



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)	
)	
JOHN J. PALCZUK; and)	Case No. AP-19-18
KAREN PALCZUK,)	
)	
<i>Respondents.</i>)	
)	
Serve: John J. Palczuk)	
11629 Midlavian Dr.)	
Raleigh, NC 27614)	
)	
and)	
)	
Karen Palczuk)	
11629 Midlavian Dr.)	
Raleigh, NC 27614)	

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

On October 21, 2019, the Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“the Enforcement Section”), through Director of Enforcement Steven C. Reed, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed (“the Petition”). After reviewing the Petition, the Missouri Commissioner of Securities (“the Commissioner”) issues the following order:

I. ALLEGATIONS OF FACT

The Petition alleges the following facts:

A. Introduction

From about 2004 to 2009, John J. Palczuk and Karen Palczuk (“the Palczuks” or “the Respondents”) and their associate Richard Heyl (“Heyl”) solicited Missouri investors to invest money into a company called Johns Folly Ocean Villas, LLC, which was engaged in real estate development in the U.S. Virgin Islands. The securities sold to investors were not registered and Respondents were not registered as agents to sell securities. The Palczuks made false and misleading statements regarding the investment inducing Missouri investors to send money in exchange for ownership interests in the LLC. In total, Missouri investors sent \$144,000 to Heyl

and the Respondents. On August 1, 2016, Heyl entered into a Consent Order agreeing to repay \$30,000 to investors. The balance of the investors' restitution and interest has not been recovered.

B. Respondents and Related Parties

1. John J. Palczuk is a 61 year-old North Carolina resident with a last known address of 11629 Midlavian Dr., Raleigh, North Carolina 27614. Palczuk was an organizer and co-managing member of Johns Folly Ocean Villas, LLC ("JFOV"), located in the U.S. Virgin Islands. Palczuk originally owned a 25% interest in the LLC he formed with Heyl.
2. Karen Palczuk is the spouse of John J. Palczuk and a 62 year-old resident of North Carolina with a last known address of 11629 Midlavian Dr., Raleigh, North Carolina 27614. Karen Palczuk was an original member of JFOV and the Controller and 25% owner of the LLC.
3. JFOV is a limited liability company formed under the laws of the Territory of the U.S. Virgin Islands with a last known principal address of 4605 Hidden Harbor Lane, Raleigh, North Carolina 27615. According to its Operating Agreement, JFOV's original managing members were John J. Palczuk and Richard Heyl.
4. JFOV was formed to engage in real estate development in St. Johns, U.S. Virgin Islands. Its organizers were John J. Palczuk, Karen Palczuk, Richard Heyl, and Jennifer Heyl. They were also the original owners with each having a 25% interest in the LLC. Sales material offered by the Palczuks and JFOV provided that JFOV would develop three 6-bedroom villas and one 4-bedroom villa on 1.73 acres of land in the U.S. Virgin Islands.
5. Richard Heyl is a 67 year-old Missouri resident and managing member of JFOV. On August 1, 2016, Heyl entered into a Consent Order with the Enforcement Section of the Missouri Securities Division, AP-16-27, and agreed to pay \$30,000 in restitution to the Missouri investors for offering and selling unregistered, non-exempt securities in the form of shares in JFOV. Heyl took a commission of an increased percentage ownership of the LLC in exchange for selling these securities.
6. A check of the Central Registration Depository ("CRD") 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 JFOV.
7. A check of the records maintained by the Commissioner indicates that at all times relevant, John J. Palczuk was not registered as a broker-dealer, broker-dealer agent, investment adviser, investment adviser representative, and/or issuer agent.
8. A check of the records maintained by the Commissioner indicates that at all times relevant, Karen Palczuk was not registered as a broker-dealer, broker-dealer agent, investment adviser, investment adviser representative, and/or issuer agent.

9. A check of the records maintained by the Commissioner indicates that at all times relevant, Richard Heyl was not registered as a broker-dealer, broker-dealer agent, investment adviser, investment adviser representative, and/or issuer agent.

Enforcement Section's Investigation:
Investments by MR1, MR2, and MR3

10. In October 2015, the Enforcement Section received a written complaint from a 58 year-old resident of Washington, Missouri ("MR1"), and his spouse. Their companies are designated as ("MR2") and ("MR3").
11. MR2 and MR3 are Missouri based limited liability companies operated by MR1.
12. In 2004, MR1 learned about an investment opportunity involving real estate with Heyl through MR1's tax accountant.
13. In June 2004, MR1 and spouse invested \$6,000 in the JFOV enterprise via a personal check to Heyl.
14. In October 2004, MR1 and spouse invested an additional \$54,000 via three separate checks: \$24,000 dated October 29, 2004; \$6,000 dated October 30, 2004; and \$24,000 dated October 31, 2004. The checks were payable to Heyl and were deposited in the JFOV First Bank USVI bank account ending in 356. In return, MR1 and spouse received a 2% ownership in JFOV in the form of shares.
15. The \$60,000 paid by MR1 and spouse was used to purchase shares of JFOV. Bank records show MR1's money was placed into the JFOV bank account.
16. In an "Agreement for Assignment of Ownership Shares" dated November 1, 2004, Heyl and Palczuk designated MR1 and spouse a Charter Member of JFOV with a 2% interest in exchange for \$60,000. The Agreement provided a personal guarantee by the managing members, Heyl and Palczuk, allowing MR1 to withdraw the \$60,000 investment plus 15% of that amount as well as any "capital call" monies paid to JFOV if withdrawn by May 31, 2008.
17. MR1 was solicited several more times by the Palczuks directly to invest additional money into JFOV for "capital calls". The checks were mailed directly to the Palczuks in North Carolina and deposited into JFOV bank accounts. MR1, MR2, and MR3 added \$84,000 to the initial investments in JFOV for a total investment of \$144,000, further described below.
18. On or about August 8, 2006, the Palczuks solicited \$10,000 from MR1 for a capital call. The check was mailed via overnight mail to the Palczuks in North Carolina and deposited in the JFOV First Bank USVI account ending in 2997.

19. In January, 2007, the Palczuks sent MR1 and other investors a status report on the real estate development and outlined “immediate requirements” for money from investors to finance construction. MR1 mailed the Palczuks a \$20,000 check dated February 9, 2007, from MR2.
20. The check was deposited by the Palczuks in a JFOV bank account ending in 263 at Merchants Commercial Bank in the U.S. Virgin Islands. The authorized account owners are John and Karen Palczuk with an address in Raleigh, North Carolina.
21. On November 17, 2007, the Palczuks sent MR1 and other investors an email stating the need for an investor bridge loan of \$8,000 per point to pay interest on a construction loan and other costs. The funds loaned were to be returned to investors in mid- to late-2008. MR1 mailed a check from MR3 to the Palczuks for \$24,000 dated November 25, 2007. The check was deposited into the JFOV First Bank USVI account ending in 2997.
22. In an email to investors, John Palczuk represented the value of the land under construction and current value of a point at \$80,000. The email suggested the need for additional money to finance the project.
23. In June 2008, Karen Palczuk contacted MR1 about an immediate need for money that entailed a cash call of \$10,000 per point to be paid by June 30, 2008. MR1 sent Karen Palczuk checks from MR1 and MR2 for \$30,000 dated June 28, 2008. The money was deposited into the JFOV bank account at First Bank USVI ending in 2997.

Material False Statements, Failures to Disclose, and Omissions

24. The Palczuks and Heyl made material misrepresentations and omissions during the entire history of soliciting investments from MR1, MR2, MR3, and other investors including, but not limited to the following:
 - a. that neither the Palczuks nor Heyl were registered to offer or sell securities to Missouri investors;
 - b. that there was no registration, granted exemption, or notice filing indicating status as a “federal covered security” for any securities issued by JFOV;
 - c. concealing the fact that JFOV had taken loans of \$200,000 on August 1, 2007; \$100,000 on May 22, 2007; \$136,000 on May 22, 2008; \$50,000 on May 24, 2007; \$518,750 on September 24, 2007, before the personal guarantee described in paragraph 16 above expired on May 31, 2008;
 - d. failing to disclose, before the expiration of the personal guarantees on May 31, 2008, that JFOV was sued on May 22, 2008, for work, labor and materials provided from 2006 to 2008 by The Pro Shop totaling \$520,000;

- e. omitting to disclose that construction liens were filed on the real estate between 2006 and 2009 totaling over \$1.3 million;
- f. that the Palczuks would take large commissions on the sale of shares to MR1, MR2, and MR3;
- g. overstating the value of MR1, MR2, and MR3's ownership in JFOV and thereby inducing them to maintain and increase their investments in JFOV past the May 31, 2008, withdrawal date (see para. 16, supra);
- h. that the Respondents made personal loans to JFOV and charged interest; and
- i. inflating the value of investor's interest in JFOV in order to convince them to maintain their investment.

II. COMMISSIONER'S DETERMINATIONS AND FINDINGS

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

25. **THE COMMISSIONER DETERMINES** that Respondents offered and sold unregistered, non-exempt securities in the form of shares of JFOV, LLC:
- a. "Sale" and "offer to sell" are defined in Section 409.1-102(26).¹ Respondents and Heyl, at Respondents' direction, solicited individuals to invest in JFOV and received funds from investors. This activity constitutes the offer and sale of securities;
 - b. "investment contract" is enumerated in the list of items that are securities in Section 409.1-102(28). The investments Respondents offered and sold to investors are investment contracts, in that:
 - i. investors invested funds in a common enterprise with Respondents;
 - ii. investors' funds were to be used by Respondents to fund development of real estate;
 - iii. investors expected a profit from the efforts of Respondents and not from investors' own efforts; and
 - iv. investors' expected profits were interwoven with and dependent upon the efforts of Respondents.

¹ Unless otherwise noted all statutory references are to the 2016 Revised Statutes of Missouri.

26. MR1 invested money with a reasonable expectation of profits, including through the increased value of their investments in secondary trading, based on the managerial efforts of others.²
27. 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.
28. Respondents offered and sold securities in the state of Missouri without these securities being (1) a federal covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-203 or (3) registered under the Missouri Securities Act of 2003.
29. Respondents offered and sold unregistered securities in violation of Section 409.3-301 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.

Multiple Violations of Transacting Business as an Unregistered Agent

30. **THE COMMISSIONER FURTHER DETERMINES** that Respondents transacted business as unregistered agents in the state of Missouri.
31. Respondents offered and/or sold securities to investors in Missouri.
32. These activities constitute transacting business as an agent in the state of Missouri under Section 409.1-102(1).
33. At all times relevant to this matter, Respondents were not registered as agents in the state of Missouri.
34. Respondents offered and/or sold securities to investors in the state of Missouri without being registered or exempt from registration as an agent in violation of Section 409.4-402(a), 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.

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

35. **THE COMMISSIONER FURTHER DETERMINES** that in connection with the offer, sale or purchase of a security, Respondents and their agent Heyl 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, the following:

² See *SEC v. Edwards*, 540 U.S. 389, 393 (2004); *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946)

- a. that neither the Palczuks nor Heyl were registered to offer or sell securities to Missouri investors;
 - b. that there was no registration, granted exemption, or notice filing indicating status as a “federal covered security” for any securities issued by JFOV;
 - c. concealing the fact that JFOV had taken loans of \$200,000 on August 1, 2007; \$100,000 on May 22, 2007; \$136,000 on May 22, 2008; \$50,000 on May 24, 2007; and \$518,750 on September 24, 2007, before the personal guarantee described in paragraph 16 above expired on May 31, 2008;
 - d. failing to disclose, before the expiration of the personal guarantees on May 31, 2008, that JFOV was sued on May 22, 2008, for work, labor and materials provided from 2006 to 2008 by The Pro Shop totaling \$520,000;
 - e. omitting to disclose that construction liens were filed on the real estate between 2006 and 2009 totaling over \$1.3 million;
 - f. that the Palczuks would take large commissions on the sale of shares to MR1, MR2, and MR3;
 - g. overstating the value of MR1, MR2, and MR3’s ownership in JFOV and thereby inducing them to maintain and increase their investments in JFOV past the May 31, 2008, withdrawal date (see para. 16, supra);
 - h. that the Respondents made personal loans to JFOV and charged interest; and
 - i. inflating the value of investor’s interest in JFOV in order to convince them to maintain their investment.
36. Respondents made an untrue statement 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.
37. An 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; and
- C. 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 requests for:

- A. \$10,000 against each Respondent for violations of Section 409.3-301, in a final order, unless Respondents request a hearing and shows cause why the penalties should not be imposed;
- B. \$10,000 against each Respondent for violations of Section 409.4-402(a), in a final order, unless Respondents request a hearing and shows cause why the penalties should not be imposed;
- C. \$10,000 against each Respondent for violations of Section 409.5-501, in a final order, unless Respondents request a hearing and shows cause why the penalties should not be imposed;
- D. an order against Respondents to pay restitution for any loss, including the amount of any actual damages that may have been caused by the Respondents' conduct. The amount of restitution payable at present is \$114,000 plus interest from the date of the violation causing the loss. Further, order Respondents to disgorge any profits arising from any violation of Sections 409.3-301, 409.4-402, and 409.5-501;
- E. an order awarding of the costs of the investigation against Respondents in this proceeding, awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and show cause why an award should not be made.


- F. an order that the Commissioner provide such other relief as he deems just. All of the preceding relief is sought on behalf of the persons injured by the acts and practices of all Respondents that constitute violations of the Missouri Securities Act.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 22^d DAY OF OCTOBER, 2019.



JOHN R. ASHCROFT
SECRETARY OF STATE



DAVID M. MINNICK
COMMISSIONER OF SECURITIES



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)	
)	
JOHN J. PALCZUK; and)	Case No. AP-19-18
KAREN PALCZUK,)	
)	
<i>Respondents.</i>)	
)	
Serve: John J. Palczuk)	
11629 Midlavian Dr.)	
Raleigh, NC 27614)	
)	
and)	
)	
Karen Palczuk)	
11629 Midlavian Dr.)	
Raleigh, NC 27614)	

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:

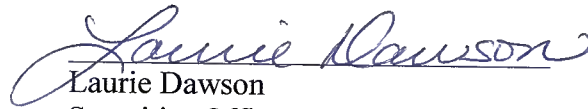
David M. Minnick, Commissioner of Securities
Office of the Secretary of State, Missouri
600 West Main Street, Room 229
Jefferson City, Missouri, 65102

CERTIFICATE OF SERVICE

I hereby certify that on this nd 22 day of October, 2019, 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:**

John J. Palczuk
11629 Midlavian Dr.
Raleigh, NC 27614

Karen Palczuk
11629 Midlavian Dr.
Raleigh, NC 27614


Laurie Dawson
Securities Office Manager