



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)	
)	
CAROL COSTELLO; and)	
INDUSTRIAL REALTY DEVELOPMENT, LLC,)	Case No. AP-17-11
)	
<i>Respondents.</i>)	
)	
Serve:)	
)	
Industrial Realty Development, LLC)	
c/o Carol Costello)	
648 East 45th Street)	
Kanas City, Missouri 64110)	
)	
and)	
)	
Carol A. Costello)	
648 East 45th Street)	
Kanas City, Missouri 64110)	

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

On May 19, 2017, the Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through Director of Enforcement Sandra J. McDowell, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed (“Petition”). After reviewing the Petition, the Commissioner issues the following order:

I. ALLEGATIONS OF FACT

The Petition alleges the following facts:

A. Summary of Allegations

The Petition alleges that from September 2012 to October 2012, (the “Relevant Period”), Carol Costello (“Costello”), a Kansas City, Missouri resident, solicited an Ohio resident (“OR”) to invest in Eagle County, Colorado tax liens. Costello told OR, among other things, there would

be no risk involved with the investments, Costello had experience with the investments, and Costello would match OR's investments. Two investments were made by OR totaling \$24,333, but Costello only invested \$10,833.67 of this amount and spent the remaining portion on personal expenses. Costello also did not match OR's investments as promised. In addition, Costello allegedly forged OR's name on Eagle County documents to receive the investment returns but did not forward the investment returns to OR, instead Costello spent the investment returns on personal expenses.

B. Respondents and Related Parties

1. Costello is a 57 year-old Missouri resident with a last known address of 648 East 45th Street, Kanas City, Missouri 64110. Costello has never been registered as an investment adviser, investment adviser representative, broker-dealer, broker-dealer agent, and/or issuer agent.
2. Industrial Realty Development, LLC is a limited liability company formed in Missouri on March 18, 2011, and its registered agent is Costello. A check of the records maintained by the Commissioner of Securities (the "Commissioner") indicates that at all times relevant, there was no registration, granted exemption, or notice filing indicating status as a "federal covered security" for any securities issued by Industrial Realty Development, LLC.
3. Industrial Realty, Inc. was a Missouri corporation created by Costello in or around July 2000. It was administratively dissolved or revoked as of February 19, 2010, for failure to file a correct and current annual report. A check of the records maintained by the Commissioner indicates that at all times relevant, there was no registration, granted exemption, or notice filing indicating status as a "federal covered security" for any securities issued by Industrial Realty, Inc.
4. Minturn Commercial Development, LLC is a limited liability company formed in Colorado on October 12, 2010, and its registered agent is Costello, with an address listed at 648 East 45th Street, Kanas City, Missouri 64110. A check of the records maintained by the Commissioner indicates that at all times relevant, there was no registration, granted exemption, or notice filing indicating status as a "federal covered security" for any securities issued by Minturn Commercial Development, LLC.

C. Enforcement Section Investigation

5. On or about January 13, 2015, the Enforcement Section opened an investigation on Industrial Realty Development, LLC and Costello after receiving a complaint from a 27 year-old Ohio resident, OR. OR told the Enforcement Section, among other things, the following:
 - a. In or around September 2012, Costello, OR's cousin, solicited OR, to invest in tax liens in Eagle County, Colorado. The solicitations occurred over the telephone and in person in Kansas City, Missouri.

- b. Costello told OR, among other things, that
 - i. there was no risk involved with the investment and Costello had experience investing in tax liens,
 - ii. Costello preferred Eagle County because the return on investment was purportedly better than other places,
 - iii. Costello further promised the investment would make OR a return of 8-10% or ownership of the property if the property owner was delinquent in paying taxes after three years. The Enforcement Section later learned from Eagle County, Colorado officials that investors rarely obtain the property because the property owner eventually pays the property taxes prior to the third year in which the taxes are in arrears; and
 - iv. Costello would match OR's investment amount.
- c. OR wrote an \$11,000 check payable to "Industrial Realty" on September 29, 2012. OR wrote another check in the amount of \$13,333 payable to "Industrial Realty Development" on October 31, 2012;
- d. OR did not receive any paperwork from Costello after making the investments and has not received any returns;
- e. when OR questioned Costello about the investments, Costello became defensive and angry and suggested that the tax liens had not been redeemed yet (in other words, the property owner had not paid the taxes in arrears);
- f. OR contacted the Eagle County, Colorado Treasurers office in November 2014, and was told the tax liens had been redeemed and the funds sent to Costello. OR was also told that Costello was banned from any further tax lien sales due to complaints about Costello; and
- g. OR alleged that Costello forged OR's signature on Eagle County paperwork to receive the funds. In particular, OR suspects Costello forged:
 - i. a Tax Lien Sale Registration Form dated October 23, 2012,
 - ii. a W-9 Request for Taxpayer Identification Number and Certification dated October 23, 2012, (this is an Eagle County requirement for new investors), and
 - iii. a document assigning rights, title and interest for tax lien certificate numbers 20120114 and R014429 to Industrial Realty Development, LLC dated November 8, 2012.

OR's \$11,000 Investment

6. A review of Industrial Realty, Inc.'s US Bank records ending in account #4259 from October 1, 2012 to October 31, 2012, indicated, among other things:
 - a. a beginning balance of -\$373.43 on October 1, 2012;
 - b. OR's \$11,000 investment deposited on October 4, 2012;
 - c. other deposits totaling \$4,395.60 that included:
 - i. a \$650 check from an individual for "Rent",
 - ii. a \$3,251.33 check from an individual for "Minturn 327",
 - iii. \$120 in cash, and
 - iv. the remaining consisted of refunds from various retailers;
 - d. \$4,679.06 in checks written that included:
 - i. \$935.06 to "Pure Pilates",
 - ii. \$190 to Silverthorne Municipal Court,
 - iii. \$143 to an ironing service business,
 - iv. two checks totaling \$2,381 to Minturn Commercial Development for "Loan Payment", and
 - v. other checks to various individuals;
 - e. payments in excess of \$6,400 to restaurants, Southwest Airlines, Saks Fifth Avenue, salons and spas, Nordstrom, Neiman Marcus, insurance companies, and utility companies; and
 - f. an ending balance of \$3,933.23 on October 31, 2012.

OR's \$13,333 Investment

7. A review of Industrial Realty, Inc.'s US Bank records ending in account #4259 from November 1, 2012 to November 30, 2012, indicated, among other things:
 - a. a beginning balance of \$3,933.23 on November 1, 2012;

- b. OR's \$13,333 investment deposited on November 5, 2012;
- c. other deposits totaling \$15,760.19 that included:
 - i. a \$460 check from an individual for "dining room chairs",
 - ii. a \$6,000 check from Kansas City Free Health Clinic,
 - iii. four checks totaling \$7,605.19 from OR for insurance and mortgage payments for real-estate OR was invested in with Costello, and
 - iv. a \$90 check from an individual;
- d. \$21,940.76 in checks written that included:
 - i. \$200 to an individual, \$10,833.67 to the Eagle County Treasurer,
 - ii. \$8,452 to the Eagle County Treasurer that was returned for "NOT SUFFICIENT FUNDS",
 - iii. \$2,122 to an insurance company,
 - iv. \$80 to an individual that was returned for "NOT SUFFICIENT FUNDS",
 - v. \$68.20 to Macy's, and
 - vi. other checks to various individuals;
- e. payments in excess of \$7,000 to banks, insurance companies, and Neiman Marcus; and
- f. an ending balance of \$4,023.39 on November 30, 2012.

Deposits from Eagle County, Colorado Treasurer

- 8. A review of Industrial Realty Inc.'s US Bank account ending in #4259 from December 1, 2012 to August 29, 2013, indicated the following deposits were made via checks from the Eagle County, Colorado Treasurer:
 - a. \$5,214.08 payable to Costello deposited on December 4, 2012;
 - b. \$1,177.58 payable to Industrial Realty Development, LLC deposited on December 11, 2012;
 - c. \$7,345.75 payable to Industrial Realty Development, LLC deposited on

December 11, 2012;

- d. \$16,938.38 payable to Minturn 327 deposited on December 27, 2012; and
 - e. \$15,067.13 payable to Industrial Realty Development, LLC deposited on August 29, 2013.
9. None of the above referenced payments from the Eagle County, Colorado Treasurer were forwarded to OR. Instead, Costello spent the funds on what appeared to be personal expenses. In fact, it appeared no funds were paid to OR after reviewing five other US Bank accounts into late 2015, of which Costello had signatory authority.
10. On July 10, 2015, the Enforcement Section conducted an on-the-record interview with Costello. Costello declined to answer any questions by invoking her 5th Amendment right against self-incrimination.
11. Prior to the offer and sales of securities, specifically investments in tax liens, Costello made untrue statements of material facts and/or omitted material facts by, among other things, the following:
- a. telling OR that Costello would match OR's investment amount(s);
 - b. not disclosing that Costello would spend, rather than invest, a large portion of OR's investments;
 - c. not disclosing that Costello would forge OR's signature on Eagle County documents; and
 - d. not disclosing that Costello would keep all returns from the investments and not inform OR when the tax liens were redeemed

II. COMMISSIONER'S DETERMINATIONS AND FINDINGS

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

12. **THE COMMISSIONER DETERMINES** that Respondents offered and sold unregistered, non-exempt securities in the State of Missouri, by among other things:
- a. soliciting an investor through Costello to invest in Eagle County, Colorado tax liens;
 - b. receiving funds from the investor to invest on more than one occasion; and
 - c. promising returns on the investments that were dependent upon the efforts of others and not on the efforts of the investor.

13. These activities constitute an offer and/or sale as those terms are defined in Section 409.1-102(26), RSMo. (Cum. Supp. 2013).¹
14. The investments that Respondents offered and/or sold constitute securities as that term is defined in Section 409.1-102(28).
15. 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 Respondents.
16. Respondents offered and/or sold securities in Missouri without these securities being (1) federal covered, (2) exempt from registration under Sections 409.2-201 or 409.2-203, or (3) registered under the Missouri Securities Act of 2003.
17. Respondents’ conduct in violation of Section 409.3-301, constitutes an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.6-604.

Multiple Violations of Transacting Business as an Unregistered Agent

18. **THE COMMISSIONER FURTHER DETERMINES** that Respondent Costello transacted business as an unregistered agent in the State of Missouri.
19. Respondent Costello, a Missouri resident, offered and/or sold securities to an investor on behalf of Industrial Realty Development, LLC in or from Missouri.
20. These activities constitute transacting business in the State of Missouri under Section 409.1-102(1).
21. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, Respondent Costello was not registered as a securities agent in the State of Missouri.
22. Respondent Costello’s conduct in violation of Section 409.4-402(a) constitutes an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.6-604.

Multiple Violations of Employing an Unregistered Agent

23. **THE COMMISSIONER FURTHER DETERMINES** that Respondent Industrial Realty Development, LLC employed and/or associated with an unregistered agent in the State of Missouri.

¹ Unless otherwise noted, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

24. Respondent Industrial Reality Development, LLC employed Costello who offered and sold securities on behalf of it.
25. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, Respondent Industrial Reality Development, LLC had no registration or granted exemption for any agents to transact business in the State of Missouri.
26. Respondent Industrial Reality Development, LLC's activities constitute employing and/or associating with an agent in the State of Missouri under Section 409.4-402(d).
27. Respondent's conduct in violation of Section 409.4-402(d) constitutes an illegal act, practice, or course of business, and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

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

28. **THE COMMISSIONER FURTHER DETERMINES** that in connection with the offer, sale or purchase of a security as described above, Respondents made untrue statements of material fact or 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:
 - a. there was no risk involved with the investment;
 - b. that Costello had experience investing in tax liens;
 - c. the investment would make the investor a return of 8-10% or ownership of the property; and
 - d. Respondents would match the investor's investment amount(s).
29. **THE COMMISSIONER FURTHER DETERMINES** that in connection with the offer, sale or purchase of a security as described above, Respondents omitted to disclose the following material facts that could impact the return and the viability of the investments
 - a. Respondents were not registered to offer or sell securities in the State of Missouri;
 - b. the securities were not registered or exempt from registration;
 - c. Respondents would forge OR's signature on documents;
 - d. Respondents would keep all returns from the investments and not inform the

investor when the tax liens were redeemed; and

- e. that the investor's funds would be spent on personal expenses.
30. **THE COMMISSIONER FURTHER DETERMINES** that in connection with the offer, sale or purchase of a security as described above, Respondents, engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person by, among other things:
- a. Respondents spent, rather than invested, a large portion of the investor's investments on personal expenses;
 - b. Respondents forged the investor's signature on documents; and
 - c. Respondents kept all returns from the investments.
31. Respondents made untrue statements of material fact, 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, 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.
32. 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).

III. 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 be prohibited from violating or materially aiding in any violation of:

- A. Section 409.3-301, by offering or selling any securities as defined by Section 409.1-102(28), 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) by transacting business as an unregistered agent;
- C. Section 409.4-402(d) by employing an unregistered agent; and
- D. Section 409.5-501 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, the Commissioner hereby states that he will determine whether to grant the Enforcement Section's request for:


- A. \$10,000 civil penalty against each Respondent for more than one violation of Section 409.3-301;
- B. \$10,000 civil penalty against Respondent Costello for more than one violation of Section 409.4-402(a);
- C. \$10,000 civil penalty against Respondent Industrial Reality Development, LLC, for more than one violation of Section 409.4-402(d);
- D. \$10,000 civil penalty against each Respondent for multiple violations of Section 409.5-501;
- E. an Order against Respondents to pay restitution in an amount 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, and 409.5-501; and
- F. an Order against Respondents to pay costs of the investigation in this proceeding, awarding an amount to be determined after review of evidence submitted by the Enforcement Section.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 25th DAY OF MAY, 2017.



JOHN R. ASHCROFT
SECRETARY OF STATE


DAVID M. MINNICK
COMMISSIONER OF SECURITIES



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
CAROL COSTELLO; and)
INDUSTRIAL REALTY DEVELOPMENT, LLC,)
)
 Respondents.)
)
Serve:)
)
Industrial Realty Development, LLC)
c/o Carol Costello)
648 East 45th Street)
Kansas City, Missouri 64110)
)
and)
)
Carol A. Costello)
648 East 45th Street)
Kansas City, Missouri 64110)

Case No. AP-17-11

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. (2016), and 15 CSR 30-55.020. Any request for a hearing before the Commissioner must contain:

- a. a brief statement of the facts;
- b. a summary of the factual and legal issues involved;
- c. a request for relief;
- d. suggestions in support of the relief sought, including the relevant statutes;
- e. the name of the party requesting the hearing; and
- f. the name of the attorney representing the party, if any.

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:

David M. Minnick, 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 *25th* day of May, 2017, 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 and regular U.S. Mail with electronic communication if applicable to:**

Industrial Realty Development, LLC
c/o Carol A. Costello
648 East 45th Street
Kansas City, Missouri 64110

Carol A. Costello
648 East 45th Street
Kansas City, Missouri 64110

Hugh L. Marshall
McDowell, Rice, Smith, and Buchanan
605 West 47th Street, Suite 350
Kansas City, Missouri 64112
hmarshall@mcdowellrice.com
Attorney for Respondents

and by hand delivery to:

Saundra J. McDowell
Director of Enforcement
Securities Division
Missouri Secretary of State



Laurie Dawson
Securities Office Manager
600 West Main Street
Jefferson City, Missouri 65101
Telephone: (573) 751-4136
Facsimile: (573) 526-3124