



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
 )  
 PENSON ASSOCIATES, LLC; and )  
 WILLIAM R. PENSON, JR., Individually )  
 and doing business as Penson Associates, LLC, )  
 )  
*Respondents.* ) Case No. AP-15-25  
 )  
 Serve: Penson Associates, LLC )  
 William Penson, Registered Agent )  
 1222 Lucas Avenue #600 )  
 St. Louis, Missouri 63103 )  
 )  
 and )  
 )  
 William R. Penson, Jr. )  
 1222 Lucas Avenue #600 )  
 St. Louis, Missouri 63103 )

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

On August 6, 2015, the Enforcement Section of the Missouri Securities Division of the Office of Secretary of State (“Enforcement Section”), through Enforcement Counsel Tyler B. McCormick, 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. Respondents and Related Parties**

1. William R. Penson, Jr. (“Penson”) is a 53-year-old Missouri resident with a last known address of 1222 Lucas Avenue #600, St. Louis, Missouri 63103. Penson did business as

Penson Associates, LLC and held himself out as a representative of Penson Associates, LLC.

2. Penson Associates, LLC (“Penson Associates”), is a Missouri limited liability company organized on May 23, 2005. A check of the records of the Missouri Business Services Division indicates that the registered agent of Penson Associates is William Penson with a mailing address of 1222 Lucas Avenue #600, St. Louis, Missouri 63103.
3. As used herein, the term “Respondents” refers to Penson and Penson Associates.
4. At all times relevant to this matter, Penson and/or Penson Associates were not registered with the State of Missouri as investment advisers, investment adviser representatives, broker-dealers, broker-dealer agents, and/or issuer agents.
5. At all times relevant to this matter, there was no registration, granted exemption, or notice filing indicating status as a “federal covered security” for the securities offered and/or sold by Penson and/or Penson Associates.

**B. Enforcement Section Investigation**

**Missouri Resident 1**

6. On or before February 21, 2007, Penson spoke with a 30-year-old St. Louis, Missouri resident (“MR1”) about an investment opportunity with Penson. With regard to the investment opportunity, Penson:
  - a. told MR1 that Penson would invest MR1’s funds in “hard-money real estate loans with contractors rehabbing homes”;
  - b. told MR1 the loans had 6-month terms typically at 12%;
  - c. told MR1 that the loans had an additional 3% penalty if they were not paid before the 6-month term;
  - d. told MR1 that Penson had the ability to take the properties if the contractors did not pay, because Penson had collateral on all the properties;
  - e. promised MR1 returns between 12% - 20%;
  - f. provided MR1 with several promissory notes; and
  - g. told MR1 that Penson would reinvest MR1’s funds into new deals.
7. On or around February 21, 2007, Penson provided MR1 with a promissory note (“MR1 Promissory Note #1”) that set forth, among other things, the following:

- a. MR1 would receive \$9,000 plus interest of 12%; and
  - b. all of MR1's funds would be returned to MR1 on August 21, 2007.
8. On or around February 21, 2007, Penson executed the MR1 Promissory Note #1 with MR1.
  9. MR1 invested \$9,000 with Penson on or around February 21, 2007.
  10. On or around June 20, 2007, Penson provided MR1 with a promissory note ("MR1 Promissory Note #2") that set forth, among other things, the following:
    - a. MR1 would receive \$25,000 plus interest of 12%; and
    - b. all of MR1's funds would be returned to MR1 on February 29, 2008.
  11. On or around June 20, 2007, Penson executed the MR1 Promissory Note #2 with MR1.
  12. MR1 invested \$25,000 with Penson on or around June 20, 2007.
  13. On or around September 15, 2007, Penson provided MR1 with a promissory note ("MR1 Promissory Note #3") that set forth, among other things, the following:
    - a. MR1 would receive \$15,540 plus interest of 12%; and
    - b. all of MR1's funds would be returned to MR1 on March 15, 2008.
  14. On or around September 15, 2007, Penson executed the MR1 Promissory Note #3 with MR1.
  15. On or around September 17, 2007, MR1 gave Penson a check for \$15,000.
  16. On or around December 18, 2007, Penson provided MR1 with a promissory note ("MR1 Promissory Note #4") that set forth, among other things, the following:
    - a. MR1 would receive \$12,500 plus interest of 20%; and
    - b. all of MR1's funds would be returned to MR1 on March 18, 2008.
  17. On or around December 18, 2007, Penson executed the MR1 Promissory Note #4 with MR1.
  18. On or about December 12, 2007, MR1 gave Penson a check for \$6,000.
  19. On or about December 19, 2007, MR1 gave Penson a check for \$6,500.

20. Because Penson told MR1 how well the deals were doing, MR1 invested additional money with Penson. MR1 believed that the funds MR1 had invested with Penson had been reinvested and were continuing to earn interest.
21. Between January 2008 and March 2012, and in addition to the investments referenced above, MR1 and MR1's company invested at least \$175,000 with Penson and/or Penson Associates in "hard money lending agreements" that Penson had with contractors.
22. On or about July 25, 2012, Penson sent a text message to MR1 stating, among other things, "Been working to get money out of those deals. Made it clear that I will begin foreclosure proceedings if they can't raise capital immediately. I'm also trying to just raise funds to cash you out...worst case I can pay you back with my own funds."
23. On or about March 12, 2013, Penson sent text messages to MR1 stating, among other things, "Anyway do know that I am doing everything in my power to get us cashed out of those deals...I'm finally about to get things caught up after not making any real money for two years and worst case scenario I'll cash you out myself."
24. On or about March 22, 2013, Penson sent text messages to MR1 stating, among other things, "As [I] stated previously, I am working to get all this stuff closed out...I have it handled and will get your money to you."
25. On or about August 22, 2013, Penson sent a text message to MR1 stating, among other things, "Do understand that if [I] have to sell everything [I] own, including the last stitch of clothing on my body, [I] will so that you can get your money and [I] won't have to deal with this anymore...I've been trying to close this stuff out because [I] need my money too...I WILL GET YOU EVERY PENNY OF YOUR MONEY BACK. That's a promise." [Emphasis in original]
26. On or about August 9, 2014, Penson sent a text message to MR1 stating, among other things, "[MR1], as I have told you before I will absolutely unequivocally pay you back every dime plus interest...If it is the last thing I do I am going to make things right with you...I'm gonna make it thru this I know...It tears me up to think that it has come to this. Sorry my friend."
27. MR1 has not received a return on MR1's investments and was never repaid the principal from MR1's investments.

### **Missouri Resident 2**

28. On or about October 11, 2011, Penson, on behalf Penson Associates, spoke with a 41-year-old Olivette, Missouri resident ("MR2") about some investment opportunities. With regard to the investment opportunities, Penson:
  - a. told MR2 that MR2's funds would be used for short-term financing for real estate and "flipping homes";

- b. told MR2 the risk of the investment was low because Penson was secured by a lien on the property;
  - c. promised to pay MR2 between 15%-18% interest; and
  - d. sent MR2 an e-mail on or about April 10, 2012, outlining the investments (“MR2 E-mail”).
29. The MR2 E-mail set forth, among other things, the following:
- a. if MR2 invested in “Deal #1”, then MR2 would receive 12% interest if MR2 was paid back before July 2, 2012 and 15% interest if MR2 was paid back between July 5, 2012, and October 4, 2012; and
  - b. if MR2 invested in “Deal #2”, then MR2 would receive 15% interest if MR2 was paid back before July 2, 2012 and 18% interest if MR2 was paid back between July 5, 2012, and October 4, 2012.
30. On or around October 11, 2011, MR2 gave Penson a cashier’s check for \$7,500 to invest in “Deal #1”.
31. On or around May 1, 2012, MR2 gave Penson a check for \$11,375 to invest in “Deal #2”.
32. A review of the bank records for the Penson bank account at Bank of America in St. Louis, Missouri (“Penson Account”) revealed, among other things, that:
- a. Penson opened the Penson Account on June 14, 1999;
  - b. Penson is the sole signatory on the Penson Account;
  - c. on October 11, 2011, the Penson Account had a balance of \$1,408.32;
  - d. on October 12, 2011, Penson deposited \$4,500 of MR2’s check for \$7,500 into the Penson Account and received \$3,000 in cash.
  - e. investment funds from MR2 were commingled with other funds in the Penson Account and used for, among other things, the following:
    - i. in excess of \$265 was paid to Nordstrom;
    - ii. in excess of \$325 was paid to Ameren;
    - iii. in excess of \$3,280 was paid to Wells Fargo Home Mortgage for a mortgage payment on Penson’s residence at 1222 Lucas Ave in St. Louis;

- iv. ATM withdrawal of approximately \$200; and
- v. numerous other expenses that appear unrelated to any real estate purchases or renovations;
- f. on October 19, 2011, the Penson Account had an ending balance of \$1,567.68;
- g. on April 30, 2012, the Penson Account had a balance of \$4,941.27;
- h. on May 1, 2012, Penson deposited MR2's check for \$11,375 into the Penson Account;
- i. from May 1, 2012 to August 9, 2012, no other deposits were made into the Penson Account other than \$0.19 in interest;
- j. investment funds from MR2 were commingled with other funds in the Penson Account and between May 1, 2012, and August 9, 2012, used for, among other things, the following activity:
  - i. a \$1,500 check made to "cash";
  - ii. in excess of \$6,900 in cash withdrawals;
  - iii. in excess of \$590 was paid for heating and air conditioning service;
  - iv. in excess of \$230 was paid to AAA Life Insurance Company;
  - v. in excess of \$800 was paid to the "Automobile Club";
  - vi. in excess of \$295 was paid to Verizon Wireless;
  - vii. in excess of \$875 was paid to Dobbs Tire and Auto Center;
  - viii. in excess of \$750 was paid to St. Louis area restaurants and bars;
  - ix. in excess of \$500 was paid to Delta Air;
  - x. in excess of \$389 was paid to Direct TV;
  - xi. in excess of \$1,525 was paid to grocery stores; and
  - xii. numerous other expenses that appear unrelated to any real estate purchases or renovations; and
- k. on August 9, 2012, the Penson Account had a balance of \$586.43.

33. On or about September 3, 2013, Penson sent MR2 an e-mail that set forth, among other things, the following:

Regarding the 8/16 agreement, that was an agreed upon time that I had worked out with them. I did not have another agreement in place that would supersede my original. Bro, as I mentioned I have been working with these guys for years and I know they are trying to make this thing right. The guy is just caught in a tough situation and I'm convinced that he was attempting to raise money to pay half of the note per my request.

Bottom line [MR2] is that your agreement is with me directly and not with them. I would need to get permission from them to share details about our agreement as we have a confidentiality agreement in place. As I mentioned to you some time ago, you and I can put in place a formal written agreement if that would put you at ease. I'm not at home now and don't have the numbers in front of me. However, whatever it will take to make you feel like you're being made whole – even if I have to give up some of my interest to you – I'm open to doing that. Just as they want to make this right with me, it is important to me that I do the same with you. Let me know.

Nevertheless it sounds like you want me to go ahead and initiate legal proceeding and I will. Moreover, if it comes down to it and I need to divest some other investment to pay you out of my pocket I will.

Separately, I received an email this morning granting permission to show you that IT opportunity that we discussed. I will be sending it to you from my new email address[.]

34. On or about February 19, 2014, Penson, on behalf of Penson Associates, sent MR2 an e-mail stating, among other things, the following:

Just got your messages. [MR2], man I've told you that I'm going to get this thing resolved and again I apologize [for] the delays. Bro it happens sometimes. I've had actual equity deals in the past that have been reworked, delayed, etc that I've had several hundred grand in play. Money is money – I get it. And I'm not happy with the way this thing has gone either. But it's not a deal whereby anything will be lost regardless. Anyway, again I am on top of this and as I've said before you have nothing to be nervous about.

35. Since February 19, 2014, MR2 has attempted to contact Penson several times but has not been able to reach Penson.

36. MR2 has not received a return on MR2's investments and was never repaid the principal from MR2's investments.

### **Illinois Resident 1**

37. On or before September 10, 2012, Penson, on behalf of Penson Associates, spoke with a 47-year-old Illinois resident (“IR1”) about an investment opportunity with Penson Associates. With regard to the investment opportunity, Penson:
  - a. told IR1 that Penson needed a short-term loan to complete a business transaction because Penson’s previous investor pulled out at the last minute;
  - b. promised IR1 a return of 20%; and
  - c. told IR1 that IR1’s funds would be repaid by March 2013.
38. On or about September 11, 2012, IR1 wired \$2,000 into the Penson Account.
39. A review of the bank records for the Penson Account revealed, among other things, the following activity:
  - a. on September 7, 2012, the Penson Account had a balance of negative \$290.59;
  - b. on September 12, 2012, IR1 made a wire transfer of \$2,000 into the Penson Account;
  - c. investment funds from IR1 were commingled with other funds in the Penson Account and between September 12, 2012, and September 14, 2012, used for, among other things, the following activity:
    - i. a check written to “cash” for \$1,500; and
    - ii. ATM withdrawals of approximately \$500; and
  - d. on September 14, 2012, the Penson Account had a balance of negative \$290.59.
40. On or about October 20, 2012, IR1 gave Penson \$1,000 in cash.
41. On or about November 5, 2012, IR1 wired \$55,000 into Penson’s Bank Account for Penson to hold as a fiduciary for IR1’s newly formed company.
42. In or around December 2012, IR1 informed Penson that IR1 could only give Penson a total of \$5,000. IR1 told Penson that Penson could take \$2,000 from the \$55,000 Penson was holding as a fiduciary. Penson accepted this arrangement and agreed to pay IR1 \$5,000 plus 20% interest by March 2013.
43. In March 2013, payment became due, but IR1 did not receive any funds from Penson.
44. In or around April 2013, IR1 called Penson in an attempt to collect the monies owed.



45. A review of the bank records for the Penson Account revealed, among other things, the following activity:
- a. on November 2, 2012, the Penson Account had a balance of negative \$211.65;
  - b. on November 5, 2012, wire transfers of \$30,000 and \$25,000 from IR1 into the Penson Account;
  - c. from November 5, 2012 to April 18, 2013, the only other deposits made into the Penson Account totaled \$573.19;
  - d. investment funds from IR1 and funds that Penson was holding as a fiduciary for IR1 were commingled with other funds in the Penson Account and between November 5, 2012, and April 18, 2013, used for, among other things, the following activity:
    - i. \$8,400 in ATM withdrawals;
    - ii. a check written to “cash” for \$1,500;
    - iii. a withdrawal in excess of \$3,250;
    - iv. in excess of \$760 was paid to grocery stores;
    - v. in excess of \$1,000 was paid to Wal-Mart, Target, and Sam’s Club;
    - vi. in excess of \$1,050 was paid to Direct TV;
    - vii. in excess of \$2,360 was paid to Delta Air;
    - viii. \$3,514 was paid to “Woodson Loan”;
    - ix. a check of \$2,000 to repay a loan; and
    - x. in excess of \$14,625 was paid to Wells Fargo Home Mortgage for mortgage payments on Penson’s residence at 1222 Lucas Ave in St. Louis; and
  - e. on April 18, 2013, the Penson Account had a balance of \$141.95.
46. On or about April 18, 2013, IR1 requested that the \$5,000 be repaid and that the \$53,000 that Penson was holding as a fiduciary be wired back into IR1’s account.

47. On or about April 18, 2013, IR1 spoke with Penson and was informed, among other things, that Penson was scheduled to meet with Penson's accountant on April 21, 2013, to find a solution to repay the \$5,000 and release the monies held in trust.
48. On or about May 5, 2013, Penson spoke to IR1 over the phone and stated, among other things,
  - a. Penson needed to talk further with Penson's lawyer about a solution;
  - b. Penson would repay IR1 in cash installments; and
  - c. Penson would call back to arrange the transactions.
49. From May 6, 2013, through July 2013, IR1 attempted to reach Penson multiple times to resolve the situation without any success.
50. IR1 has not received a return on IR1's investment and was never repaid the principal from IR1's investment or the funds that Penson was holding as a fiduciary.

### **Illinois Resident 2**

51. On or before May 30, 2013, Penson, on behalf of Penson Associates, spoke with a 31-year-old Illinois resident ("IR2") about an investment opportunity with Penson Associates. With regard to the investment opportunity, Penson:
  - a. told IR2 that IR2's funds would be used for a China real estate investment with high yields;
  - b. told IR2 that Penson had done many deals with a partner who backed out of this deal at the last minute;
  - c. told IR2 that there was "zero risk" and that IR2 was "completely covered";
  - d. told IR2 that Penson would cover the difference if the investment did not reach 20%; and
  - e. provided IR2 with a promissory note ("IR2 Promissory Note").
52. On or around May 30, 2013, Penson provided IR2 with the IR2 Promissory Note that set forth, among other things, the following:
  - a. IR2 would receive \$8,000 plus interest of 20%; and
  - b. all of IR2's funds would be returned to IR2 on or before May 30, 2014.
53. On or around May 30, 2013, Penson executed the IR2 Promissory Note with IR2.

54. A review of the bank records for the Penson Account revealed, among other things, that:
- a. on May 21, 2013, the Penson Account had a balance of negative \$312.56;
  - b. on May 30, 2013, a wire transfer and check from IR2 totaling \$8,000 was deposited into the Penson Account;
  - c. investment funds from IR2 were commingled with other funds in the Penson Account and between May 30, 2013, and June 18, 2013, used for, among other things, the following activity:
    - i. an ATM withdrawal of \$500;
    - ii. a \$2,000 check made to “cash”;
    - iii. in excess of \$3,225 was paid to Wells Fargo Home Mortgage for a mortgage payment on Penson’s residence at 1222 Lucas Ave in St. Louis;
    - iv. in excess of \$50 was paid to the Four Seasons Hotel;
    - v. in excess of \$115 was paid to Verizon Wireless; and
    - vi. in excess of \$90 was paid to Walmart; and
  - d. on June 18, 2013, the Penson Account had an ending balance of \$711.92.
55. IR2 has requested the return of IR2’s investment.
56. IR2 has not received a return on IR2’s investment and was never paid the principal from IR2’s investment.

#### **Additional Findings**

57. Public records indicate that Penson filed a voluntary Chapter 13 bankruptcy petition on August 31, 2012, in the Eastern District of Missouri.<sup>1</sup>
58. Public records indicate that Penson filed a voluntary Chapter 13 bankruptcy petition on January 17, 2014, in the Eastern District of Missouri.<sup>2</sup>
59. In connection with the offer and/or sale of securities, Penson and/or Penson Associates failed to disclose to MR1, MR2, IR1, and/or IR2, among other things, the following:
- a. that Penson was not registered to offer or sell securities in the State of Missouri;

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<sup>1</sup> *In re* Penson, Case No. 12-48590 (Bank. E.D. Mo. August 31, 2012).

<sup>2</sup> *In re* Penson, Case No. 14-40296 (Bank. E.D. Mo. January 17, 2014).

- b. that the securities were not registered or exempt from registration in the State of Missouri;
- c. the specific risks associated with the investment including, but not limited to, the risk associated with Penson's and/or Penson Associates' business and/or industry;
- d. financial information to support the promised return on the investments;
- e. the financial condition of Penson Associates;
- f. the financial condition of Penson;
- g. that investment funds would be commingled with Penson's personal and/or business funds and used to pay personal expenses and/or to make cash withdrawals.

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

### **Multiple Violations of Offering and Selling Unregistered, Non-Exempt Securities**

- 60. The **COMMISSIONER DETERMINES** that Respondents offered and/or sold securities by, among other things:
  - a. soliciting MR1, MR2, IR1, and/or IR2 to invest with Penson and/or Penson Associates;
  - b. receiving funds to invest from these individuals;
  - c. providing and executing promissory notes with MR1 and IR2;
  - d. promising a return on all investments dependent upon the efforts of others and not on the efforts of the investors; and
  - e. pooling the investor funds with Penson's personal funds and/or the funds of other investors.
- 61. These activities constitute an offer and/or sale as those terms are defined in Section 409.1-102(26), RSMo. (Cum. Supp. 2013).<sup>3</sup>
- 62. The investments that Respondents offered and/or sold constitute securities as that term is defined in Sections 409.1-102(28).

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<sup>3</sup> Unless otherwise noted, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

63. At all times relevant to this matter, there was no registration, granted exemption, or notice filing indicating status as a “federal covered security” for the securities offered and/or sold by Respondents.
64. Respondents offered and/or sold securities in Missouri without these securities being (1) federal covered securities, (2) exempt from registration under Sections 409.2-201 or 409.2-203, or (3) registered under the Missouri Securities Act of 2003, in violation Section 409.3-301.
65. Respondents’ conduct in violation of Section 409.3-301 constitutes an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.6-604.

#### **Multiple Violations of Transacting Business as an Unregistered Agent**

66. The **COMMISSIONER FURTHER DETERMINES** that Penson was a representative of Penson Associates.
67. Penson offered and/or sold securities to investors in Missouri on behalf of Penson Associates by, among other things offering and/or selling investments to MR1, MR2, IR1 and/or IR2.
68. These activities constitute transacting business as an agent in the State of Missouri under Section 409.1-102(1).
69. At all times relevant, Penson was not registered as an agent in the State of Missouri.
70. Penson transacted business in Missouri by offering and/or selling securities without being registered or exempt from registration as an agent in violation of Section 409.4-402(a).
71. Penson’s conduct in violation of 409.4-402(a) constitutes an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner’s authority under Section 409.6-604.

#### **Multiple Violations of Employing an Unregistered Agent**

72. The **COMMISSIONER FURTHER DETERMINES** that Penson Associates employed and/or associated with Penson, who offered and/or sold securities in the State of Missouri on behalf of Penson Associates.
73. Penson Associates’ activities constitute employing and/or associating with an agent in the State of Missouri under Section 409.4-402(d).
74. At all times relevant to this matter, Penson Associates had no registration or granted exemption for any agents of Penson Associates to transact business in the State of Missouri.

75. Penson Associates employed and/or associated with Penson, who transacted business in Missouri as an agent without being registered or exempt from registration as an agent, in violation Section 409.4-402(d).
76. Penson Associates' conduct in violation of Section 409.4-402(d) constitutes an illegal act, practice, or course of business and such conduct is, therefore, subject to the Commissioner's authority under Section 409.6-604.

**Multiple Violations of Omitting to State Material Facts or 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**

77. The **COMMISSIONER FURTHER DETERMINES** that in connection with the offer, sale or purchase of a security as described above, Penson, on behalf of Penson Associates, omitted to state to investors, including MR1, MR2, IR1, and/or IR2, material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:
  - a. telling MR1 that: (1) Penson would invest MR1's funds in "hard-money real estate loans with contractors rehabbing homes"; (2) Penson had collateral on all the properties and that Penson had the ability to take the properties if the contractors did not pay; and/or (3) MR1's returns would be between 12% - 20%. These statements, in light of the circumstances under which they were made, were misleading statements because Penson, on behalf of Penson Associates, omitted to disclose the following material facts that could impact the return and the viability of MR1's investments:
    - i. that Penson was not registered to offer or sell securities in the State of Missouri;
    - ii. that the securities were not registered or exempt from registration;
    - iii. the specific risks associated with the investments including, but not limited to, the risk associated with Penson's and/or Penson Associates' business and/or industry;
    - iv. financial information to support the promised return on the investments;
    - v. the financial condition of Penson Associates;
    - vi. the financial condition of Penson; and/or
    - vii. that investor funds would be commingled with Penson's personal and/or business funds and used to pay personal expenses and to make cash withdrawals.

- b. telling MR2 that: (1) MR2's funds would be used for short term financing for real estate and "flipping homes"; (2) the risk of the investment was low because Penson was secured by a lien on the property; and/or (3) MR2's returns would be between 15% - 18%. These statements, in light of the circumstances under which they were made, were misleading statements because Penson, on behalf of Penson Associates, omitted to disclose the following material facts that could impact this return and the viability of MR2's investments:
- i. that Penson was not registered to offer or sell securities in the State of Missouri;
  - ii. that the securities were not registered or exempt from registration;
  - iii. the specific risks associated with the investments including, but not limited to, the risk associated with Penson's and/or Penson Associates' business and/or industry;
  - iv. financial information to support the promised return on the investments;
  - v. the financial condition of Penson Associates;
  - vi. the financial condition of Penson; and/or
  - vii. that investor funds would be commingled with Penson's personal and/or business funds and used to pay personal expenses and to make cash withdrawals.
- c. telling IR1 that: (1) Penson needed a short-term loan to complete a business transaction because a previous investor had pulled out at the last minute; (2) IR1 would be repaid the principal plus interest of 20%; and/or (3) IR1's funds would be repaid by March 2013. These statements, in light of the circumstances under which they were made, were misleading statements because Penson, on behalf of Penson Associates, omitted to disclose the following material facts that could impact this return and the viability of IR1's investment:
- i. that Penson was not registered to offer or sell securities in the State of Missouri;
  - ii. that the securities were not registered or exempt from registration;
  - iii. the specific risks associated with the investment including, but not limited to, the risk associated with Penson's and/or Penson Associates' business and/or industry;
  - iv. financial information to support the promised return on the investment;

- v. the financial condition of Penson Associates;
  - vi. the financial condition of Penson; and/or
  - vii. that investor funds would be commingled with Penson's personal and/or business funds and used to pay personal expenses and to make cash withdrawals.
- d. telling IR2 that: (1) IR2's funds would be used for a China real estate investment with high yields; (2) that Penson had done many deals with a partner who had backed out of this deal at the last minute; (3) IR2 would be repaid the principal plus interest of 20%; and/or (4) there was zero risk and that IR2 was completely covered because Penson would cover the difference if the investment did not reach 20%. These statements, in light of the circumstances under which they were made, were misleading statements because Penson, on behalf of Penson Associates, omitted to disclose the following material facts that could impact this return and the viability of IR2's investment:
- i. that Penson was not registered to offer or sell securities in the State of Missouri;
  - ii. that the securities were not registered or exempt from registration;
  - iii. the specific risks associated with the investment including, but not limited to, the risk associated with Penson's and/or Penson Associates' business and/or industry;
  - iv. financial information to support the promised return on the investment;
  - v. the financial condition of Penson Associates;
  - vi. the financial condition of Penson; and/or
  - vii. that investor funds would be commingled with Penson's personal and/or business funds and used to pay personal expenses and to make cash withdrawals.

78. The **COMMISSIONER FURTHER DETERMINES** that in connection with the offer, sale or purchase of a security as described above, Penson, on behalf of Penson Associates, engaged in an act, practice or course of business that would operate as a fraud or deceit upon investors, including MR1, MR2, IR1, and/or IR2, by, among other things:
- a. commingling investor funds with Penson's personal and other business funds and using investor funds to pay personal expenses and/or to make cash withdrawals;



- b. lulling MR2 in order to avoid or delay detection by:
    - i. sending an e-mail on or around September 3, 2013, indicating that if it comes down to it, Penson would divest some other investment to pay MR2 out of Penson's pocket; and/or
    - ii. sending an e-mail on or around February 19, 2014, in order to alleviate MR2's concerns and reassure MR2 that Penson was doing his best to return the funds;
  - c. lulling IR1 in order to avoid or delay detection by:
    - i. speaking with IR1 on or around May 5, 2013, indicating that Penson would repay IR1 in cash installments and that Penson would call IR1 back to arrange the transactions.
79. Respondents omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made not misleading and 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.
80. 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.
81. 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).

### **III. 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 409.3-301, by offering or selling any securities as defined by Section 409.1-102(28), in the State of Missouri unless those securities are registered with the Securities Division of the Office of the Secretary of State in accordance with the provisions of Section 409.3-301;
- B. Section 409.4-402(a), by transacting business as an unregistered agent;
- C. Section 409.4-402(d), by employing an unregistered agent; and

- D. Section 409.5-501, by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading or engaging in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

#### IV. 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. \$10,000 civil penalty against each Respondent for more than one violation of Section 409.3-301;
- B. \$10,000 civil penalty against Person for more than one violation of Section 409.4-402(a);
- C. \$10,000 civil penalty against Person Associates for more than one violation of Section 409.4-402(d);
- D. \$10,000 civil penalty against each Respondent for more than one violation of Section 409.5-501;
- E. 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 and/or disgorge any profits arising from the violation of Sections 409.3-301, 409.4-402, 409.5-501, in a final order, unless Respondents request a hearing and show cause why this restitution or disgorgement should not be imposed; and
- F. 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.

#### **SO ORDERED:**

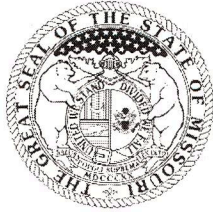
WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS TWENTY-FIRST DAY OF SEPTEMBER, 2015.



JASON KANDER  
SECRETARY OF STATE

*Andrew M. Hartnett*

ANDREW M. HARTNETT  
COMMISSIONER OF SECURITIES



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF: )  
)  
PENSON ASSOCIATES, LLC; and )  
WILLIAM R. PENSON, JR., Individually )  
and doing business as Penson Associates, LLC, )  
)  
*Respondents.* )  
)  
Serve: Penson Associates, LLC )  
William Penson, Registered Agent )  
1222 Lucas Avenue #600 )  
St. Louis, Missouri 63103 )  
)  
and )  
)  
William R. Penson, Jr. )  
1222 Lucas Avenue #600 )  
St. Louis, Missouri 63103 )

Case No. AP-15-25

**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 21<sup>st</sup> day of September, 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:**

Penson Associates, LLC  
c/o William Penson, Registered Agent  
1222 Lucas Avenue #600  
St. Louis, Missouri 63103

and

William Penson  
1222 Lucas Avenue #600  
St. Louis, Missouri 63103

**and by hand-delivery to:**

Tyler McCormick  
Securities Enforcement Counsel  
Missouri Securities Division

  
\_\_\_\_\_  
Marsha Presley  
Securities Office Manager