

State of Missouri
Office of Secretary of State

Case No. AP-05-24

IN THE MATTER OF:

GLOBAL POWER
GLOBAL WEALTH ENTERPRISES LLC;
GLOBAL WEALTH INVESTMENTS LLC; *and*
ANDRE E. MITCHELL

Respondents,

Serve all at:

4144 Lindell Blvd.
Suite 504
St. Louis, Missouri 63108

ORDER TO CEASE AND DESIST

On the 26th day of May 2005, Patrick T. Morgan, Deputy Chief Counsel 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:

I. FINDINGS OF FACT

A. The Respondents

1. Global Wealth Investments, LLC ("GWIZ") is a company doing business in the State of Missouri. GWIZ has a business address of 4144 Lindell Blvd, Suite 504, St. Louis, MO 63108. GWIZ purportedly engages in the business of raising capital to create, develop, evaluate and manage income and investment opportunities with primary emphasis on real estate and small business ventures. GWIZ is a subsidiary of Global Power Global Wealth Enterprises, LLC ("GPGW"), a company also operating in the State of Missouri with a business address of 4144 Lindell Blvd, Suite 504, St. Louis, Missouri 63108. GPGW purportedly engages in the business of offering consultation and business training for individuals and small businesses.
2. Andre E. Mitchell ("Mitchell") purports to be the President and CEO of both GPGW and GWIZ. Mitchell has a business address of 4144 Lindell Blvd, Suite 504, St. Louis, Missouri 63108. Mitchell is the registered agent of GPGW with the State of Missouri.
3. As used in this petition for a cease and desist Order, the term "Respondents" refers to GWIZ, GPGW and Mitchell.
4. In early September 2004, the Missouri Securities Division received information that indicated that the Respondents had allegedly offered or sold unregistered securities in

the State of Missouri

5. At all times relevant to this petition the records maintained by the Missouri Commissioner of Securities contained no registration, granted exemption or notice filing indicating status as a "federal covered security" for any of the securities allegedly offered by the Respondents in Missouri.
6. At all times relevant to this petition, Respondents were not registered to offer or sell securities in the State of Missouri.
7. On September 17, 2004, the Securities Division sent a letter of inquiry (the "September 17th letter") to Respondents that requested a claim of exemption from registration or exception from definition upon which Respondents relied in allegedly offering unregistered securities or any claim that the securities were federal covered securities. The letter also requested additional information about the offers to Missouri residents and advised Respondents that failure to respond within a reasonable time as set by the Commissioner constituted further proceedings to prohibit the referenced firm from offering or selling securities in the State of Missouri.
8. On October 14, 2004, the Division sent a second request letter of inquiry (the "October 14th letter") requesting the same information that was sent by the Division on September 17, 2004.

B. Mitchell's Response

9. On October 27, 2004, Mitchell responded to the Division's October 14th letter. Mitchell's response appeared on GWGP stationery. In his response, Mitchell stated that Respondents had been offering "promissory notes... to [their] friends and family members through a private placement memorandum." Mitchell also stated that no further offerings would be made until they received "clarification on what actions need to be taken."
10. In response to the Division's request for the registration exemption or definitional exemption under which the securities were being offered, Mitchell referred only to United States Securities and Exchange Commission Rule 504 ("SEC Rule 504")¹. Specifically, Mitchell wrote that the offering was being "conduct[ed] through a private placement memorandum under Rule 504 of Regulation D as a debt offering for less than \$1,000,000 in a single year."
11. In his response to the Division's request for any promotional material used in connection with the offer or sale of securities in Missouri, Mitchell attached a copy of a "Private Placement Memorandum" (see below).
12. In his response to the Division's October 14th letter, Mitchell attached a copy of the Form D Rule 504 filing that Respondents filed with the SEC (see below).²
13. In response to the Division's request for information regarding all Missouri purchasers of the securities, Mitchell attached a spreadsheet entitled "GPGW Private Placement Offering Missouri Investors List" (see below).

C. The "Private Placement Memorandum"

1. The "Private Investment Offering"

14. The "Private Placement Memorandum" ("PPM") that Mitchell attached to his response is an 18-page document that summarizes GWIZ's "private investment offering" of "Unsecured Promissory Notes." The cover of the PPM reads "UPDATED COPY AS OF August 15, 2004."
15. Page 3 of the PPM contains this statement: "GWIZ... is raising \$750,000 in debt financing in eight (8) classes of high yield senior unsecured notes as outlined below...." A schedule follows this sentence showing returns of 500% to 800% in 4 to 12 months on notes valued from \$4,000 to \$25,000. Thus, the PPM represents that a note purchased for \$25,000 will yield \$200,000 when it matures on July 1, 2006.
16. Page 4 of the PPM lists GPGW as GWIZ's "Company Manager." Page 9 of the PPM lists GPGW as the "Issuing Agent."
17. The PPM does not contain the following:
 - a. a set of financial statements of GWIZ;
 - b. any information regarding GWIZ's financial condition; or
 - c. the operating history of GWIZ;

2. The Means of Offering the "Unsecured Promissory Notes"

18. Page 3 of the PPM contains this statement: "Notes will be offered by means of this Confidential Private Placement Memorandum (PPM) with no minimum offering and a maximum total of Seven Hundred Fifty Thousand Dollars (\$750,000) in Unsecured Promissory Notes, to qualified and invited persons."
19. Page 4 of the PPM contains this statement: "Receipt of this overview is not an offer to sell, nor a solicitation to buy any security."
20. Page 10 of the PPM reads in part as follows:

**SUBSCRIPTION AGREEMENT
FOR
GLOBAL WEALTH INVESTMENTS (GWIZ)
(PLEASE RETURN PAGES 10-11 WITH YOUR PAYMENT)**

If you are interested in purchasing unsecured Promissory Notes... of Global Wealth Investments (the "Company"), you must:

- a) Complete this Subscription Agreement (the "Agreement");
- b) Provide a cashiers check or money order (unless a wire transfer is being sent) made payable to **GPGW Enterprises** as impound agent for the company;
- c) Deliver both the Agreement and payment to:

Impound Agent:

GPGW Enterprises

Fbo (for-benefit-of) Global Wealth Investments

Attention:

Mr. Andre Mitchell
President & CEO

Address:

4144 Lindell, Suite 504
St. Louis, MO 63108

(Emphases in original.)

3. "Securing" the "Unsecured Promissory Notes"

21. On page 3, the PPM makes the following representations regarding how the "Unsecured Promissory Notes" are "secured":

Your investment dollars are used to purchase and develop income producing assets—creating an asset-backed investment.... Your principal investment remains secure and will be secured by a \$1 Million surety bond we are seeking from Beach City Bonds as well as an "Et Al" first position lien on all properties acquired by Global Wealth Investments. The only thing ever at risk is the interest and steps have been taken to minimize this risk due to *our relationship with AMSTAR Mortgage* and the \$1 Million in mortgage underwriting they will provide each year in either resale mortgages or refinancing.

(Emphases added.)

22. Regarding "Beach City Bonds," the PPM contains none of the following:
- a description of Beach City Bonds;
 - contact information (representative, address, phone number, etc.) for Beach City Bonds;
 - any disclosures regarding the contemplated agreement between Respondents and Beach City Bonds; or
 - any information on whether or when Respondents actually acquired the "\$1 Million surety bond" they were "seeking from Beach City Bonds."
23. In the course of investigating the PPM's claims, the Division discovered a Beach City Bonds Insurance Services, Incorporated, located at 19891 Bushard Street, Huntington Beach, California. A representative of Beach City Bonds identified herself as the president and owner of the company. This individual also identified her business as a "small surety bond agency." After researching her company's records, this representative asserted that Beach City Bonds had never been contacted by either GPGW or Mitchell.
24. Regarding the "'Et Al' position lien" used to secure the "principal investment," the PPM does not disclose the extent or value of the lien purportedly to be placed on the properties acquired by GWIZ.
25. Regarding GWIZ's "relationship with AMSTAR Mortgage," the PPM does not disclose any information regarding the following:
- how to contact AMSTAR Mortgage (representative information, address, phone

- number, etc.);
- b. AMSTAR Mortgage's history in participating in such agreements; or
- c. the terms of any purported agreement between GWIZ and AMSTAR Mortgage

4. "Use of Offering Proceeds"

- 26. Page 3 of the PPM has a section titled "Use of Offering Proceeds." Among other things, this section of the PPM represents that "Proceeds from the Offering will be used to acquire the properties and real assets outlined above as well as for renovation and redevelopment costs." The PPM does not disclose that, according to the Form D Mitchell purportedly filed, less than half of the offering proceeds (\$350,000 or 46% of the \$750,000 offering proceeds) will go towards the "Purchase of real estate."
- 27. Page 9 of the PPM contains the following representation: "Use of Proceeds: Investment and *working capital* " (emphasis added). The PPM does not disclose that, according to the Form D Mitchell purportedly filed, less than 15% of the offering proceeds (\$105,000 or 14% of the \$750,000 offering proceeds) will go towards "Working capital."
- 28. The PPM does not disclose that, according to the Form D Mitchell purportedly filed, \$150,000 (20% of the \$750,000 offering proceeds) will go towards "Salaries and fees."

D. The Form D

- 29. As noted above, Mitchell attached to his response the Form D that he purportedly filed with the SEC. The Form D bears his signature as "President and CEO, GPGW Enterprises, LLC."
- 30. The Form D that Mitchell included represents that he "has been or will be paid or given, directly or indirectly,... commission[s] or similar remuneration for solicitation of purchasers in connection with sales of securities in [this] offering" in Missouri.

E. "GPGW Private Placement Offering Missouri Investors List"

- 31. This document purports to list 19 individuals with Missouri addresses who "invested" with in the "GPGW Private Placement Offering" between June 10, 2004 and September 28, 2004. The amounts "invested" range from \$1,000 to \$20,000.
- 32. In response to the Division's request for a statement of how the Respondents identified the offerees and their suitability for the offering, Respondent Mitchell wrote the following:

With the exception of the few investors that were contacted on our behalf through Venture Capital Connections,^[3] everyone was either a relative or friend of one of our directors, staff or executives and contacted through our warm market resources via telephone or email. We also received referrals of other lesser known family members or friends through these initial contacts.....

F. The Division's Unanswered Requests for Further Information

33. On November 4, 2004, the Division sent a correspondence letter requesting additional information in response to Respondents' letter dated October 27, 2004, via certified mailed.
34. On December 15, 2004, the Division sent a second request letter of inquiry requesting the same information that was sent by the Division on November 4, 2004.
35. On February 28, 2005, the Division sent a third request letter of inquiry requesting the same information that was sent by the Division on October 27, 2004 and November 4, 2004.
36. Respondents failed to respond to the Division's letters of inquiry dated October 27, 2004, November 4, 2004 and February 28, 2005.
37. To date, the Division has not received any response from the Respondent with regard to the Division's original letter of inquiry dated November 4, 2004.
38. In the course of investigating the Respondents, the Division spoke with a Missouri resident ("MR") who had "invested \$20,000 in GWIZ." Among other things, MR stated the following:
 - a. Mitchell had "sold" him the "investment package";
 - b. MR was told that, if MR invested, only MR's interest-not his principal-would be at risk; and
 - c. MR's brother invested \$5,000 in November of 2004.
39. The requested order is in the public interest.

II. STATUTORY PROVISIONS

40. Section 409.1-102(26), RSMo Cum. Supp. 2004, defines "sale" to include "every contract of sale, contract to sell, or disposition of, a security or interest in a security for value." That same section defines "offer to sell" as "every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value."
41. Section 409.1-102(28), RSMo Cum. Supp. 2004 includes "any note" within the definition of a security.
42. Section 409.3-301 reads as follows:

It is unlawful for a person to offer or sell a security in this state unless:

 - (1) The security is a federal covered security;
 - (2) The security, transaction, or offer is exempted from registration under sections 409.2-201 to 409.2-203; or
 - (3) The security is registered under this act.
43. Neither the Missouri Securities Act of 2003 nor the Missouri Code of State Regulations pursuant to § 409.2-203⁴ recognize an offering under SEC Rule 504 in

Missouri as either (1) a federal covered security or (2) a security, transaction, or offer exempted from registration under sections §§ 409.2-201 to 409.2-203.

44. Section 409.5-501, RSMo Cum. Supp. 2004 reads as follows:

It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to omit state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading; or
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

45. Section 409.5-503(a), RSMo. Cum. Supp. 2004 reads as follows: "In a[n]... administrative proceeding under this act, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim."

46. Section 409.6-604(a) reads as follows:

If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this act or a rule adopted or order issued under this act... the commissioner may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this act....

47. Section 409.6-604(b) reads as follows:

An order under subsection (a) is effective on the date of issuance.... If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final as to that person by operation of law.

48. Section 409.6-604(c) reads in part as follows: "The final order may make final, vacate, or modify the order issued unless under subsection (a)."

49. Section 409.6-604(d) reads as follows: "In a final order under subsection (c), the commissioner may impose a civil penalty up to one thousand dollars for a single violation or up to ten thousand dollars for more than one violation."

50. Section 409.6-604(e) reads as follows: "In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act.... These funds may be paid into the investor education and protection fund."

III. ALLEGATIONS OF STATUTORY VIOLATIONS

Count I:

Offering or Selling Nonexempt, Unregistered Securities

51. Respondents violated § 409.3-301 when they offered or sold a security in Missouri without that security being (1) a federal-covered security, (2) exempt from registration under §§ 409.2-201 or 409.2-202, or (3) registered under the Missouri Securities Act of 2003 when they offered or sold promissory notes to the individuals listed on the "GPGW Private Placement Offering" document.
- a. The "promissory notes" that Mitchell claimed to be "offering" qualify as "securities" under § 409.1-102(28), RSMo Cum. Supp. 2004.
 - b. Mitchell represented in his October 27th letter that Respondents had been "offering [promissory notes] to [their] friends and family members." Such actions constitute an "attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value," satisfying the definition of "offer to sell" under § 409.1-102(26), RSMo Cum. Supp. 2004.
 - c. The document Mitchell provided titled "GPGW Private Placement Offering" represents that Missouri individuals "invested" with GPGW. This satisfies the definition of "sale" under § 409.1-102(26), RSMo Cum. Supp. 2004.

Count II:

Omitting to State Material Facts in Connection with the Sale of a Security

52. Respondents violated § 409.5-501(2) when, in connection with the offer and sale of promissory notes issued by GWIZ, they omitted to state in the PPM the following material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading:
- a. any information regarding GWIZ's financial condition;
 - b. the operating history of GWIZ;
 - c. the extent or value of the "'Et Al' position lien" purportedly to be placed on the properties acquired by GWIZ that Respondents represent will "secure" the purchasers' "principal investment";
 - d. information regarding AMSTAR Mortgage's history in participating in the agreement suggested by the PPM;
 - e. the terms of any purported agreement between GWIZ and AMSTAR mortgage;
 - f. that only 46% of the offering proceeds would go to the "Purchase of real estate";
 - g. that less than 15% of the offering proceeds would go to "Working capital";
 - h. that 20% of the offering proceeds would go to "Salaries and fees."

Count III:

Making an Untrue Statement of a Material Fact in Connection with the Sale of a Security

53. Respondents violated § 409.5-501(2) when, in connection with the offer and sale of promissory notes issued by GWIZ, they made an untrue statement of material fact when they falsely represented in the PPM that GWIZ was "seeking" a "\$1 Million surety bond... from Beach City Bonds."

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 the above-described securities 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 § 409.3-304, RSMo Cum. Supp. 2004; and
- B. violating or materially aiding in any violation of § 409.5-501 by, in connection with the offer or sale of the above-described 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 the light of the circumstances under which it is made, not misleading.

IT IS FURTHER ORDERED that, pursuant to § 409.6-604(d), the Commissioner will grant the Enforcement Division's petition for an imposition of a civil penalty of ten thousand dollars (\$10,000) against Respondents, jointly and severally, in a final order unless Respondent requests a hearing and shows cause why the penalty should not be imposed.

IT IS FURTHER ORDERED that, pursuant to § 409.6-604(e), the Commissioner will grant the Enforcement Section's petition and charge Respondents, jointly and severally, the costs of the investigation in this matter. The Commissioner will charge Respondents an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondents request a hearing and shows cause why he should not be charged such costs.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 31ST DAY OF MAY, 2005.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
DAVID B. COSGROVE
COMMISSIONER OF SECURITIES

¹ SEC Rule 504 exempts from the federal registration requirements of the Securities Act of 1933 offers or sales of securities having, among other things, an aggregate offering price of \$1 million or less in 12 months. 17 CFR § 230.504.

² Respondent Mitchell also attached a "[d]efinition and excerpt from the SEC web page" discussing SEC Rule 504.

³ "Venture Capital Connections" is a limited liability company registered with Missouri.

⁴ Section 409.2-203, RSMo Cum. Supp. 2004, reads in pertinent part as follows: "A . . . rule adopted or order issued under this act may exempt a security, transaction, or offer; a rule under this act may exempt a class of securities, transactions, or offers from any or all of the requirements of sections 409.3-301 to 409.3-306 and 409.5-504"