

2000-175 AC



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:

HEARTSCAN IMAGING, LLC)
 3419 Via Lido, Suite 122)
 Newport Beach, California 92663;)
)
 HEARTSCAN, LLC)
 3419 Via Lido, Suite 122)
 Newport Beach, California 92663;)
)
 HEARTSCAN EAST COAST IMAGING, LLC)
 619 Garden Street)
 Titusville, Florida 02796;)
)
 HEARTSCAN IMAGING UNIT INVESTMENT TRUST)
 3419 Via Lido, Suite 122)
 Newport Beach, California 92663;)
)
 HEARTSCAN UNIT INVESTMENT TRUST)
 3419 Via Lido, Suite 122)
 Newport Beach, California 92663;)
)
 PATRICK KAVANAUGH)
 3419 Via Lido, Suite 122)
 Newport Beach, California 92663;)
)
 RANDY VILLA)
 3419 Via Lido, Suite 122)
 Newport Beach, California 92663; and)
)
 DONALD NELSON,)
 619 Garden Street)
 Titusville, Florida 02796,)
)
 Respondents.)

Order No. CD-01-34

ORDER TO CEASE AND DESIST

On the 16th day of October 2001, Mary S. Hosmer, Assistant Commissioner of Securities for the Securities Division, submitted a petition for a cease and desist order. After

reviewing the petition, the Commissioner issues the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. HeartScan Imaging, LLC (HSI), is a California limited liability company with a principal business address of 3419 Via Lido, Suite 122, Newport Beach, California, 93663. HSI purports to be in the business of financing, developing, operating and owning a medical imaging facility equipped with a high-speed electron tomography scanner in Beverly Hills, California.
2. HeartScan, LLC (HeartScan) is a Nevada limited liability company with a principal business address of 3419 Via Lido, Suite 122, Newport Beach, California, 93663. HeartScan purports to be in the business of financing, developing, operating and owning a medical imaging facility equipped with a high-speed electron tomography scanner in Palm Springs, California.
3. HeartScan East Coast Imaging, LLC (HSECI) is a Florida limited liability company with a principal business address of 619 Garden Street, Titusville, Florida, 92796. HSECI purports to be in the business of financing, developing, operating and owning a medical imaging facility equipped with a high-speed electron tomography scanner in Daytona Beach, Florida.
4. HeartScan Imaging Unit Investment Trust (HeartScan Imaging UIT) is a Nevada business trust. HeartScan Imaging UIT has conducted business at 3419 Via Lido, Suite 122, Newport Beach, California, 93663. HSI is the trustee for HeartScan Imaging UIT.
5. HeartScan Unit Investment Trust (HeartScan UIT) is a Nevada business Trust. HeartScan UIT has conducted business at 3419 Via Lido, Suite 122, Newport Beach, California, 93663. HeartScan is the trustee for HeartScan UIT.
6. Patrick Kavanaugh purports to be the President of HSI and HeartScan and is believed to be the President of HSECI.
7. Randy Villa purports to be an agent of HSI and HSECI.
8. Donald Nelson purports to be the Director of HSECI.
9. On June 22, 1999, the Wisconsin Division of Securities issued a Summary Order of Prohibition prohibiting Kavanaugh from transacting business as a securities agent in Wisconsin without a license. The Order alleged that Kavanaugh offered and sold unregistered securities without a license in violation of Wisconsin law.
10. On October 9, 2000, the Wisconsin Division of Securities issued a Summary Order of Prohibition and Revocation prohibiting HeartScan, HeartScan UIT, and Kavanaugh from offering and selling unregistered securities in Wisconsin, from omitting to state material facts in connection with the offer and sale of securities, and from employing unlicensed securities agents to represent them in Wisconsin. The Order also revoked all exemptions from registration previously granted for securities offered by HeartScan,

HeartScan UIT, and Kavanaugh in Wisconsin. The Order alleged that Kavanaugh, in his capacity as Trustee for HeartScan UIT, willfully violated the Summary Order of Prohibition issued by the Division of Securities on June 22, 1999, after having been advised that to do so would be a criminal offense punishable under Wisconsin law.

11. On October 17, 2000, a Missouri resident (MR1) received a telephone call from a person purporting to be an agent of HSI, who solicited MR1 to purchase units in HeartScan Imaging UIT. MR1 received a packet of information from HSI on November 14, 2000, which included, in part, a private placement memorandum, a subscription agreement, and a purchaser questionnaire for HeartScan Imaging UIT.
12. The November 14, 2000 private placement memorandum received by MR1 from HSI offered units in HeartScan Imaging UIT at \$5,000 per unit with a minimum purchase of three units. This private offering concerned the construction and management of a medical imaging center in Beverly Hills, California.
13. MR1 subsequently received telephone calls from persons representing themselves as agents of HSI, including Villa, on November 18 and November 20, 2000, who solicited an investment in the Beverly Hills medical imaging center project.
14. On December 19, 2000, MR1 received another call from Villa. Villa told MR1 that he represented HSECI and was soliciting an investment in a project to build a medical imaging center in Daytona Beach, Florida.
15. MR1 inquired whether Villa also worked for HSI and had previously offered an investment in a Beverly Hills medical imaging center, and Villa replied that HSI and HSECI are the same company and that the company is offering two different investment opportunities.
16. From May 4, 2001 to June 11, 2001, MR1 received six additional calls from agents of HSECI soliciting an investment in the Daytona Beach medical imaging center project.
17. In connection with the above-described offers, MR1 stated that MR1 did not know and had not done business with any of the Respondents before being solicited to purchase these securities.
18. At no time did Respondents and their agents disclose to MR1 the material fact of the Wisconsin regulatory actions against Kavanaugh, HeartScan and HeartScan UIT.
19. On or about October 1, 2000, a second Missouri resident (MR2) received a telephone call from an agent of HSI, who solicited MR2 to purchase units in HeartScan Imaging UIT.
20. During this call, the agent for HSI asked MR2 if MR2 were an accredited investor and MR2 stated that he was not accredited. MR2 subsequently received an investment package from HSI that was substantially similar in content and form to the packet received by MR1 on November 14, 2000.
21. MR2 received two additional calls from the same agent for HSI between October 1 and October 12, 2000. During these calls, HSI's agent instructed MR2 how to fill out the

Purchaser Questionnaire and the Subscription Agreement to portray MR2 as an accredited investor, even though MR2 had previously stated that MR2 was not accredited. MR2 filled out the purchase documents according to the agent's instructions and purchased three units in HeartScan Imaging UIT for \$15,000.

22. At no time did Respondents and their agents verbally or in written materials disclose to MR2 the material fact of the Wisconsin regulatory actions against Kavanaugh, HeartScan and HeartScan UIT.
23. In connection with the above-described offer, MR2 stated that MR2 did not know and had not done business with any of the Respondents before being solicited to purchase these securities.
24. On or about September 1, 2000, a third Missouri resident (MR3) received a telephone call from an agent of HSI, who solicited MR3 to purchase units in HeartScan Imaging UIT and in HeartScan UIT. HSI's agent told MR3 that if he invested he would be investing in both the Palm Springs and Beverly Hills medical imaging center projects.
25. MR3 received additional telephone calls from agents of HSI during September 2000. The agents solicited MR3 to buy units in HeartScan Imaging UIT and HeartScan UIT. MR3 invested \$15,000 in HeartScan Imaging UIT on September 23, 2000.
26. At no time did Respondents and their agents verbally or in written materials disclose to MR3 the material fact of the Wisconsin regulatory actions against Kavanaugh, HeartScan and HeartScan UIT.
27. In connection with the above-described offer, MR3 stated that MR3 did not know and had not done business with any of the Respondents before being solicited to purchase these securities.
28. In October 2000, the Missouri Securities Division received information indicating that Respondents may have offered unregistered securities in the State of Missouri.
29. A check of the records maintained by the Missouri Commissioner of Securities revealed that on June 2, 2000, HeartScan filed a Regulation D, Rule 506 exemption from registration for the HeartScan UIT offering.
30. A check of the records maintained by the Missouri Commissioner of Securities revealed that on December 8, 2000, HSI filed a Regulation D, Rule 506 exemption from registration for the HeartScan Imaging UIT offering. The Form D stated that HSI would sell securities only to accredited investors.
31. A check of the records maintained by the Commissioner revealed that Villa was not registered to sell securities in the State of Missouri.
32. On February 2, 2001, the Division sent letters of inquiry to HSI and Villa at HSI's Newport Beach, California address that requested a claim of exemption from registration or exception from definition upon which HSI relied in offering unregistered securities in the State of Missouri. Villa was asked to state a claim of exemption or exception from the definition of a securities agent. The letters requested additional

information about the offers to Missouri residents, and advised HSI and Villa that failure to respond within a reasonable time as set by the Commissioner constituted proper ground for the entry of an order suspending the right to offer and sell securities in the State of Missouri.

33. On February 28, 2001, the Division received a written response from counsel for HSI and HeartScan that stated, in part, that HSI and HeartScan had filed for exemptions from registration of the securities under Rule 506 of Regulation D. The response did not state a claim of exemption from registration for Villa as a securities agent employed by HSI. Counsel for HSI and HeartScan also noted that each of the investment contracts executed by Missouri residents included representations and warranties that the investor was an accredited investor.
34. On March 30, 2001, the Division sent correspondence to HSECI and Randy Villa at HSECI's Titusville, Florida address that were substantially similar to the letters sent to HSI in Newport Beach. The letters requested a written response by April 23, 2001. These letters were delivered and signed for at HSECI, but the Division has received no response.
35. On May 10, 2001, the Division sent correspondence to Donald Nelson and HSECI at HSECI's Titusville, Florida address that were substantially similar to the letters sent to HSECI on March 30, 2001. The letters requested a written response by May 31, 2001. These letters were delivered and signed for at HSECI, but the Division has received no response.
36. On July 30, 2001, the Division sent correspondence to Patrick Kavanaugh at HSI's Newport Beach address, HeartScan's Palm Springs address, and HSECI's Titusville address. These letters were substantially similar to the letters sent to HSECI on May 10, 2001. The letters requested a written response by August 15, 2001. The letter sent to the Titusville address was delivered and signed for at HSECI, but the Division has received no response.
37. On June 6, 2001, the California Department of Corporations filed a Complaint in Intervention for Injunction and Ancillary Relief against HeartScan, HeartScan UIT, HSI, HeartScan Imaging UIT, and Patrick Kavanaugh, among others. The Complaint alleged that the defendants fraudulently marketed up to \$6.7 million in securities through misrepresentations and omissions of material facts concerning the offer; concerning the uses to which investors' funds would be put; and concerning the involvement of Patrick Kavanaugh as an officer or principal of the entities issuing the securities.
38. Counsel for respondents HSI and HeartScan claimed that the securities offered to Missouri residents were exempt from registration in Missouri.
39. Respondents HSECI, Nelson and Villa failed to provide information requested by the Commissioner of Securities.
40. Respondents offered unregistered, non-exempt securities in the form of units issued by HeartScan, HSI and HSECI to Missouri residents.

41. Respondents transacted securities business in Missouri without being registered to sell securities in Missouri.
42. Respondents omitted to state material facts regarding the securities being offered and sold to investors by:
 - A. failing to inform three Missouri residents of the existence of the June 22, 1999 Wisconsin Division of Securities Summary Order of Prohibition prohibiting Kavanaugh from transacting business as a securities agent in Wisconsin without a license; and
 - B. failing to inform three Missouri residents of the existence of the October 9, 2000 Wisconsin Division of Securities Summary Order of Prohibition and Revocation prohibiting HeartScan, HeartScan UIT, and Kavanaugh from offering and selling unregistered securities in Wisconsin, from omitting to state material facts in connection with the offer and sale of securities, and from employing unlicensed securities agents to represent them in Wisconsin.
43. Respondent HSI engaged in acts, practices or courses of business that operated or would operate as a fraud or deceit upon any person by:
 - A. sending an investment package to a Missouri resident despite knowing that this person was not accredited;
 - B. persuading a Missouri resident to fill out the Purchase Questionnaire with false information so that the Missouri resident would appear to be an accredited investor;
 - C. instructing a Missouri resident to fill out the Purchase Questionnaire in such a way as to portray the Missouri resident as an accredited investor;
 - D. selling on October 12, 2000, units in the HeartScan Imaging UIT to an unaccredited Missouri investor; and
 - E. filing on December 8, 2000, a Regulation D, Rule 506 exemption from registration for the HeartScan Imaging UIT offering that stated that HSI would sell securities only to accredited investors.
44. Respondents failed to provide information requested by the Division to prove Respondents' claims of exemption.
45. This Order is in the public interest.

CONCLUSIONS OF LAW

1. Section 409.401(o), RSMo 2000, includes within the definition of a security "investment contract." The units of investment offered and sold by Respondents as described in the above findings of fact constitute securities.

2. Section 409.101(2), RSMo 2000, provides that it is unlawful for any person 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. The conduct described in the above findings of fact constitutes a violation of this section.
3. Section 409.101(3), RSMo 2000, provides that it is unlawful for any person to engage in any act that operates or would operate as a fraud or deceit upon any person. The conduct described in the above findings of fact constitutes a violation of this section.
4. Section 409.201(a), RSMo 2000, provides that 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. The conduct described in the above findings of fact constitutes a violation of this section.
5. Section 409.201(b), RSMo 2000, provides that it is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered under Section 409.101 to 409.419. The conduct described in the above findings of fact constitutes a violation of this section.
6. 17 CFR 230.502(c) provides that neither an issuer nor any person acting on behalf of an issuer shall offer or sell securities through the use of general solicitation. 17 CFR 230.508(a)(2) provides that failure to comply with 17 CFR 230.502(c) precludes an issuer or its agents from availing themselves of the exemption under Regulation D. Therefore, the securities offered by Respondents are not federal covered securities.
7. Section 409.301, RSMo 2000, provides that 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. The conduct described in the above findings of fact constitutes a violation of this section.
8. Section 409.408(a), RSMo 2000, provides, in part, that:

The refusal to furnish information as required by order of the commissioner pursuant to the provisions of this subsection, within a reasonable time to be fixed by the commissioner, shall be proper ground for the entry of an order by the commissioner suspending the right to sell such security and/or suspending or canceling the registration of the broker-dealer, agent or investment adviser.
9. Section 409.408(b), RSMo 2000, provides, in part, that:

If the commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person

and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof.

10. Transacting business as an unregistered agent as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 2000.
11. Employing an unregistered agent as described in the above findings of fact constitutes an illegal practice under Section 409.408(b), RSMo 2000.
12. The offer or sale of unregistered securities as described in the above findings of fact constitutes an illegal practice under section 409.408(b), RSMo 2000.
13. Failing to state a material fact in connection with the offer, sale or purchase of a security constitutes an illegal practice under section 409.408(b), RSMo 2000.
14. Engaging in an act that operates or would operate as a fraud or deceit upon any person in connection with the offer, sale or purchase of a security constitutes an illegal practice under section 409.408(b), RSMo 2000.
15. Section 409.402(f), RSMo 2000, provides that the burden of proving an exemption or an exception from a definition is upon the person claiming it. As described in the above findings of fact, Respondents failed to prove an exemption from registration or an exception from the definition of a security.
16. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. Section 409.408(b), RSMo 2000.

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:

- A. Offering or selling securities issued by HeartScan, LLC, HeartScan Imaging, LLC, and HeartScan East Coast Imaging, LLC;
- B. Offering or selling business trust units in HeartScan Unit Investment Trust and HeartScan Imaging Unit Investment Trust;
- C. Offering or selling any other security in violation of Sections 409.101, 409.201 or 409.301, RSMo 2000;
- D. Omitting to state to prospective investors, in connection with the offer or sale of any security, the material fact that the Wisconsin Division of Securities had issued a 1999 order prohibiting Patrick Kavanaugh from offering or selling unregistered securities;

- E. Omitting to state to prospective investors, in connection with the offer or sale of any security, the material fact that the Wisconsin Division of Securities issued a 2000 order prohibiting Patrick Kavanaugh, HeartScan, LLC, and HeartScan Unit Investment Trust from offering or selling unregistered securities in Wisconsin; from employing unregistered securities agents in Wisconsin; from omitting to state material facts in connection with the offer or sale any securities in Wisconsin; and revoking all previously granted exemptions from registration;
- F. Omitting to state any other material fact to prospective investors in connection with the offer or sale of any security;
- G. Causing, persuading or aiding any prospective investor to misrepresent his or her status as an accredited investor;
- H. Filing any falsified documents in connection with obtaining an exemption from securities registration; and
- I. Engaging in any other act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 31st DAY OF October, 2001.



MATT BLUNT
SECRETARY OF STATE

A handwritten signature in black ink, appearing to read "Douglas M. Ommen", written over a horizontal line.

DOUGLAS M. OMMEN
COMMISSIONER OF SECURITIES

NOTICE

Respondent(s) 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 M. Ommen, 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 2000 and MO 15 CSR 30-55.020.