



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
 )  
LIVING ELEMENT PICTURES, INC.; )  
CHRISTOPHER GOSCH, ) Case No. AP-04-72  
CANDANCE GOSCH, )  
DEREK THORNSBERRY, and )  
PATRICIA GILLUM, )

Respondents.

Serve all at: Living Element Pictures, Inc. at  
6080 Center Drive, 5<sup>th</sup> Floor  
Los Angeles, CA 90045

**ORDER TO CEASE AND DESIST**

On the 13th day of August 2004, Omar Davis, Enforcement Counsel for the Securities Division, submitted a petition for a Cease and Desist Order. After reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

**FINDINGS OF FACT**

1. Living Element Pictures, Inc., ("Living Element") is a company operating in the State of California with an address of 6080 Center Drive, 5<sup>th</sup> Floor, Los Angeles, CA 90045.
2. Christopher Gosch ("Gosch") purports to be the President, CEO and Founder of Living Element Pictures, Inc. and has a business address of 6080 Center Drive, 5<sup>th</sup> Floor, Los Angeles, CA 90045.
3. Candance Gosch purports to be the CFO and Vice President of Living Element Pictures, Inc. and has a business address of 6080 Center Drive, 5<sup>th</sup> Floor, Los Angeles, CA 90045.
4. Derek Thornsberry ("Thornsberry") purports to be an agent of Living Element Pictures, Inc. and has a business address of 6080 Center Drive, 5<sup>th</sup> Floor, Los Angeles, CA 90045.
5. Patricia Gillum ("Gillum") purports to be an agent and executive producer of Living Element Pictures, Inc. and has a business address of 6080 Center Drive, 5<sup>th</sup> Floor, Los Angeles, CA 90045.

6. As used in this Cease and Desist Order, the term "Respondents" refers to Living Element Pictures, Inc., Christopher Gosch, Candance Gosch, Derek Thornsberry and Patricia Gillum.
7. On or about April 23, 2004, a Missouri Resident ("MR") received an unexpected phone call, at MR's place of employment, from an individual who identified himself as Derek Thornsberry. Thornsberry represented himself as an agent employed with Living Element Pictures, Inc.
8. During this conversation, Thornsberry informed MR about investing in a film production. MR was offered the opportunity to invest in the production of a movie by purchasing a unit in Living Element Pictures, Inc. for the amount of \$37,500.00 per unit. Written information provided to MR by Respondent advised that Living Element Pictures, Inc. engaged in *"...seeking a cash equity investment of between \$2-5\$ million per film to bring our project from inception to distribution, utilizing Living Element Pictures' talent, experience, expertise and industry contacts to achieve the highest returns possible. With an ongoing slate of film projects and distribution firmly in place, a revenue stream is assured."*
9. MR was not told of the investment risk during the phone conversation, however MR was told that MR would receive a return of 150% on the investment. MR was also told that the unit must be purchased quickly as the movie was to begin shooting "next week" and would be completed within three months.
10. MR did not have to participate or be involved with Living Element Pictures, Inc. in any way other than to purchase "units" to assist in the "pool" of funding for the film production.
11. MR questioned Thornsberry on how Thornsberry obtained MR's name and phone number. MR had no prior relationship with Respondent nor had MR ever heard of Living Element Pictures, Inc. Thornsberry informed MR that MR's name and number were purchased from a "Dunn & Bradstreet List of Accredited Investors." MR was neither an accredited investor nor was MR a sophisticated investor. MR had no interest in investing with Living Element and advised Thornsberry accordingly.
12. On or about April 26, 2004, MR received a Federal Express packet at his place of employment, which included, a confidential private placement memorandum, a subscription agreement and the objectives of Living Element Pictures, Inc. along with a letter from Gillum dated April 23, 2004.
13. Shortly after receiving the packet, MR received two voice messages on MR's office phone. The individual on the phone identified herself as Patricia Gillum. Gillum reiterated what Thornsberry said during the phone conversation a few days earlier, and wanted to hear from MR once MR had the chance to review the packet material.
14. Living Element Pictures, Inc. provided MR with the following example of what to expect for MR's investment return:

- a. "Up to 15% recoupment of the initial investment; thereafter, partners will share 50/50 with Living Element Pictures in all profits for the life of the LLC."
  - b. "Initial investor earnings may be realized as early as 9-12 months following a film's completion. Thereafter, quarterly earnings reports will be made to investors."
  - c. "The highest revenue levels will most likely be achieved in the first 12 months after a film's distribution. Revenue from sources such as pay-per-view, pay cable, basic cable, and broadcast television can extend indefinitely."
15. MR never returned the phone calls left by Gillum, as MR was not interested in investing with Respondents in any way.
  16. On or about May 3, 2004 the Missouri Securities Division received information, which indicated that Respondents offered and/or sold unregistered securities in the State of Missouri.
  17. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration, granted exemption or notice filing indicating status as a "federal covered security" for any of the securities offered by the Respondents in the State of Missouri.
  18. On May 21, 2004, the Division sent a letter of inquiry via certified mail to Respondents requesting a claim of exemption from registration or exception from definition of a security upon which Respondent relied in offering and/or selling unregistered securities in or from the State of Missouri. The letter also requested additional information about the offers, and advised Respondent that failure to respond constituted proper ground for the entry of an order by the Commissioner.
  19. On June 4, 2004, Respondents responded to the Division's letter dated May 21, 2004 stating that, among other things, Living Element Pictures, Inc. was "exempt" from registration under the Missouri Securities Laws and under Regulation D of the federal securities laws.
  20. On June 9, 2004, the Division sent a correspondence to Respondents requesting documentation relevant to each of Respondents' claimed exemptions, via certified mailed.
  21. On July 20, 2004 the Division's original correspondence dated June 9, 2004 was returned to the Division from the United States Postal Service ("USPS") marked as "unclaimed". According to USPS, delivery of the correspondence was attempted three times and on all three occasions, it was unclaimed.
  22. Respondents failed to adequately respond to the Division's letter of inquiry dated June 9, 2004.
  23. To date, the Division has not received any response from the Respondent with regard to this matter.

24. Respondent was not registered to offer and/or sell securities in the State of Missouri.
25. Respondent offered and/or sold unregistered, non-exempt securities, in the form of investment contracts in Living Element Pictures, Inc. to Missouri residents.
26. The securities offered and/or sold by Respondents were not federal covered securities.
27. This Order is in the public interest.

### **CONCLUSIONS OF LAW**

1. §409.1-102, RSMo Cumulative Supp. 2003 includes “investment contract” within the definition of a security. Pursuant to §409.1-102(28)(D) RSMo, Cumulative Supp. 2003, 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.” The interests offered by Respondents as described in the above findings of fact constitute securities.
2. §409.4-402(a) RSMo, Cumulative Supp. 2003 provides that it is unlawful for any person to transact business in this state as a agent unless the person is registered under the act or exempt from registration, as set forth at §409.4-402(b). The conduct described in the above findings of fact constitutes a violation of this section.
3. §409.4-402(d) RSMo, Cumulative Supp. 2003 provides that it is unlawful for any 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 individual is registered or exempt from registration. The conduct described in the above findings of fact constitutes a violation of this section.
4. §409.3-301 RSMo, Cumulative Supp. 2003 provides that it is unlawful for any person to offer or sell any 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. The conduct described in the above findings of fact constitutes a violation of this section.
5. 17 CFR 230.502(c), provides that neither an issuer nor any person acting on behalf of an issuer shall offer or sell securities through the use of general solicitation. The methods employed in the solicitation of MR constituted general solicitation.
6. 17 CFR 230.508(a)(2) provides that failure to comply with 17 CFR 230.502(c) precludes an issuer or its agents from availing themselves of the exemption under Regulation D, therefore the security is not a federal covered security.
7. §409.5-503 RSMo, Cumulative Supp. 2003 provides that the person claiming an exemption, exception, preemption or exclusion has the burden of proving its applicability.

8. As described in the above findings of fact, Respondents failed to prove any exemptions, exceptions, preemption or exclusions.
9. §409.6-602(b) RSMo, Cumulative Supp. 2003 provides that, for the purpose of an investigation under the 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.
10. §409.6-604(a) RSMo, Cumulative Supp. 2003 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

11. §409.6-604(d) RSMo, Cumulative Supp. 2003 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.

12. §409.6-604(e) RSMo, Cumulative Supp. 2003 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.

13. Transacting business as an unregistered agent as described in the above findings of fact constitutes an illegal act, practice or course of business under §409.6-604(a) RSMo, Cumulative Supp. 2003.

14. Employing or associating with an unregistered agent as described in the above findings of fact constitutes an illegal act, practice or course of business under §409.4-402(d) RSMo, Cumulative Supp. 2003
15. The offer or sale of unregistered securities as described in the above findings of fact constitutes an illegal act, practice or course of business under §409.6-604(a) RSMo, Cumulative Supp. 2003.
16. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. §409.6-604(a) RSMo, Cumulative Supp. 2003.

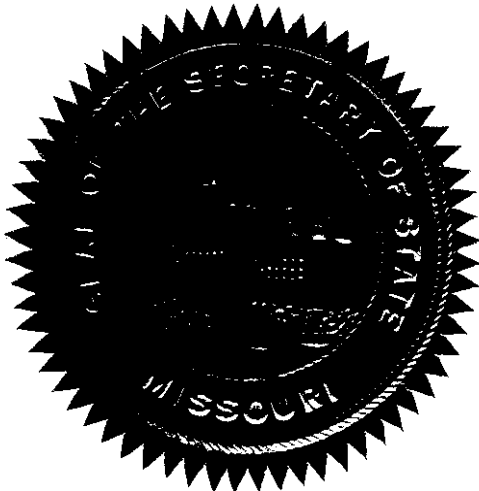
### **ORDER**

**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. Offering or selling investment contracts in Living Element Pictures, Inc.
- B. Violating or materially aiding in the violation of §409.4-402(a) RSMo, Cumulative Supp. 2003 by transacting business as an agent without an effective registration.
- C. Violating or materially aiding in the violation of §409.4-402(d), RSMo, Cumulative Supp. 2003, by employing or associating with an unregistered agent; and
- D. Violating or materially aiding in the violation of §409.3-301 RSMo, Cumulative Supp. 2003 by offering or selling any security that is not registered, unless the security is a federal covered security or has an effective exemption from registration;

### **SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 28<sup>th</sup> DAY OF September, 2004.



MATT BLUNT  
SECRETARY OF STATE

A handwritten signature in black ink, appearing to read "Douglas M. Ommen", written over a horizontal line.

DOUGLAS M. OMMEN  
COMMISSIONER OF SECURITIES