Empire used other merchant accounts to process Bankcard Empire's credit card sales;
 - g. N. Kriens understood that when Bankcard Empire 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 Bankcard Empire;³ and
 - k. N. Kriens did not want to answer any more questions regarding N. Kriens' involvement with the Bankcard Empire.

³ Upon information and belief, N. Kriens made hundreds of thousands of dollars by allowing the Bankcard Empire to use Ultimate's Merchant Account to process Bankcard Empire's credit card sales.

16. Before MR's investment, Respondents and their representatives, among other things, did not tell MR the following:
- a. that the securities offered and/or sold to MR were not registered in the State of Missouri;
 - b. that the 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 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 the Bankcard Empire and/or Ultimate to support the claim that MR would receive

- "substantial income" from the investment;
- g. the risks of the investment; and
 - 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) (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").
17. In addition to obtaining records relating to the Illinois Cease and Desist, the L. Mersky Conviction, and L. Mersky SEC Bar, mentioned-above, an 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 issued a consent order against Bankcard Empire, *In the matter of AIG Promotions, LLC; David Corporation, d/b/a Bankcard Empire, Respondent*, Case Number S-09-450-10-CO01 (Washington Department of Financial Institutions, Securities Division 2010);
 - b. on August 9, 2010, the Director of the Division of Securities for the State of South Dakota issued a cease and desist order 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 order against Leslie Spencer Mersky and Bankcard Empire, *In the matter of Leslie Spencer Mersky, and Bankcard Empire, Respondents*, KSC No. 2011-5789 (Kansas Office of Securities Commissioner 2011).

II. STATUTORY PROVISIONS

18. 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."
19. Section 409.1-102(17), RSMo. (Cum. Supp. 2011), defines "Issuer" as "a person that issues or proposes to issue a security . . ."
20. 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."
21. 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."
22. 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.

23. 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).

24. Section 409.4-402(d), RSMo. (Cum. Supp. 2011), states:

It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in this state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

25. 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.

26. 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.

27. 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.

28. 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.

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

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

III. CONCLUSIONS OF LAW

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

30. Paragraphs 1 through 29 are incorporated by reference as though fully set forth herein.

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

32. An "investment contract" is enumerated in the list of items that are securities in Section 409.1-102(28), RSMo. (Cum. Supp. 2011). The investments Respondents offered and sold to MR are investment contracts, in that:

a. MR invested funds in a common enterprise with Ultimate and the Bankcard Empire;

b. MR's funds were to be used by Ultimate and the Bankcard Empire to market the Bankcard Empire's credit card machines;

- c. MR expected a profit from the efforts of Ultimate and Bankcard Empire to market Bankcard Empire's credit card machines, and not from her own efforts; and
 - d. MR's expected profits were interwoven with and dependent upon the efforts of Ultimate and the Bankcard Empire.
33. 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 by Respondents.
34. Respondents violated Section 409.3-301, RSMo. (Cum. Supp. 2011), when they offered and sold securities in Missouri without these securities being (1) a federal covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-203, RSMo. (Cum. Supp. 2011), or (3) registered under the Missouri Securities Act of 2003.
35. 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 Respondents' offer and sale of these unregistered securities.
36. Respondents' actions of offering and selling securities that were not registered, exempt or a federal covered security constitute an illegal act, practice, or course of business and thus such actions are subject to the Commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2011).

Multiple Violations of Employing an Unregistered Agent

37. Paragraphs 1 through 29 are incorporated by reference as though fully set forth herein.
38. Respondent Ultimate, Respondent Davidan, and Respondent Lajobejo are the issuers of the investment contracts sold to MR.
39. Respondent Ultimate, Respondent Davidan, and Respondent Lajobejo employed representatives who transacted business on behalf of Respondent Ultimate, Respondent Davidan, and Respondent Lajobejo. These activities constitute transacting business in the State of Missouri.
40. At all times relevant, records maintained by the Commissioner contained no registration or granted exemption for any agents of Ultimate, Davidan, and Lajobejo to transact business in the State of Missouri.
41. Respondent Ultimate, Respondent Davidan, and Respondent Lajobejo violated Section 409.4-402(d), RSMo. (Cum. Supp. 2011), when they employed an unregistered agent who transacted business in the State of Missouri.
42. 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 Ultimate's, Respondent Davidan's, and Respondent Lajobejo's action of employing an unregistered agent who transacted business in the State of Missouri.
43. Respondent Ultimate's, Respondent Davidan's, and Respondent Lajobejo's actions of employing an unregistered agent who transacted business in Missouri constitute an illegal act, practice, or course of business and thus such actions are subject to the commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2011).

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

44. Paragraphs 1 through 30 are incorporated by reference as though fully set forth herein.
45. In connection with the offer, sale or purchase of a security Respondents 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 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 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);
 - 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 of the investment;

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).

46. 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 Respondents' actions in omitting to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.
47. Respondents violated Section 409.5-501, RSMo. (Cum. Supp. 2011), when, in connection with the offer and sale of a security, they omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading.
48. Respondents' actions in omitting to state material facts constitute illegal acts, practices, or courses of business and thus such actions are subject to the Commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2011).
49. 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 are 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 409.4-402(d), RSMo. (Cum. Supp. 2011), by employing an unregistered agent; and
- D. 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, omitting to state a material fact necessary in order to make a 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 each Respondent for multiple violations of Section 409.3-301, RSMo. (Cum. Supp. 2011), in a final order, unless Respondents request a hearing and show 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 each Respondent for violations of Section 409.3-301, RSMo. (Cum. Supp. 2011), against an elderly person, in a final order, unless Respondents request a hearing and show 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 Ultimate for multiple violations of Section 409.4-402(d), RSMo. (Cum. Supp. 2011), in a final order, unless Respondent Ultimate 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 Ultimate for violation of Section 409.4-402(d), RSMo. (Cum. Supp. 2011), against an elderly person, in a final order, unless Respondent Ultimate 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 Davidan for multiple violations of Section 409.4-402(d), RSMo. (Cum. Supp. 2011), in a final order, unless Respondent Davidan 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 Davidan for violation of Section 409.4-402(d), RSMo. (Cum. Supp. 2011), against an elderly person, in a final order, unless Respondent Davidan 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 Lajobejo for multiple violations of Section 409.4-402(d), RSMo. (Cum. Supp. 2011), in a final order, unless Respondent Lajobejo 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 Lajobejo for violation of Section 409.4-402(d), RSMo. (Cum. Supp. 2011), against an elderly person, in a final order, unless Respondent Lajobejo 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 each Respondent for multiple violations of Section 409.5-501, RSMo. (Cum. Supp. 2011), in a final order, unless Respondents request a hearing and show 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 each Respondent for violation of Section 409.5-501, RSMo. (Cum. Supp. 2011), against an elderly person, in a final order, unless Respondents request a hearing and show cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an order of restitution, the Commissioner will determine whether to order Respondents to pay restitution for any loss, possibly to include the amount of any actual damages that may have been caused by the conduct of Respondents, and interest at the rate of eight percent (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), after review of evidence submitted by the Enforcement Section, in a final order, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2011), unless Respondents request a hearing and show cause why this restitution or disgorgement should not be imposed.

IT IS FURTHER ORDERED that, as the Enforcement Section has petitioned for an award for the costs of the investigation against Respondents in this proceeding the commissioner will issue a final order, pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2011), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and show cause why such award should not be made.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 11TH DAY OF JULY, 2012.

ROBIN CARNAHAN
SECRETARY OF STATE

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

State of Missouri
Office of Secretary of State

Case No. AP-12-23

IN THE MATTER OF:

THE DAVIDAN CORPORATION dba BANKCARD EMPIRE;
LAJOBEJO LLC dba BANKCARD EMPIRE;
ULTIMATE BUSINESS SOLUTIONS, LLC;
DAVID ADAM MERSKY;
LESLIE SPENCER MERSKY, CRD # 1374944;
BRUCE KRIENS, JR.; AND NIKKI KRIENS,

Respondents.

Serve: The Davidan Corporation dba Bankcard Empire at:
c/o Registered Agent: Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

Lajobejo LLC dba Bankcard Empire at:
c/o Registered Agent: Corporation Service Company
2338 West Royal Palm Road, Suite J
Phoenix, Arizona 85021

Ultimate Business Solutions, LLC at:
c/o Registered Agent: Spiegel & Utrera, P.A.
1785 East Sahara Avenue - Suite 490
Las Vegas, Nevada 89104

and

c/o Registered Agent: Nikki Kriens at:
3741 East Leah Lane
Gilbert, Arizona 85234

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

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

Bruce Kriens, Jr. at:
3741 East Leah Lane
Gilbert, Arizona 85236

Nikki Kriens at:
3741 East Leah Lane
Gilbert, Arizona 85236

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. Kitzi, 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 11th 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 case was **mailed by Certified U.S. mail to:**

The Davidan Corporation dba Bankcard Empire
c/o Corporation Service Company, Registered Agent
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

Lajobejo LLC dba Bankcard Empire
c/o Corporation Service Company, Registered Agent
2338 West Royal Palm Road, Suite J
Phoenix, Arizona 85021

Ultimate Business Solutions, LLC
c/o Registered Agent: Spiegel & Utrera, P.A.
1785 East Sahara Avenue - Suite 490
Las Vegas, Nevada 89104

and at:

c/o Registered Agent: Nikki Kriens
3741 East Leah Lane
Gilbert, Arizona 85234

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

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

Bruce Kriens, Jr.
3741 East Leah Lane
Gilbert, Arizona 85236

Nikki Kriens
3741 East Leah Lane
Gilbert, Arizona 85236

John Hale, Specialist