



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
FANGO, LLC; and IMANI BUTLER,) Case No.: AP-21-03
)
 Respondents.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER TO CEASE AND DESIST AND ORDER AWARDING RESTITUTION, CIVIL PENALTIES AND COSTS

Now on this 2nd day of February, 2022, the Missouri Commissioner of Securities (“the Commissioner”), having reviewed this matter, issues the following findings and order:

I. PROCEDURAL BACKGROUND

1. On April 2, 2021, the Enforcement Section of the Missouri Securities Division of the Secretary of State (“the Enforcement Section”), through Enforcement Counsel Steven M. Kretzer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, Costs and Other Administrative Relief Should Not Be Imposed (“the Petition”) against Fango, LLC (“Fango”), and Imani Butler (“Butler”) (collectively, “Respondents”).
2. On April 12, 2021, the Enforcement Section submitted a First Amended Petition for Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, Costs and Other Administrative Relief Should Not Be Imposed (“the Amended Petition”).
3. On April 16, 2021, the Commissioner issued an Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, Costs and Other Administrative Relief Should Not Be Imposed (“the C&D Order”).
4. On August 12, 2021, Butler filed a Request for Hearing with the Commissioner.
5. On August 16, 2021, the Commissioner issued an Order that the Request for Hearing did not comply with the requirements set forth by 15 CSR 30-55.020(1). The Order directed Butler to file a Request for Hearing that complied with 15 CSR 30-55.020(1) by August 26, 2021.
6. On August 30, 2021, attorney Matthew Frawley entered his appearance on behalf of Respondents and filed a Request for Hearing, Answer to the C&D Order, and Suggestions

in Support of Hearing.

7. On September 3, 2021, the Enforcement Section filed its Objection to Respondent's Request for Hearing arguing that the Respondent's Request for Hearing was untimely in that it was filed more than 100 days after notice of the Amended Petition against Respondents.
8. On September 7, 2021, a pre-hearing conference was held in this matter. Present before the Commissioner were counsels Steven M. Kretzer and Matthew Frawley, representing respectively, the Enforcement Section and Respondents.
9. On September 8, 2021, the Commissioner denied Petitioner's Motion for Final Order and issued an Order setting forth the scheduling deadlines and setting the matter for hearing October 26-28, 2021.
10. On October 19, 2021, Petitioner and Respondents submitted a Joint Stipulation of Facts and Evidence to the Commissioner. Petitioner also submitted its Witness and Exhibit List.
11. On October 26, 2021, Petitioner appeared by Enforcement Counsel Steven M. Kretzer and Director of Enforcement Douglas M. Jacoby. Respondents appeared by counsel Matthew Frawley and Respondent Butler appeared in person.
12. Petitioner then presented evidence in the form of live testimony and exhibits. Testifying live were Alexander Toth ("MR"), Butler, and Enforcement Section Investigator Scott Huston ("Huston").
13. During the hearing, the following exhibits were admitted into evidence: A, B, C, D, D2, D3, D4, E, F, G, H, I, J, 1a and 1b.
14. Petitioner filed its Proposed Findings of Fact, Conclusions of Law and Final Order to Cease and Desist and Order Awarding Restitution, Civil Penalties and Costs on December 10, 2021.
15. Respondents filed their Proposed Findings of Fact, Conclusions of Law and Final Order Denying the Enforcement Section's Petition on November 11, 2021.

II. FINDINGS OF FACT

A. SUMMARY OF FINDINGS

Having reviewed the submitted exhibits, recalled the evidence from the hearing, and reviewed the transcript, Proposed Findings of Fact, and briefs submitted by the Parties, the Commissioner hereby makes the following findings of fact:

Between August 2015 and April 2016, Butler offered and sold membership units in a Missouri limited liability company, Fango, to one Missouri investor for \$60,050. Fango was a start-up enterprise that envisioned developing a business that facilitated interactive experiences between

fans and celebrities and/or athletes via an Internet website and mobile phone applications. However, once in possession of investor's funds, Butler misappropriated some of the funds for his own personal benefit. In order to receive the funds, Respondents made material omissions and untrue statements that misled the one investor in Fango. By engaging in these activities and conduct, Respondents violated Section 409.5-501¹ of the Missouri Securities Act ("the Act").

B. RESPONDENTS AND RELATED PARTIES

16. Fango is a limited liability company registered with the State of Missouri on August 19, 2013. Fango was assigned charter number LC1335882.
17. The address for Fango is 2079 Travel Court, Apt. A, St. Louis, Missouri 63146.
18. Butler is a thirty-five-year-old St. Louis, Missouri resident with the last known address of 1134 Lakeshore Drive, St. Charles, Missouri 63303. Butler was the founder of Fango.
19. John Abkemeier ("Abkemeier") was another member of the Fango organization with 250,000 Class A Common Units assigned to him.
20. Fango was created to build and manage Internet and mobile phone applications involving an online fan club, which would enable various levels of fan interaction with celebrities. St. Louis area musical entertainers, media personalities and professional athletes were intended as targets for recruitment to participate in the fan experience through Fango.

D. MISSOURI RESIDENT INVESTMENT

21. During the summer of 2015, MR was introduced to Butler and Abkemeier.
22. During this time period, Butler and Abkemeier introduced MR to the Fango idea and explained that it would consist of running electronic applications that facilitate an online fan club, enabling various levels of fan interaction with celebrities, musicians, media personalities and/or professional athletes.
23. Fango would generate revenue through fees paid to the website or application from fans seeking celebrity interaction. Butler claimed to MR that contracts with celebrities and/or athletes had either been executed or were in the process of being negotiated.
24. Abkemeier further induced MR to invest in the company by assuring MR that Fango would be generating revenues within 120 days of going live and assuring MR that monthly cash dividends from Fango's continuous earnings would follow. Abkemeier provided MR a brochure outlining the plan for Fango that claimed "[t]he company plans on generating revenue...within 120 days of funding."
25. On or about August 14, 2015, MR agreed to purchase one hundred thousand (100,000) membership units in Fango for \$50,000. MR's first payment of \$10,000 towards this

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

purchase occurred on August 18, 2015, via wire transfer to Fango's bank account.

26. MR also gave Butler \$50 via a check written to Fango in order for Butler to establish the Fango bank account.
27. MR gave Butler more than the \$50,000 originally contemplated in the Operating Agreement based on Butler's assertions that additional funds were required to make Fango successful.
28. Between August 18, 2015, and April 4, 2016, MR ultimately paid a total of \$59,550 to Fango via direct wires to the Fango bank account and personal checks.
29. MR invested an additional \$500 in cash after Butler came to him at one point asking for an immediate infusion into Fango. MR's total investment in Fango was \$60,050.

E. FANGO OPERATING AGREEMENT

30. The Fango membership units purchase was memorialized through a Fango contractual operating agreement that identified roles for Butler, MR, Abkemeier and other associates.
31. On August 13, 2015, Abkemeier emailed MR and Butler a copy of a document entitled "Fango.com Business Summary August 2015" that, among other things, included the following:
 - a. a discussion about seeking \$50,000 from only "experienced and certified investors" and the risk being very high but that the returns of the "investment could be very attractive when the company is able to execute its business plan";
 - b. a list of prominent celebrities identified as "participating and target celebrat[ies]" that "board members had first or second hand connections to including LeBron James, Tim Tebow, Cam Newton, Jay-Z, Beyonce and Taylor Swift;
 - c. a breakdown outlining how Fango intended to utilize a \$50,000 investment, to wit:
 - i. \$25,000 to develop a website and mobile application;
 - ii. \$22,500 for sales and marketing;
 - iii. \$2,500 in legal fees; and
 - d. the claim that Fango would generate revenue within 120 days of funding.
32. On August 14, 2015, Abkemeier circulated an updated document, attached to an email, entitled "Fango Operating Agreement" ("the Agreement") to MR and Butler. While the Agreement had been included with the August 13 email mentioned above in paragraph 31, the August 14 email version included the name and amount of membership units in Fango that MR would be receiving based on the payment arrangement for the investment.

33. The Agreement identified Butler as Chief Executive Officer (“CEO”).
34. MR was identified in the Agreement as Chief Financial Officer (“CFO”). As the sole financial investor, MR requested appointment as CFO in order to monitor the outlay of funds and progress of the product development. Despite being listed as CFO, MR never actually performed the duties of CFO. MR never received access to the Fango accounts and was unable to monitor progress on a day-to-day basis as requested by MR when making the investment.
35. The Agreement purported to allocate membership unit ownership in Fango between five individuals as follows:
 - a. Butler: 450,000 Class A Common Units;
 - b. MR: 100,000 Series A Preferred Units;
 - c. Abkemeier: 250,000 Class A Common Units;
 - d. Lakshmanan Sankaran (“Sankaran”): 150,000 Class A Common Units; and
 - e. Corey Schonhorst (“Schonhorst”): 50,000 Class C Non Participating Units.
36. MR never received a fully executed Agreement. Abkemeier was able to produce a fully executed Agreement to the Enforcement Section in the course of the investigation that was presented and admitted into evidence during the hearing as Exhibit C.

F. MR’S PAYMENT PLAN

37. Because MR was unwilling to make the investment in one lump sum payment, Respondents agreed to have MR provide payments on the investment as MR was able.
38. On August 29, 2015, MR became ill and was hospitalized at Mercy Hospital (“Mercy”).
39. While at Mercy, MR notified Abkemeier of his condition and status.
40. On August 31, 2015, Butler met MR at Mercy demanding a payment for MR’s investment in Fango. MR agreed to wire \$15,000 and was escorted in a wheelchair to the bank branch located in Mercy to effectuate the transfer.
41. On October 16, 2015, Butler approached MR, regarding another payment toward his membership unit purchase. At that time, MR requested documentation regarding Fango. Although Butler agreed to provide the requested documents during the meeting, MR’s request was never honored.
42. MR liquidated securities in order to keep making payments for the purchase of Fango membership units.

43. MR continued to make payments on the \$60,000 investment and paid an additional \$14,500 after December 29, 2015, bringing the aggregate investment purchase price to \$60,050.
44. Butler testified that in his eyes MR was not actually interested in being Fango's CFO. However, MR testified he would regularly ask for updates about the status of Fango's development.

G. FANGO BANK RECORDS

45. MR testified that the investments were deposited in an account ending in 2399 ("the Account") at Central Bank of St. Louis ("Central Bank").
46. Exhibit B admitted during the hearing by stipulation of the parties was a copy of all statements from the sole Central Bank account utilized in the Fango business between August 2015 and June 2016.
47. Exhibit B shows that the Account was opened by Butler using the business name Fango on August 17, 2015.
48. Butler was the lone signatory authorized to conduct transactions from the Account.
49. Between August 18, 2015, and April 4, 2016, eleven (11) deposits totaling \$59,550 representing MR's investment were made into the Account. MR testified that he gave Butler \$500 in cash during one meeting with Butler wherein Butler asked for and received a cash payment toward the investment.
50. Between August 17, 2015, and June 17, 2016,² as the only authorized user of the Account, Butler spent all of MR's investment funds.

H. APPNOTCH, LLC ("AppNotch")

51. Butler testified that \$17,000 in cash payments were made to AppNotch. Butler became dissatisfied with the production from AppNotch and instructed AppNotch to stop working on the project. As a remedy to Butler's dissatisfaction, AppNotch provided Butler with a \$2,250 check representing a refund of a portion of the fees Fango paid to AppNotch.
52. Butler took the refund from AppNotch and cashed the check. He did not disclose this settlement to MR, nor did he remit any of the settlement amount to MR.
53. Of the ten (10) applications ordered, only three (3) were developed before the project was cancelled and Butler negotiated and received the refund mentioned above.
54. Sankaran, one of the other membership unit holders in Fango, is the CEO of AppNotch.

² Central Bank closed the account June 17, 2016 when it had a balance of -\$698.70, mostly from overdraft fees.

I. SCHONHORST

55. According to the Agreement, Schonhorst's role with Fango was in marketing. MR provided the money; and Abkemeier would provide the required resources to bring in other potential outside investors.
56. Schonhorst and Butler used Fango money to travel to Los Angeles, California, in order to reach out directly with contacts Schonhorst had that might be able to put them in touch with targeted celebrities. Butler confirmed this account during the hearing.
57. The Account showed \$1,077 in payments to airlines in September 2015 that coincide with Butler's testimony.
58. Similarly, the Account revealed seven transactions, between September 10, 2015 and September 15, 2015, occurring in the Los Angeles area totaling \$266.80.
59. Ultimately, the business idea envisioned by Fango members failed to materialize and the business failed.

K. MATERIAL MISSTATEMENTS AND/OR OMISSIONS

60. In connection with the offer and/or sale of securities, specifically the offer and sale of membership units in Fango, Butler made numerous misstatements and/or omitted to disclose material information that included:
 - a. Respondents misrepresented to MR how the investment funds were to be used;
 - b. Respondents falsely promised MR that he would function as CFO; and
 - c. Respondents misrepresented to MR that he would start seeing a return on his investment within four months.

III. CONCLUSIONS OF LAW

The Commissioner has reviewed the evidence provided at the hearing and made the findings of fact above based upon the relevant and material evidence presented and reasonable inferences drawn therefrom. The testimony of MR and Huston was competent and credible. The testimony of Butler was largely in sync with the testimony of MR, and where it differs the Commissioner finds MR's testimony to be compelling and Butler's less credible. The exhibits provided were credible and consistent with the testimony of the parties, and the Commissioner accepts the documents, particularly the bank statements, as compelling evidence in this matter. The Commissioner, after review and consideration, assigns no weight to Exhibit I and does not take it into account in this Final Order.

The Respondents, at hearing and in their post-hearing brief, raised three points against the Enforcement Section's Petition: (1) that it was brought untimely in violation of the statute of

limitations contained in Section 409.5-509(j);³ (2) that the business interest in question is not a security under Section 409.1-102(28); and (3) that no fraud occurred that would trigger liability under Section 409.5-501. The Respondents' arguments are addressed in turn.

Statute of Limitations

Section 409.5-509(j) provides "A person may not obtain relief. . . unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation." The Petition was brought under Section 409.6-604, which applies only to administrative and not civil action. The Missouri Court of Appeals has held that Section 409.5-509(j) does not apply to administrative actions under Section 409.6-604. *State ex rel. Lavender Farms, LLC v. Ashcroft*, 558 S.W.3d 88, 92 (Mo. App. W.D. 2018). Further, the general statutes of limitation for civil actions in Missouri, contained in Sections 516.380, 516.390, and 516.400 do not apply to administrative actions of the Commissioner under Section 409.6-604. *Brady v. Ashcroft*, --- S.W.3d --- (Mo. App. W.D. 2022). Therefore, no cited statute of limitations applies to this action. The Commissioner finds this Petition was brought within "a reasonable time period from the time the misconduct occurred." *Patterson v. State Bd. Of Optometry*, 668 S.W.2d 240, 244 (Mo. App. E.D. 1984).

The Agreement as a Security

The instrument Respondents offered and sold is a security under the Act. Section 409.1-102(28)(D) defines the term "security" to include, under the term "investment contract":

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 and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors[.]”

Section 409.1-102(28)(E) provides a "security" "[m]ay include as an 'investment contract', among other contracts, an interest in a limited partnership and a limited liability company. . ." In this matter, the Agreement apportioned 100,000 Series A Preferred Units of equity in Fango to MR in exchange for a monetary investment. Such purchase of membership units in a limited liability company are expressly defined as securities under the Act.

Even if the instruments purchased by MR in the Agreement were not defined as securities in the Act, they clearly meet the definition of an investment contract. MR, based upon the disclosures and solicitation of Respondents, expected profits from the venture, which was to be based upon the efforts of others, primarily Butler.

Fraud under Section 409.5-501

The Enforcement Section cites four violations of Section 409.5-501: (1) misrepresentations by

³ Respondents cite to Section 409.5-509(f) in their Proposed Findings, but the five-year limitation referenced in their argument is contained in Section 409.5-509(j). The Commissioner assumes this is the statute on which Respondents rely.

Respondents to MR about the use of the investment funds; (2) misrepresentations by Respondents to MR that MR would function as CFO of Fango; (3) misrepresentations by Respondents to MR that Fango would see a profit (and MR a return) within 120 days; and (4) misrepresentation by omission by Respondents to MR about the specific risks of the investment. The Commissioner finds three of these violations substantiated by the evidence presented.

The Commissioner performed a review of the bank records presented as Exhibit B at the hearing. The records are clear that this account was funded with \$59,550 paid by MR, which is consistent with the testimony of both parties. An additional \$500 paid in cash is not reflected in the records but was credibly testified to by MR and not disputed. Of the \$59,550 in the bank records, \$7,766.68 was spent on clearly personal expenses by Butler. Another \$19,195.80 was spent for business development of Fango, including the net amount of \$14,750 that went to AppNotch.⁴ Butler took cash withdrawals and fees of \$19,304.75, including the \$500 MR paid in cash and the \$2,250 refund from AppNotch. The final \$13,782.77 Butler spent on food, drink, gas, bowling, and other activities in the St. Louis area.

Given the nature of Fango's business and the testimony of both Butler and MR, the Commissioner finds that a portion of the \$13,782.77 was spent in furtherance of the business development of Fango. Therefore, 25% of this amount will be considered an appropriate expense and the remainder personal expenses of Butler. The Commissioner finds that as no record in the evidence explains the large amount of cash withdrawals, the entire amount will be considered personal expenses of Butler.

Therefore, of the \$60,050 invested by MR, \$37,408.51 was improperly used by Butler on personal expenses and only \$22,640.49 was used in furtherance of Fango's business development. The Commissioner finds that this constitutes sufficient grounds for a violation of Section 409.5-501.

Respondents, based upon all available evidence, both orally and in the Agreement, agreed to let MR function as CFO. While the parties dispute why this role never came about, and why MR never got access to the bank account that would have revealed Butler's spending, the Commissioner finds that this promise clearly induced the investment of MR. As it never came to fruition, it is substantive grounds for a violation of Section 409.5-501.

Respondent Fango, through Abkemeier, told MR in writing, through email and the brochure provided to MR, that Fango would see a return on investment within 120 days. This statement also served as an inducement to MR. There is no evidence that Butler took any action or made any statement to dispel this representation. However, not only did Fango not see a profit within 120 days, Fango never received revenue from any source other than the investment funds of MR. The Commissioner finds this sufficient grounds for a violation of Section 409.5-501.

The Enforcement Section sought an additional violation of Section 409.5-501 for failing to disclose to MR specific risks associated with the nature of the start-up business envisioned by Respondents. The Commissioner finds the evidence does not support this count. The lending brochure given to MR contained a risk disclosure about investing in start-ups. Further, MR testified

⁴ Butler testified that AppNotch received a \$17,000 cash payment, of which \$2,250 was later refunded in cash and not returned to MR.

that he was an experienced businessman, and he knew or should have known the high-risk nature of the investment. Respondents adequately disclosed the risk of investing in Fango.

Three (3) Violations of Section 409.5-501

61. **THE COMMISSIONER DETERMINES** that Respondents, in connection with the offer and sale of a security to MR engaged in an act, practice or course of business that operated or would operate as a fraud or deceit upon another person, in violation of Section 409.5-501.
62. Respondents' violations of Section 409.5-501 are supported by the following facts:
 - a. Respondent Butler misappropriated investor funds by using such funds to pay personal expenses that ran counter to the representations Respondents made to MR at the time of MR's investment regarding how the invested funds were to be used;
 - b. Respondent Butler misrepresented to MR that MR would be able to function as CFO of Fango, would have access to the bank account established by MR's funds, and would be able to oversee Butler's use of the funds to ensure such funds were for the development and furtherance of Fango; and
 - c. Respondent Fango, through its agent Abkemeier, misrepresented to MR that he would start seeing a return on his investment within four months. In written correspondence prior to the execution of the Agreement, MR was told by Abkemeier "we are projecting receipt of revenue from our base package within 120 days of receipt of the full investment or basically before the end of 2015." Furthermore, the lending brochure from Fango reiterated that "The company plans on generating revenue from one POI within 120 days of funding." There is no evidence that Butler dispelled these representations.
63. Respondents' violations of Section 409.5-501, which constitute acts, practices, or courses of business that operates or would operate as a fraud or deceit upon another person, subject Respondents to the Commissioner's authority under Section 409.6-604.
64. An order is in the public interest and is consistent with the purposes of the Act. *See* Section 409.6-605(b).

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 violating or materially aiding in any violation of:

- A. Section 409.5-501, by, in connection with the offer or sale of securities, engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondents shall pay, joint and several, civil penalties in the amount of \$30,000 for three (3) violations of Section 409.5-501. These amounts shall be made payable to the State of Missouri and paid within thirty (30) days of the date of this Final Order. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d)(2), Respondents shall pay, joint and several, restitution in the amount of \$37,408.45 plus eight percent statutory interest from April 2016 for violation of Section 409.5-501. This amount shall be made payable to the Missouri Secretary of State's Investor Restitution Fund, and the Commissioner will take reasonable and necessary actions to distribute such funds to MR. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within thirty (30) days of this order.

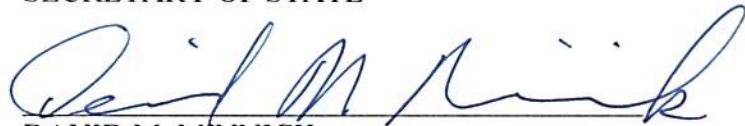
IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(e), Respondents shall pay, joint and several, \$16,510.88 in actual costs for investigation into, and the proceedings associated with, this matter as requested by the Enforcement Section in Post-Hearing Exhibit 2. This amount shall be made payable to the Investor Education and Protection Fund. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within thirty (30) days of the date of this final order.

IT IS FURTHER ORDERED that each Respondent shall pay their own costs and attorney's fees in this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 2nd DAY OF FEBRUARY, 2022.

JOHN R. ASHCROFT
SECRETARY OF STATE


DAVID M. MINNICK
COMMISSIONER OF SECURITIES

