



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:	)	
	)	
MAXIMUM PERFORMANCE, INC.; and	)	
HOWARD E. ROBERTS,	)	Case No. AP-15-49
	)	
<i>Respondents.</i>	)	
	)	
Serve: Maximum Performance, Inc.	)	
c/o Business Filings Incorporated	)	
Suite 2021, 800 South Gay Street	)	
Knoxville, Tennessee 37929-9710	)	
	)	
and	)	
	)	
Howard E. Roberts at	)	
850 Washburn Avenue	)	
Louisville, Kentucky 40220	)	

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

On December 17, 2015, the Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through John Phillips and Roumen Manolov, submitted a Petition for Order to Cease and Desist and Order to Show Cause why Restitution, Civil Penalties, and Costs Should not be Imposed. After reviewing the petition, the Commissioner issues the following order:

**I. ALLEGATIONS OF FACT**

The petition alleges the following facts:

**A. Respondent and Related Parties**

1. Maximum Performance Inc. (“MPI”) is a Tennessee for-profit corporation formed on October 21, 1996. MPI is a supplier of horse, human, and dog supplements. MPI was administratively dissolved on August 9, 2011, and formed again on June 14, 2013. Its

registered agent is Business Filings Incorporated, Suite 2021, 800 South Gay Street, Knoxville, Tennessee, 37929-9710.

2. Howard Roberts (“Roberts”) was a Missouri resident during the time relevant to this petition with a last known Missouri address of 402 West Mount Vernon, #117, Nixa, Missouri 65714. Currently, Roberts is a resident of Kentucky with a last known address of 850 Washburn Avenue, Louisville, Kentucky.
3. As used herein, the term “Respondents” refers to MPI and Roberts.

## **B. Enforcement Section Investigation**

### **Missouri Resident (“MR”)**

4. In or around late 2013 or early 2014, Roberts initiated contact with a 77 year-old Springfield, Missouri resident (“MR”).
5. MR and Roberts first met over four decades ago but had not communicated since that time.
6. MR had been a widow for at least three years and Roberts was recently divorced.
7. Shortly after reconnecting, Roberts began to take MR out for dates.
8. Sometime in January of 2014, Roberts moved into MR’s home.
9. Roberts told MR that his business (MPI) was struggling without funding and stated that no one wanted to invest in the business.
10. On or about March 4, 2014, while living together, MR purchased a new truck as a gift for Roberts in the amount of \$43,660.21.
11. On or about April 11, 2014, Roberts solicited from MR an investment of \$250,000 in MPI.
12. MR stated that she would provide funding for MPI but wanted shares of stock in return.
13. On April 11, 2014, MR and Roberts, on behalf of MPI, executed a six-page Stock Sale and Purchase Agreement specifying that MR was purchasing 25 shares of MPI stock with an “aggregate purchase price of two hundred and fifty thousand dollars (\$250,000).”
14. On April 17, 2014, MR invested \$250,000 in MPI with Roberts via a cashier’s check made payable to MPI.
15. A review of MPI’s bank records, on which Roberts was the sole signatory, revealed, among other things, that Roberts deposited the \$250,000 investment check received from MR in MPI’s business account on April 17, 2014.

16. On April 25, 2014, only eight days after the transaction took place, Roberts took MR to Patient Care Family Clinic in Springfield, Missouri, where MR was admitted with serious mental disorders.

### **MR's Medical Records**

17. A review of MR's medical records from April 26, 2014, to July 9, 2014, revealed, among other things, that:
- a. MR was taken to the hospital by Roberts for "reported hallucinations";
  - b. Roberts told the medical staff that Roberts believed MR had bipolar disorder because Roberts had family members who had bipolar disorder and Roberts was familiar with the symptoms;
  - c. Roberts told the medical staff that MR should not "be driving anymore due to cognitive problems and confusion";
  - d. Roberts provided examples of MR's behavior such as MR being unable to unlock the car doors after Roberts exited a convenience store;
  - e. Roberts told the medical staff that MR "is unable to figure out how to use a key to unlock her house door" and MR could not "figure out how to open a manila envelope";
  - f. Roberts explained how MR would have "episodes in her own home when she did not recognize where she was"; and
  - g. Roberts told the medical staff that MR had recently gone to a neighbor's house wearing only her housecoat and tried to buy the neighbor's house with a check.
18. Between April 2014 and July 2014, physician and psychological evaluations indicated that MR suffered from significant cognitive defects, possible underlying Alzheimer's, underlying dementia, and impaired judgment.
19. In addition, physician and psychologist notes state that MR was in need of a guardian and that others might easily take advantage of MR.

### **Roberts' On-the-Record Statement**

20. On September 25, 2015, the Enforcement Section conducted an on-the-record statement ("OTR") of Roberts pursuant to Section 409.6-602(a)(2), RSMo. (Cum. Supp. 2013).<sup>1</sup> During the OTR, Roberts stated, among other things, that:

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<sup>1</sup> Unless otherwise noted, all statutory references are to the 2013 cumulative supplement of the Revised Statutes of Missouri.

- a. Roberts moved into MR's house sometime in January of 2014;
- b. at the time when Roberts moved into MR's house, he just finished his divorce and had very little money to run MPI;
- c. at that time, MPI was trying to develop a human product and Roberts had already made the down payment on the purchase of the human product;
- d. it was very expensive for MPI "to get what they call the NSF [sticker]" and "without that sticker on there [the bottle], no college athlete, or professional athlete can take that product without that being on there";
- e. MR put \$250,000 in MPI in order to get the product manufactured;
- f. "the way it was presented was that it was a gift";
- g. at the time when MR invested the money, Roberts "figured that she and I would die together, and I think she felt the same way";
- h. when asked to explain the meaning of "die together," Roberts stated that meant "we would have continued living there, building the business, working together until death do us apart";
- i. MR suggested that she and Roberts get married but Roberts did not intend to do so;
- j. Roberts, however, never let MR know that marriage would not happen;
- k. sometime in May of 2014, Roberts' ex-wife moved into MR's house and stayed in the house with Roberts and MR. According to Roberts, neither he nor his ex-wife told MR that she was Roberts's ex-wife;
- l. MR "appeared to be healthy and the only problem that she had at that time was with her teeth";
- m. Roberts and MR made a trip to California and Roberts did not notice any behavioral issues from MR;
- n. when Roberts and MR returned from the trip to California, sometime around of May of 2014, MR "started having some hallucinogenics" and "the first thing that started happening was that she was accusing her stepson of breaking into the house and stealing stuff out of the house";
- o. when confronted with the information about his statements to the medical staff on April 26, 2014, Roberts changed his testimony and admitted to having noticed

- problems in MR's behavior;
- p. Roberts also admitted to saying to the medical personnel at the hospital that MR had serious cognitive issues;
  - q. Roberts contacted a law firm to help with Roberts's appointment as a guardian for MR;
  - r. on April 29, 2014, only four days after MR was admitted to the hospital, Roberts signed an Attorney-Client Fee Agreement For Guardianship and Conservatorship for legal services concerning the appointment of Roberts as MR's guardian and/or conservator;
  - s. Roberts was arrested, convicted, and served a sentence for mail fraud;
  - t. in 2004, Roberts filed for bankruptcy; and
  - u. Roberts never informed MR of his prior arrest, conviction, or bankruptcy.

## **II. COMMISSIONER'S DETERMINATION AND FINDING**

### **Multiple Violations of 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**

21. The **COMMISSIONER FURTHER DETERMINES** that, in connection with the offer, sale or purchase of a security as described above, Respondents engaged in an act, practice or course of business that operated or would operate as a fraud or deceit on MR when Respondents:
- a. omitted to disclose to MR Roberts's arrest, conviction, and bankruptcy prior to MR's investment and, thus, prevented MR from having the necessary information to adequately evaluate the risks of the investment;
  - b. entered into an investment transaction with MR when Roberts knew that MR lacked sufficient mental capacity to understand the nature of the transaction;
  - c. entered into an investment transaction with MR when Roberts knew that MR had serious cognitive issues and could not realize the consequences of MR's own actions; and/or
  - d. enticed MR into investing into MPI by exploiting MR's gullibility and pretending to be responsive to MR's desire to marry Roberts when Roberts never intended to marry MR.

22. At the time Respondents engaged in this conduct, MR was over 60 years-old and was an elderly person as that term is defined under Section 409.6-604(d)(3)(B).
23. Respondents 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.
24. Respondents' conduct in violation of Section 409.5-501, constitutes engaging 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.
25. This 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).

#### **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 be 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.

#### **V. STATEMENT**

Pursuant to Section 409.6-604(d), the Commissioner hereby states that he will determine whether to grant the Enforcement Section's requests for:

- A. \$15,000 civil penalty against each Respondent for more than one violation of Section 409.5-501, when at least one of these violations were committed against a disabled and/or elderly person;
- B. An order against Respondents to pay restitution for any loss, including the amount of any actual damages that may have been caused by the conduct, and interest at the rate of 8% per year from the date of the violation causing the loss or disgorge any profits arising from the violations of Section 409.5-501; and
- C. An order against Respondents to pay the costs of the investigation in this proceeding, after a review of evidence of the amount submitted by the Enforcement Section.

**[This section intentionally left blank.]**

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS TWENTY-THIRD DAY OF DECEMBER, 2015.

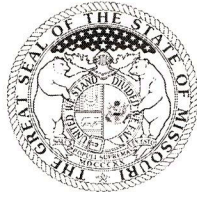


JASON KANDER  
SECRETARY OF STATE

*Andrew M. Hartnett*

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ANDREW M. HARTNETT  
COMMISSIONER OF SECURITIES



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Howard E. Roberts at )  
850 Washburn Avenue )  
Louisville, Kentucky 40220 )

Case No. AP-15-49

**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. (Cum. Supp. 2013), and 15 CSR 30-55.020.

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:

**Andrew M. Hartnett, 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 23 day of December, 2015, 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:**

Maximum Performance, Inc.  
c/o Business Filings Incorporated  
Suite 2021, 800 South Gay Street  
Knoxville, Tennessee 37929-9710

and

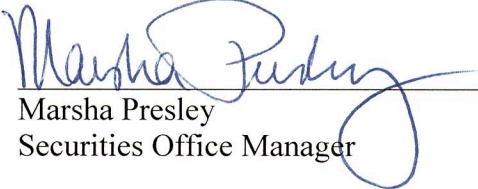
Howard E. Roberts  
850 Washburn Avenue  
Louisville, Kentucky 40220

**and by hand-delivery to:**

John Phillips  
Director of Enforcement  
Missouri Securities Division

and

Roumen Manolov  
Director of Registration  
Missouri Securities Division

  
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Marsha Presley  
Securities Office Manager