



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:

GEORGE J. KERRY)	ORDER TO CEASE & DESIST
5941 Crane Circle)	Order No. CD-00-07
St. Louis, Missouri 63109,)	
)	
Respondent.)	

George J. Kerry offered and sold a promissory note issued by First Lenders Indemnity Corporation to a Missouri resident. The promissory note was not registered as a security in the State of Missouri. Kerry was not registered to sell securities in the State of Missouri. Kerry and First Lenders were the subjects of Cease and Desist Orders issued by the Missouri Commissioner of Securities in 1994 for sales of unregistered securities in the State of Missouri. These facts were not disclosed to the Missouri resident.

The Missouri Commissioner of Securities is empowered to issue such orders as are necessary to protect the public interest. Section 409.408, RSMo 1994.

The Commissioner has received a Petition for a Cease and Desist Order and issues the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. First Lenders Indemnity Corporation was a Florida entity purportedly engaged in the sale of "commercial promissory notes" and had an address of 200 South Orange Avenue, Suite 1850, Orlando, Florida 32801.
2. George J. Kerry was a sales agent for First Lenders and has a last-known address of 5941 Crane Circle, St. Louis, Missouri 63109.
3. As used in this Cease and Desist Order, the term "Respondent" refers to Kerry.
4. In December 1994, Kerry met with a Missouri resident ("MR") to discuss a promissory note investment opportunity with First Lenders.

5. During this December 1994 meeting, Kerry told MR, among other things, the following:
 - a. The First Lenders investment would return 9% interest on a nine-month note.
 - b. At the end of nine months, the proceeds would be reinvested.
 - c. The First Lenders promissory notes were guaranteed by the Federal Deposit Insurance Corporation ("FDIC").
 - d. MR could not lose MR's investment because the government backed the First Lenders' promissory notes.
 - e. The First Lenders investment carried no risk.
6. On or about January 21, 1995, MR invested \$33,000 with First Lenders by writing a check to "F. L. I. C. Trust Fund." MR gave this check to Kerry.
7. On or about October 21, 1995, MR invested another \$2,000 with First Lenders by writing a check to "F. L. I. C. Trust Fund." MR gave this check to Kerry.
8. On or about October 21, 1995, First Lenders provided a packet of information to MR that included, among other things, a promissory note, subscription agreement and a document entitled, "President's Letter."
9. On June 1, 1998, the Missouri Securities Division received information that indicated that Respondent had sold securities in the State of Missouri.
10. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for the securities as sold by Respondent in the State of Missouri.
11. A check of the records maintained by the Commissioner confirmed no registration for Respondent to sell securities in the State of Missouri.
12. On February 18, 1994, the Commissioner entered an Order to Cease and Desist against First Lenders, among others, for the sale of unregistered securities in the form of promissory notes to Missouri residents.
13. On March 29, 1994, the Commissioner entered an Order to Cease and Desist against Respondent, among others, for the sale of unregistered securities in the form of promissory notes to Missouri residents.

14. In September 1996, the federal district court for the Central District of California, pursuant to a complaint filed by the United States Securities and Exchange Commission, enjoined First Lenders and others from any further sales of securities in violation of federal anti-fraud provisions.
15. In June 1997, First Lenders filed for bankruptcy in the federal district court for the Central District of California.
16. In connection with the sale of the above-mentioned securities to a Missouri resident, Respondent omitted to state the following material facts:
 - a. Respondent was not registered to sell securities in the State of Missouri.
 - b. The First Lenders promissory notes were not registered as securities in the State of Missouri.
 - c. First Lenders was the subject of an Order to Cease and Desist issued by the Missouri Commissioner of Securities on February 18, 1994.
 - d. Respondent was the subject of an Order to Cease and Desist issued by the Missouri Commissioner of Securities on March 29, 1994.
17. In connection with the sale of the above-mentioned securities to a Missouri resident, Respondent misrepresented the following material facts:
 - a. That an investment in the First Lenders promissory notes entailed no risks.
 - b. That MR could not lose MR's investment because the government backed the First Lenders promissory notes.
 - c. That the FDIC guaranteed the First Lenders promissory notes.
18. This Order is in the public interest.

CONCLUSIONS OF LAW

1. A security is defined as ". . . any **note**; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; limited partnership interest; voting-trust certificate; certificate of deposit for a security; [or] certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease[.]" (Emphasis added.) Section 409.401, RSMo Cumulative Supp. 1999.

The First Lenders promissory notes as sold by Respondent constitute securities.

2. It is unlawful for any person to transact business in this state as an agent unless he is registered as an agent under Sections 409.101 to 409.419. Section 409.201(a), RSMo Cumulative Supp. 1999.

Respondent's conduct described in the Section entitled "Findings of Fact" constitutes a violation of Section 409.201(a), RSMo Cumulative Supp. 1999.

3. "It is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this act; (2) the security or transaction is exempted under section 409.402; or (3) it is a federal covered security." Section 409.301, RSMo Cumulative Supp. 1999.

Respondent's sale of unregistered securities, as described in the above "Findings of Fact," constitutes a violation of Section 409.301, RSMo Cumulative Supp. 1999.

4. "It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly

- (1) to employ any devise, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or
- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." Section 409.101, RSMo 1994.

Respondent's omissions of material facts in connection with the sale of securities, as described in the above "Findings of Fact," constitute violations of Section 409.101, RSMo 1994.

Respondent's misrepresentations of material facts in connection with the sale of securities, as described in the above "Findings of Fact," constitute violations of Section 409.101, RSMo 1994.

5. The Commissioner may, if he believes from the evidence satisfactory to him that a person is engaged or about to engage in any fraudulent or illegal practice or transaction, issue an order prohibiting such person from engaging in or continuing such fraudulent or illegal practice. Section 409.408(b), RSMo 1994.

Transacting business as an unregistered agent constitutes an illegal practice under the statute.

Selling unregistered securities constitutes an illegal practice under the statute.

Omitting to state a material fact in connection with the sale of securities constitutes an illegal practice under the statute.

Misrepresenting a material fact in connection with the sale of securities constitutes an illegal practice under the statute.

6. Sufficient evidence exists to conclude that Respondent has engaged in willful violations of Sections 409.101, RSMo 1994, and 409.201 and 409.301, RSMo Cumulative Supp. 1999.
7. Sufficient evidence exists to conclude that Respondent will continue such fraudulent and illegal practices.

NOW, THEREFORE, the Commissioner of Securities Orders that George J. Kerry, his agents, employees and servants CEASE AND DESIST the offer and sale of securities in violation of Sections 409.101, RSMo 1994, and 409.201 and 409.301, RSMo Cumulative Supp. 1999.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 14th DAY OF March, 2000.



REBECCA MCDOWELL COOK
SECRETARY OF STATE

A handwritten signature in black ink, appearing to read "D. F. Wilburn", written over a horizontal line.

DOUGLAS F. WILBURN
COMMISSIONER OF SECURITIES

NOTICE:

Respondent and any unnamed representatives aggrieved by this Order may request a hearing in this matter. Any request for a hearing should be sent, in writing to Douglas F. Wilburn, Commissioner of Securities, Office of the Secretary of State, Missouri State Information Center, Room 229, 600 West Main Street, Jefferson City, Missouri, 65102, within thirty (30) days of the receipt of this Order. Section 409.412(a), RSMo 1994 and MO 15 CSR 30-55.020.