



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
DES MOINES INVESTMENTS, LLC, CRD# 146322;)
DAVID D. HARKIN, CRD# 2369348; and)
MATTHEW S. KIMBERLEY, CRD# 2701092,)
)
)
)
)
Respondents.)

Case No.: AP-22-09

CONSENT ORDER

1. The Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“**Enforcement Section**”), through Director of Enforcement Douglas M. Jacoby, alleges that from August 23, 2020 to March 3, 2022 (“**Relevant Period**”), Respondents David Daniel Harkin (“**Harkin**”) and Matthew Sean Kimberley (“**Kimberley**”) of Des Moines Investments, LLC (“**DMI**” or the “**Firm**”) transacted business as investment adviser representatives with Missouri-resident clients without being registered or exempt from registration in Missouri as investment adviser representatives, in violation of Section 409.4-404(a) of the Missouri Securities Act (the “**Act**”)¹. Further, as a result of the activities of Harkin and Kimberley with respect to Missouri clients, the Firm is alleged to have transacted business as an investment adviser without being registered or exempt from registration in Missouri, in violation of Section 409.4-403(a), and employed and/or associated with individuals who were required to be registered in Missouri, in violation of Section 409.4-403(d).
2. Respondents and the Missouri Securities Division (“**Securities Division**”) desire to settle the allegations and the matter raised by the Securities Division relating to the alleged violations of Sections 409.4-403(a), 409.4-403(d) and 409.4-404(a).

CONSENT TO JURISDICTION

3. Respondents and the Securities Division stipulate and agree that the Missouri Commissioner of Securities (“**the Commissioner**”) has jurisdiction over Respondents and this matter pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*

¹ Unless otherwise indicated, all statutory citations refer to the 2016 edition of the Revised Statutes of Missouri updated by the 2021 Cumulative Supplement.

4. Respondents and the Securities Division stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), which provides:

“The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.”

WAIVER AND EXCEPTION

5. Respondents waive any right to a hearing with respect to this matter.
6. Respondents waive any rights that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondents specifically forever release and hold harmless the Missouri Office of the Secretary of State, Secretary of State, the Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
7. Respondents stipulate and agree with the Securities Division that, should the facts contained herein prove to be false or incomplete, the Securities Division reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO THE COMMISSIONER’S ORDER

8. Respondents and the Securities Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondents’ (a) testimonial obligations; (b) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.
10. Respondents agree that they are not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondents neither admit nor deny the allegations made by the Securities Division or the Findings of the Commissioner, but consent to the Commissioner’s Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.

THE COMMISSIONER’S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

A. Respondents

12. **David D. Harkin** is a fifty-year-old resident of Des Moines, Iowa, and is registered in the Central Registration Depository (“**CRD**”) with number 2369348. Harkin is the sole owner and chief compliance officer of DMI, and is associated with the Firm as an investment adviser representative. Despite being a registered investment adviser representative in Iowa, Harkin has never been registered as an investment adviser representative in Missouri but was registered in Missouri as a broker agent for a previous employer. Harkin’s broker agent registration in Missouri expired on November 11, 2014.
13. **Matthew S. Kimberley** is a forty-nine-year-old resident of Waukee, Iowa, and is registered in CRD with number 2701092. Kimberley is an independent contractor employed by DMI as an investment adviser representative. He has served in that capacity at DMI since August 2020 and works out of the Firm’s Urbandale, Iowa office located at 2961 100th Street. Despite being a registered investment adviser representative in Iowa, Kimberley has never been registered as an investment adviser representative in Missouri but was registered in Missouri as a broker agent for a previous employer. Kimberley’s broker agent registration in Missouri expired on August 27, 2020.
14. **Des Moines Investments, LLC** is an investment adviser with a principal address at 2 East Army Post Road in Des Moines, Iowa. DMI was originally formed in November 2006 as Fort Des Moines Financial Services, Inc. and later changed its name to Des Moines Investments, LLC in June 2020. DMI is registered in CRD with number 146322. Despite being a registered investment adviser in Iowa, DMI has never been registered as an investment adviser in Missouri. Since March 3, 2022, DMI has been a federally-covered investment adviser registered with the Securities and Exchange Commission. Harkin and Kimberley represent the only two registered individuals employed at DMI.

B. Facts

15. Prior to August 2020, DMI had established investment advisory relationships with five separate and distinct retail client accounts, each of which was owned by Missouri residents (the “**Legacy Missouri Accounts**”).
16. Some of the investment advisory relationships for the Legacy Missouri Accounts date back to as early as January 2009 and had transferred to the Firm from its predecessor Fort Des Moines Financial Services, Inc.
17. For each of the five Legacy Missouri Accounts, Harkin has been the designated investment adviser representative on the accounts since its inception.
18. On August 23, 2020, a Camdenton, Missouri couple executed an Agreement for Investment Management Services (“**Advisory Agreement**”) with DMI, pursuant to which DMI was to

provide investment advisory services to the couple.

19. According to the Advisory Agreement, Respondent Kimberley was designated as the couple's investment adviser representative.
20. The Camdenton couple became DMI's sixth Missouri client.
21. Subsequently, two pre-existing clients of DMI relocated their residences from Iowa to Missouri—one in August 2021 and the other in February 2022—increasing the number of DMI's Missouri clients to eight.
22. In the most recent twelve months, the Firm (including Harkin and Kimberley) earned compensation from the investment advisory services it provided to each of the eight Missouri client accounts.
23. As a result of the foregoing, DMI provided investment advisory services for compensation during the Relevant Period to more than five Missouri resident clients without being registered or exempt from registration as an investment adviser in Missouri.
24. Further, each of Harkin and Kimberley, on behalf of DMI, provided investment advisory services for compensation during the Relevant Period to at least one of the Missouri resident clients without being registered or exempt from registration as a registered investment adviser representative in Missouri.
25. On March 3, 2022, DMI converted from being a state-registered investment adviser in Iowa and Texas to becoming a federally-covered investment adviser registered with the Securities and Exchange Commission.
26. On March 29, 2022, the Firm contacted the Registration Section of the Securities Division by telephone and self-reported its registration issues.

C. Violations

27. As a result of the conduct described above, the Enforcement Section alleges that the failure by Harkin and Kimberley, during the Relevant Period, to register as investment adviser representatives in Missouri constitutes sufficient grounds to charge Harkin and Kimberley with violating Section 409.4-404 of the Act, which makes it unlawful for an individual to transact business in Missouri as an investment adviser representative unless the individual is registered or exempt from such registration under the Act.
28. The Enforcement Section also alleges that the failure by DMI, during the Relevant Period, to register as an investment adviser in Missouri constitutes sufficient grounds to charge DMI with violating Section 409.4-403(a) of the Act, which makes it unlawful for a person to transact business in Missouri as an investment adviser unless the person is registered or exempt from such registration under the Act.
29. The Enforcement Section further alleges that DMI's association with Harkin and Kimberley,

during the Relevant Period, constitutes sufficient grounds to charge DMI with violating Section 409.4-403(d) of the Act, which makes it unlawful for an investment adviser to employ or associate with an individual required to be registered under the Act as an investment adviser representative who transacts business in Missouri on behalf of the investment adviser unless the individual is registered or exempt from such registration under the Act.

II. CONCLUSIONS OF LAW

30. **THE COMMISSIONER CONCLUDES** that Respondent Harkin's failure during the Relevant Period to register as an investment adviser representative under the Act constitutes a violation of Section 409.4-404(a).
31. **THE COMMISSIONER CONCLUDES** that Respondent Kimberley's failure during the Relevant Period to register as an investment adviser representative under the Act constitutes a violation of Section 409.4-404(a).
32. **THE COMMISSIONER CONCLUDES** that Respondent DMI's failure during the Relevant Period to register as an investment adviser under the Act constitutes violations of Section 409.4-403(a).
33. **THE COMMISSIONER CONCLUDES** that Respondent DMI's employment of and/or association during the Relevant Period with Harkin and Kimberley, who were required to be registered as investment adviser representatives under the Act, constitutes violations of Section 409.4-403(d).
34. **THE COMMISSIONER CONCLUDES** that the violations above are sufficient to issue an order in accordance with Section 409.6-604.
35. The Commissioner, after consideration of the stipulations set forth above and on consent of the Respondents and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondents in this matter and that the following order is in the public interest, necessary for the protection of public investors, and consistent with the purposes intended by Chapter 409.

III. ORDER

NOW, THEREFORE, it is hereby Ordered that:

36. Respondent Harkin shall pay \$2,500 to the Missouri Secretary of State's Investor Education and Protection Fund for violating Section 409.4-404(a). **This amount is due upon execution of this Order and shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund** and sent to the Missouri Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101;
37. Respondent Kimberley shall pay \$2,500 to the Missouri Secretary of State's Investor Education and Protection Fund for violating Section 409.4-404(a). **This amount is due upon**

execution of this Order and shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund and sent to the Missouri Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101;

38. Respondents DMI and Harkin, joint and several, shall pay \$2,500 to the Missouri Secretary of State's Investor Education and Protection Fund for a violation of Sections 409.4-403(a) and 409.4-403(d). **This amount is due upon execution of this Order and shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund** and sent to the Missouri Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101;
39. Respondents, their respective agents and employees, and all other persons participating in the above-described alleged violations with knowledge of this Order, are permanently enjoined and restrained from engaging in violations of Sections 409.4-403(a), 409.4-403(d) and 409.4-404(a); and
40. Respondents shall pay their own costs and attorneys' fees with respect to this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 9th DAY OF JUNE, 2022.



JOHN R. ASHCROFT
SECRETARY OF STATE



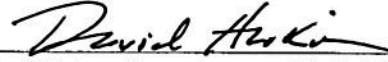
DAVID M. MINNICK
COMMISSIONER OF SECURITIES

Consented to by:



THE MISSOURI SECURITIES DIVISION
Douglas M. Jacoby
Director of Enforcement

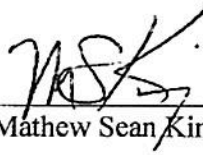
RESPONDENTS



Des Moines Investments, LLC, CRD #146322
David Daniel Harkin, Owner/Manager



David Daniel Harkin, CRD #2369348



Mathew Sean Kimberley, CRD #2701092