



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
RICHARD C. CHINNERY,)
)
 Respondent.) Case No. AP-15-02
)
Serve:)
)
Richard Chinnery)
706 North 17th Street)
Lexington, Missouri 64067-1115)

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

On February 3, 2015, the Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through 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 order:

I. FACTUAL BACKGROUND

A. Respondent and Related Parties

The petition alleges the following facts:

1. Richard C. Chinnery (“Chinnery”) is a Missouri resident with an address of 706 North 17th Street, Lexington, Missouri 64067. Chinnery is registered through the Central Registration Depository (“CRD”) with number 602679. A check of the CRD records indicates that Chinnery was registered as an investment adviser representative with United Advisors Corporation (“United Advisors”) from January 23, 2009 to March 6, 2009. Since 2009 Chinnery has not been registered in Missouri to sell securities or offer investment advice.

2. Custom Sales and Marketing, Inc. (“Custom Sales”) was a Missouri corporation organized on March 1, 1999, with an address of 3946 Redwood Drive, Suite E, Independence, Missouri 64055. Custom Sales did business as (d/b/a) Custom Planners. Chinnery was listed as the registered agent for Custom Sales. Custom Sales’ business registration expired June 6, 2011, for failing to maintain a registered agent.
3. A check of the records of the Missouri Department of Insurance, Financial Institutions, and Professional Registration (“DIFP”) indicates that Chinnery is currently licensed as an insurance producer with license number 0186147.
4. SSH2 Acquisitions, Inc. (“SSH2”) was a Nevada Corporation formed on July 31, 2009 and was based in the State of Florida. SSH2’s business registration was revoked on July 31, 2012.
5. As used herein, the term “Respondent” refers to Chinnery.
6. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, Respondent was not registered in the State of Missouri as a broker-dealer, broker-dealer agent, investment adviser, or issuer agent.
7. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, there was no registration, no granted exemption, or notice filing indicating status as a “federal covered security” for the securities offered and sold by Respondent.

B. Missouri Resident (MR)

9. In 2009, a 68 year-old Cabool, Missouri resident (“MR”) received \$105,000 from an inheritance and talked with Chinnery about investing these funds.
10. MR had invested in annuities with Chinnery in the past and trusted Chinnery.
11. Chinnery told MR, among other things, that:
 - a. Chinnery could invest MR’s funds;
 - b. Chinnery and his wife had invested and made money with an investment group;
 - c. these were “secret” investments; and
 - d. the funds invested would double within one year.
12. Chinnery never provided MR the name of the company where MR’s funds would be invested.
13. Chinnery never provided MR with information about how these funds would be invested.

14. Chinnery never discussed with MR any potential risks associated with this investment.
15. Chinnery never told MR of any duties or responsibilities MR had with respect to this investment.
16. On or around February 24, 2009, MR wrote a check payable to Chinnery and Custom Sales totaling \$26,614.97 to invest on MR's behalf.
17. On or around March 3, 2009, MR wrote a check payable to Chinnery and Custom Sales totaling \$11,947.43 to invest on MR's behalf.
18. On or around March 13, 2009, MR wrote a check payable to Chinnery and Custom Sales totaling \$1,027.51 to invest on MR's behalf.
19. On or around April 15, 2009, MR wrote a check payable to Chinnery and Custom Sales totaling \$12,904.94 to invest on MR's behalf.
20. On or around April 16, 2009, MR wrote a check payable to Chinnery and Custom Sales totaling \$2,505.15 to invest on MR's behalf.
21. On or about December 16, 2009, MR wired funds to Custom Sales totaling \$50,000 to invest on MR's behalf.
22. Between March 2009 and January 2010, Chinnery provided MR three handwritten notes ("N1", "N2", and "N3") after receiving the funds from MR.
23. On or around March 2, 2009, Chinnery sent N1 to MR. N1 stated, among other things, that:
 - a. Chinnery received \$26,614.97 from MR;
 - b. Chinnery would return the \$26,614.97 plus "appreciation"; and
 - c. on or before March 2, 2010, Chinnery would return MR's funds and pay the "appreciation."
24. On or around April 20, 2009, Chinnery sent N2 to MR. N2 stated, among other things, that:
 - a. Chinnery received \$28,385.03 from MR;
 - b. Chinnery would "put [the investment funds] to work with the money received on 3-2-09"; and
 - c. Chinnery would let MR "know from time to time how things are progressing."

25. On or around December 17, 2009, Chinnery sent N3 to MR. N3 stated, among other things, that:
 - a. Chinnery received \$50,000 from MR;
 - b. MR would receive this \$50,000 back on or around March 30, 2010; and
 - c. MR would receive an additional \$50,000 on or around April 30, 2010, “for a 100% return.”
26. In or around late 2010, MR telephoned Chinnery and questioned Chinnery concerning the status of MR’s investment.
27. During that telephone conversation, Chinnery told MR that the place where he invested the money was being sued and some people were going to jail and that the money could not be recovered.
28. On December 3, 2011, Chinnery e-mailed MR from his Custom Sales e-mail account. In this e-mail Chinnery recommended MR “write off” the loss of MR’s investment. Chinnery stated that he was writing off his loss as well.
29. MR has not had any communication with Chinnery since this December 2011 e-mail. MR has not received any money from Chinnery or Custom Sales.

B. Enforcement Section Investigation

30. On July 1, 2014, representatives with the Enforcement Section contacted Chinnery who stated, among other things, the following:
 - a. MR was an insurance customer of both Chinnery and Custom Sales;
 - b. Chinnery received a total of \$105,000 from MR;
 - c. Chinnery did not give any specific information to MR concerning where MR’s investment funds were being sent;
 - d. Chinnery told MR that Chinnery had also invested in the same investment;
 - e. Chinnery told MR that for approximately four to five months Chinnery had received monthly returns on Chinnery’s investment;
 - f. Chinnery told MR the investment was profitable;
 - g. all checks and/or wires received from MR for the investment were deposited into the Custom Sales bank account (“CS Bank Account”);

- h. Chinnery provided MR with handwritten notes for all of MR's investments;
 - i. Chinnery invested MR's funds through SSH2 from the CS Bank Account;
 - j. MR had to send the funds through Chinnery because SSH2 was not taking new investors;
 - k. Chinnery invested \$25,000 of his own money in SSH2;
 - l. Chinnery estimated that he received a \$10,000 return from SSH2;
 - m. Chinnery lost a total of \$15,000 of his own funds in the SSH2 investment;
 - n. subsequent to Chinnery investing MR's funds with SSH2, Chinnery learned that SSH2 had invested these funds and was a victim of a "Ponzi scheme"¹;
 - o. Chinnery did not inform the investment advisory firm where he was employed of MR's investment because Chinnery didn't know he needed to; and
 - p. Chinnery knows now that he should have informed his employer.
31. A review of the CS Bank Account revealed, among other things, that:
- a. on February 27, 2009, the CS Bank Account had an account balance of \$3,165.25;
 - b. between March 2, 2009, and December 16, 2009, checks and wired funds from MR totaling \$105,000 were deposited in the CS Bank Account;
 - c. between May 11, 2009 and October 2, 2009, over \$6,982 was deposited from what appears to be insurance business into the CS Bank Account; and
 - d. between September 21, 2009 and November 24, 2009, Chinnery deposited over \$32,000 from an associate.
32. A review of Chinnery's CRD records reveal that Chinnery filed documents with the Securities Division through the CRD stating that Chinnery's employment at Custom Sales ended in January 2009.

¹According to Chinnery, SSH2 invested funds received by Chinnery in Commodities Online, LLC and Commodities Online Management, LLC (collectively referred to as the "Commodities Entities"). According to the SEC, the Commodities Entities were investment schemes (see Litigation Release No. LR-22472, September 6, 2012). Five people connected to the Commodities Entities were indicted by the U.S. Attorney for the Southern District of Florida on September 5, 2012.

33. MR's investment funds were commingled with Chinnery's insurance business and personal funds in the CS Bank Account and used, among other things, for the following:
- a. a check and a wire transfer totaling \$50,400 to SSH2;
 - b. approximately \$89,200 for expenses unrelated to an investment, including, among other things, the following:
 - i. \$25,000 wire transfer to an associate of Chinnery;
 - ii. in excess of \$9,400 in cash and/or checks written to Chinnery or other Chinnery family members;
 - iii. in excess of \$4,000 for car payments; and
 - iv. payments to restaurants, Wal-Mart, Target, JC Penny, and various convenience stores.
34. As of December 31, 2009, the balance of the CS Bank Account was less than \$8,000.

II. COMMISSIONER'S DETERMINATION AND FINDING

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

35. The **COMMISSIONER DETERMINES** that Respondent Chinnery:
- a. solicited MR to invest with Chinnery;
 - b. Chinnery offered and sold N1 and N3 to MR. N1 and N3 are notes, and a "note" and an "investment contract" are enumerated in the list of items that are securities in Section 409.1-102(28), RSMo. (Cum. Supp. 2013); and
 - c. the investments Chinnery offered and sold to MR are investment contracts, in that:
 - i. MR invested funds in a common enterprise with Chinnery and others;
 - ii. MR's funds were to be used by Chinnery to invest through another entity; and
 - iii. MR expected a profit from the efforts of others and not from MR's own efforts.
36. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, there was no registration, granted exemption, or notice filing

indicating status as a “federal covered security” for the securities offered and sold by Respondent.

37. Respondent 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. 2013); or (3) registered under the Missouri Securities Act of 2003.
38. At the time Respondent engaged in the conduct set forth above, MR was over sixty years old and was an elderly person as that term is defined under Section 409.6-604(d)(3)(B), RSMo. (Cum. Supp. 2013).
39. Respondent offered and sold unregistered securities in violation of Section 409.3-301, RSMo. (Cum. Supp. 2013), and engaged in an illegal act, practice, or course of business and such conduct is therefore subject to the Commissioner’s authority under Section 409.6-604, RSMo. (Cum. Supp. 2013).

Multiple Violations of Transacting Business as an Unregistered Agent

40. The **COMMISSIONER FURTHER DETERMINES** that:
 - a. Respondent offered and/or sold securities to an investor in Missouri; and
 - b. These activities constitute transacting business in the State of Missouri.
41. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, Respondent was not registered as a securities agent in the State of Missouri.
42. At the time Respondent engaged in this conduct, MR was over sixty years old and was an elderly person as that term is defined under Section 409.6-604(d)(3)(B), RSMo. (Cum. Supp. 2013).
43. Respondent offered and/or sold securities to an investor in Missouri without being registered or exempt from registration as an agent in violation of Section 409.4-402(a), RSMo. (Cum. Supp. 2013), and engaged in an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.6-604, RSMo. (Cum. Supp. 2013).

Multiple Violations of Making an Untrue Statement, Omitting to State Material Facts or Engaging in an Act, Practice, or Course of Business that Would Operate as a Fraud or Deceit upon Another Person in Connection with the Offer or Sale of a Security

44. The **COMMISSIONER FURTHER DETERMINES** that in connection with the offer, sale or purchase of a security, Respondent omitted to state material facts necessary in

order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:

- a. telling MR that (1) Chinnery could invest MR's funds; (2) the investment was secret; and/or (3) the invested funds would double within one year. These statements, in light of the circumstances under which they were made, were misleading statements because Chinnery omitted to disclose the following material facts that could impact this return and the viability of MR's investment:
 - i. the name of the investment group where MR's funds would be invested;
 - ii. specific information about the investment group;
 - iii. specific information about how the funds would be invested;
 - iv. specific risks associated with the investment;
 - v. specific information about why the investment was secret;
 - vi. specific information about why the investment group was not accepting new investors;
 - vii. financial information to support the promised return on the investment;
 - viii. that the securities were not registered;
 - ix. that Chinnery had not disclosed this investment to the investment advisory firm where he was employed;
 - x. that Chinnery's employment with Custom Sales ended in January 2009, two months before MR's investment;
 - xi. that MR's funds would be deposited in the CS Bank Account;
 - xii. that investor funds would be commingled with Chinnery's personal and/or business funds and used to pay personal expenses, to make cash withdrawals, and to pay returns to other investors;
 - xiii. that Chinnery would use over half of MR's investment funds for expenses unrelated to any investment; and/or

- xiv. that after March 6, 2009, Chinnery was not registered as an investment adviser representative.
45. The **COMMISSIONER FURTHER DETERMINES** that in connection with the offer, sale or purchase of a security, Respondent omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
- a. telling MR that (1) Chinnery could invest MR's funds; (2) Chinnery would pay MR back within one year; (3) Chinnery would pay MR "appreciation"; (4) Chinnery would put MR's funds to work; and/or (5) Chinnery would pay a 100% return on MR's investment. These statements, in light of the circumstances under which they were made, were misleading statements because Chinnery omitted to disclose the following material facts that could impact this return and the viability of MR's investment:
 - i. financial information to support the promised return on the investment;
 - ii. financial information to support Chinnery's ability to pay MR back within one year;
 - iii. that the securities were not registered;
 - iv. that Chinnery had not disclosed this investment to his investment advisory firm where he was employed;
 - v. that investor funds would be commingled with Chinnery's personal and/or business funds and used to pay personal expenses, to make cash withdrawals, and to pay returns to other investors;
 - vi. that Chinnery would use over half of MR's investment funds for expenses unrelated to any investment; and/or
 - vii. that after March 6, 2009, Chinnery was not registered as an investment adviser representative.
46. In connection with the offer, sale or purchase of a security as described above, Chinnery engaged in an act, practice or course of business that would operate as a fraud or deceit upon MR, by, among other things:
- a. telling MR that Chinnery could invest MR's funds;
 - b. telling MR that the investment was secret;

- c. telling MR that the invested funds would double within one year;
 - d. commingling MR's invested funds with Chinnery's personal and other business funds;
 - e. using these commingled funds to pay personal expenses;
 - f. using these commingled funds to make cash withdrawals;
 - g. telling MR that MR should "write off" the investment as a loss on MR's taxes because the investment funds could not be recovered because of a lawsuit when Chinnery had not invested over half of MR's funds; and/or
 - h. using these commingled funds to pay associates of Chinnery.
47. At the time Respondent engaged in this conduct, MR was over sixty years old and was an elderly person as that term is defined under Section 409.6-604(d)(3)(B), RSMo. (Cum. Supp. 2013).
48. Respondent omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person in violation of Section 409.5-501, RSMo. (Cum. Supp. 2013), and engaged in an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604, RSMo. (Cum. Supp. 2013).
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. 2013).

III. ORDER

NOW, THEREFORE, it is hereby ordered that Respondent, their agents, employees and servants, and all other persons participating in or about to participate in the above-described violations with knowledge of this order be prohibited from violating or materially aiding in any violation of:

- A. Section 409.3-301, RSMo. (Cum. Supp. 2013), by offering or selling any securities as defined by Section 409.1-102(28), RSMo. (Cum. Supp. 2013), in the State of Missouri unless those securities are registered with the Securities Division of the Office of the Secretary of State in accordance with the provisions of Section 409.3-301;
- B. Section 409.4-402(a), RSMo. (Cum. Supp. 2013), by transacting business as an unregistered agent; and

- C. Section 409.5-501, RSMo. (Cum. Supp. 2013), by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

IV. STATEMENT

Pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2013), the Commissioner hereby states that he will determine whether to grant the Enforcement Section's requests for:

- A. \$10,000 civil penalty against Respondent for more than one violation of Section 409.3-301, RSMo. (Cum. Supp. 2013);
- B. \$10,000 civil penalty against Respondent for more than one violation of Section 409.4-402(a), RSMo. (Cum. Supp. 2013);
- C. \$10,000 civil penalty against Respondent for more than one violation of Section 409.5-501, RSMo. (Cum. Supp. 2013);
- D. \$15,000 civil penalty against Respondent for more than one violation of Sections 409.3-301, 409.4-402(a), and 409.5-501, RSMo. (Cum. Supp. 2013, when at least three of these violations were committed against an elderly person;
- E. An order against Respondent 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 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, 409.5-501, RSMo. (Cum. Supp. 2013); and
- F. An order against Respondent to pay the costs of the investigation in this proceeding, after a review of evidence of the amount submitted by the Enforcement Section.

SO ORDERED:

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



JASON KANDER
SECRETARY OF STATE

Andrew M. Hartnett

ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
RICHARD C. CHINNERY,) Case No. AP-15-02
)
) *Respondent.*)
)
Serve:)
)
Richard Chinnery)
706 North 17th Street)
Lexington, Missouri 64067)

NOTICE

TO: Respondent 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. 2013), 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:

Andrew M. Hartnett, 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 18th day of February, 2015, 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:**

Richard Chinnery
706 North 17th Street
Lexington, Missouri 64067-1115



Marsha Presley, Securities Office Manager