



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
MARK A. KISTLER and)
MARILYN H. KISTLER) Case No. AP-14-16
)
Respondents.)

**FINAL ORDER TO CEASE AND DESIST AND ORDER
AWARDING RESTITUTION, CIVIL PENALTIES, AND COSTS**

The Enforcement Section of the Securities Division of the Office of Secretary of State (the “Enforcement Section”), through Assistant Commissioner Mary S. Hosmer, has petitioned for a final order in the above-referenced matter. After reviewing those petitions and this case’s procedural history, the Commissioner now issues the following final order.

I. FINDINGS OF FACT

A. Respondents and Related Parties

1. Mark Kistler is a 46-year-old Missouri resident with an address of 8218 Albin Avenue, St. Louis, Missouri 63114.
2. Marilyn Kistler is a 70-year-old Missouri resident with an address of 9437 Old Bonhomme Road, St. Louis, Missouri 63132. Marilyn Kistler is the mother of Mark Kistler.
3. Brenda Duke (“Duke”) is a 55-year-old Missouri resident with an address of 8218 Albin Avenue, St. Louis, Missouri 63114.
4. As used herein, the term “Respondents” refers to Mark Kistler and Marilyn Kistler.
5. A check of the records maintained by the Commissioner indicates that at all times relevant to this matter, Respondents were not registered as agents or investment adviser representatives in the State of Missouri.

6. A check of the records maintained by the Commissioner indicates that 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 sold by Respondents.

Enforcement Section Investigation

7. On September 18, 2012, the Enforcement Section received a written complaint from the Missouri Department of Health and Senior Services, Division of Senior & Disability – Senior Services Section (“DHSS”), filed on behalf of MR, an 89-year-old Missouri resident, regarding MR’s real estate investment.
8. MR currently resides at a low-income assisted living facility located in St. Louis, Missouri.
9. Between December 2012 and April 2013, investigators with the Enforcement Section met with and received information from MR regarding, among other things, MR’s \$225,000 investment through Mark Kistler and Marilyn Kistler.
10. MR stated, among other things, the following;
 - a. MR became a patient of Dr. David Kistler¹ in 1986;
 - b. MR met Mark Kistler at Dr. Kistler’s office;
 - c. Mark Kistler worked on MR’s residence and helped MR run errands;
 - d. Mark Kistler took MR to meetings with MR’s financial advisor;
 - e. Mark Kistler informed MR that Mark Kistler had a business of buying old homes and then rehabbing² and selling them for a profit;
 - f. Mark Kistler drove MR by at least two properties that Mark Kistler had bought to rehab;
 - g. MR did not “remember investing in [Mark Kistler’s] rehab business” but at one point, Marilyn Kistler told MR that “[MR] would receive \$20,000 if ‘certain things sold’”;
 - h. in May 2007, MR, at Mark Kistler’s insistence, took out a home equity line of credit (“HELOC”) at Citibank in the amount of \$110,000;

¹ According to the petition, Dr. Kistler is the father of Mark Kistler and the spouse of Marilyn Kistler.

² As used in the petition and herein, the term “rehabbing” is defined as restoring residential buildings to a livable condition.

- i. Mark Kistler and Marilyn Kistler had MR sign checks; however, MR did not recall what the checks were for or what bills Mark Kistler and/or Marilyn Kistler were paying with the checks;
 - j. during an interview, MR was shown seven checks from MR's account that totaled \$110,200. Four of the checks were payable to Marilyn Kistler, and three of the checks were payable to Cash and referenced materials and labor and/or were endorsed by Mark Kistler. MR stated that MR signed the checks but did not fill out the remaining information on the checks;
 - k. Mark Kistler and Marilyn Kistler treated MR like MR "had no sense about anything";
 - l. Mark Kistler and Marilyn Kistler convinced MR to move into an assisted living facility;
 - m. in order to pay for the assisted living facility, Mark Kistler and/or Marilyn Kistler sold MR's car and had MR sell some of MR's stock;
 - n. to date, MR has not received any return on MR's investment with Mark Kistler and Marilyn Kistler; and
 - o. Dr. Kistler is no longer MR's health care provider.
11. MR's records show that in 2007, Mark Kistler was listed on MR's United Missouri Bank ("UMB") checking account as "Payable on Death."
12. In June 2014, the balance of MR's HELOC was over \$110,000.

Mark Kistler OTR

13. On March 28, 2013, Mark Kistler appeared before representatives of the Enforcement Section for an on-the-record examination ("Mark Kistler OTR"). During this interview, Mark Kistler stated, among other things, the following:
- a. Mark Kistler met MR approximately 18 years ago;
 - b. MR was an elderly woman who was very innocent and who frightened easily. In the last several years, MR had limited mobility and could not see well;
 - c. in 2007, Mark Kistler began doing "handyman work" for MR and drove MR to get groceries and to appointments;
 - d. in or around 2007, Mark Kistler talked to MR about MR's financial situation;
 - e. MR was constantly worried about money;

- f. Mark Kistler took MR to open a bank checking account;
- g. Mark Kistler was listed as “payable upon death” on MR’s bank account;
- h. MR informed Mark Kistler that her income was very low;
- i. Mark Kistler talked to MR about rehabbing and renting MR’s duplex, as well as buying properties to rehab;
- j. Mark Kistler told MR that the “rehab market was booming”;
- k. Mark Kistler knew that MR had approximately \$250,000 in MR’s brokerage account;
- l. MR told Mark Kistler that MR’s stocks were underperforming and Mark Kistler told MR that MR had “other opportunities”;
- m. Mark Kistler attended a meeting with MR and MR’s investment adviser representative;
- n. MR’s investment adviser representative was “not comfortable” meeting with both MR and Mark Kistler;
- o. the investment adviser representative did not want MR to invest in the rehab project with Mark Kistler;
- p. subsequent to meeting with the investment adviser representative, Mark Kistler and MR agreed to rehab MR’s duplex and purchase other properties to rehab, and rent both the duplex and the other properties for a profit (“Real Estate Investment”);
- q. the Real Estate Investment was an unwritten agreement between Mark Kistler and MR;
- r. the money MR was to earn from rehabbing and renting MR’s duplex was to be used for MR’s living expenses;
- s. the money MR was to earn from renting the other properties would fund an animal shelter, which MR wanted to be “MR’s legacy” (“Legacy”);
- t. Mark Kistler would live in one of the properties, rent free, as payment from the Real Estate Investment. In addition, Mark Kistler was to receive income for operating MR’s Legacy;

- u. from approximately 2008 through 2011, the majority of Mark Kistler's income stemmed from this arrangement with MR;³
- v. after renting out MR's duplex, MR was to live in one of the rehabbed properties with Mark Kistler;
- w. Mark Kistler never provided MR with any contract regarding MR's Real Estate Investment;
- x. Mark Kistler used MR's funds for the Real Estate Investment to acquire three properties. Mark Kistler identified these properties as the Albin property ("Albin Property"), the Gaebler property ("Gaebler Property"), and the Brenner property ("Brenner Property");
- y. Mark Kistler spent approximately \$65,000 of MR's funds to purchase and rehab these three properties. The remaining funds received from MR were used for rehabbing MR's duplex;
- z. Mark Kistler filled out several checks drawn from MR's bank account and MR signed these checks. These checks were written for "Cash" or were written to Marilyn Kistler;
- aa. Mark Kistler subsequently had MR write checks to Marilyn Kistler for the Real Estate Investment;
- bb. Marilyn Kistler was not part of the Real Estate Investment; however, Marilyn Kistler's name was on two of the properties purchased with MR's funds;⁴
- cc. after the funds were sent to Marilyn Kistler, Marilyn Kistler would transfer money to Mark Kistler via checks, some of which were made payable to "Cash";
- dd. Mark Kistler also paid subcontractors that Mark Kistler had hired to work on the Real Estate Investment properties in cash "because the people that I was dealing with were primarily felons who didn't have accounts . . . I think like three of them were and so they didn't want any other form except for cash and I told them that they were responsible for their taxes";
- ee. Mark Kistler did not account for these expenditures but claimed that Mark Kistler provided MR with a box of receipts;
- ff. Mark Kistler suggested that MR take out a HELOC;

³ The petition states that it is unclear what portion of the money Mark Kistler obtained from MR was taken as income. Mark Kistler did live rent free in a house purchased with MR's funds.

⁴ The petition also alleges that, subsequent to the purchase, all three properties were titled in Marilyn Kistler's name. As of July 2014, these properties were still titled in Marilyn Kistler's name.

- gg. a friend of Mark Kistler's helped MR with the HELOC;
- hh. the money from the HELOC went to Mark Kistler for rehabbing the three purchased properties and MR's duplex;
- ii. Mark Kistler would start on the animal shelter for MR's Legacy when Mark Kistler received cash from renting the properties referenced above;
- jj. only one of the three properties was ever rented, and that property was rented for a period of approximately three months;
- kk. MR received no income from any of the properties; and
- ll. on or around February 4, 2011, before MR moved to an assisted living facility, Mark Kistler's girlfriend, Duke, became MR's durable power of attorney.

Marilyn Kistler OTR

14. On May 1, 2013, Marilyn Kistler appeared before representatives of the Enforcement Section for an on-the-record examination ("Marilyn Kistler OTR"). During this interview, Marilyn Kistler stated, among other things, the following:
- a. for the last 40 years, Marilyn Kistler was the office manager and the only nurse at Dr. Kistler's office;
 - b. MR and MR's mother were patients of Dr. Kistler;
 - c. MR was Marilyn Kistler's friend, and Marilyn Kistler assisted MR;
 - d. MR began to forget to pay bills, and to help pay these bills, Marilyn Kistler had Marilyn Kistler's name added to MR's checking account;
 - e. MR's main purpose in life was to establish a shelter for mistreated animals, and that animal shelter was how MR wanted to be remembered;
 - f. Mark Kistler discussed MR's financial situation and the funding of an animal shelter with MR;
 - g. Mark Kistler and MR were going to have some rental properties that would produce the funds necessary to set up MR's animal shelter;
 - h. Mark Kistler and MR had a verbal agreement to purchase properties to rehab and then to rent these properties for a profit;
 - i. Mark Kistler took MR to see the properties to be purchased;

- j. three properties were purchased with MR's money;
- k. all three properties were titled in Marilyn Kistler's name;
- l. when Marilyn Kistler was asked why all three properties were in her name, Marilyn Kistler responded, "that's a good question." Marilyn Kistler then stated that MR trusted Marilyn Kistler and that if anything happened, Marilyn Kistler would make sure MR's funds would go to the animal shelter;
- m. only the Albin Property had ever been rented. There was no structure on one of the properties, and the last property was not livable;
- n. Mark Kistler and Duke lived in the Albin Property. They did not pay MR rent;
- o. Marilyn Kistler knew of MR's HELOC but thought it was inappropriate for MR. Marilyn Kistler stated, "You don't stick a 90-year-old with a home equity line of credit unless she had some monies that would cover it. And why would she need that much?";
- p. Mark Kistler was rehabbing MR's duplex, and the upstairs unit of the duplex was to be rented when Mark Kistler finished the rehab;
- q. MR wrote checks to Marilyn Kistler to fund Mark Kistler's rehab of MR's duplex and the other properties;
- r. Marilyn Kistler sometimes wrote checks drawn from MR's account that MR had signed and then gave the checks to Mark Kistler. MR allowed Marilyn Kistler to fill out these checks;
- s. during the time that Marilyn Kistler was a signatory on MR's checking account, Marilyn Kistler wrote checks and signed Marilyn Kistler's name to checks drawn from MR's checking account;
- t. Marilyn Kistler deposited checks from MR into Marilyn Kistler and Dr. Kistler's personal bank account;
- u. the only record that Marilyn Kistler received regarding the use of MR's funds to purchase the properties or for the rehab of the properties were the memo lines of the checks or the bank statements;
- v. Marilyn Kistler wrote checks to Mark Kistler from MR's checking account; however, Marilyn Kistler did not receive any documents from Mark Kistler detailing how MR's money was used;
- w. Marilyn Kistler used an accounting software program to keep track of MR's checks and the money Marilyn Kistler gave to Mark Kistler;

- x. Marilyn Kistler supplied an accounting spreadsheet reflecting Marilyn Kistler's use of MR's money ("Payment Spreadsheet");
 - y. the Payment Spreadsheet did not account for all of the expenses because some HELOC payments and some purchases of groceries for MR were made from Marilyn Kistler's business account; and
 - z. before MR moved to an assisted living facility in March 2011, Marilyn Kistler became MR's health care power of attorney.
15. A review of the Payment Spreadsheet reflected that, from July 21, 2006, through December 31, 2012, Marilyn Kistler wrote checks, made automatic payments, and/or used a debit card for a total amount of \$141,012.05. The Payment Spreadsheet reflected that during this time, \$12,838.24 went to pay MR's bills, taxes, and groceries. The remaining \$128,173.81 went to Mark Kistler for the purchase and rehab of the three properties, partial rehab of MR's duplex and to make payments of \$5,022 on MR's HELOC loan.
16. A review of MR's bank account revealed that, from January 2007 to December 2012, MR:
- a. received \$110,000 in this bank account from the HELOC;
 - b. signed three checks totaling \$11,000 made out to "cash" for the Real Estate Investment (the memo line of the checks indicate material and labor and at least two of these checks were endorsed by Mark Kistler); and
 - c. signed four checks made out to Marilyn Kistler totaling in excess of \$99,000.
17. A review of MR's brokerage account revealed that MR:
- a. paid in excess of \$100,000 to Marilyn Kistler; and
 - b. paid in excess of \$10,000 to Mark Kistler.

Duke OTR

18. On May 14, 2013, Duke appeared before representatives of the Enforcement Section for an on-the-record examination ("Duke OTR"). During this interview, Duke stated, among other things, the following:
- a. Duke met Mark Kistler sometime in the summer of 2009;
 - b. Duke was Mark Kistler's girlfriend and was living at the Albin Property with Mark Kistler as of May 2013;

- c. Duke met MR through Mark Kistler;
- d. MR had very bad vision and had difficulty walking;
- e. Duke helped MR by picking up MR's medication;
- f. MR loved her home, and MR wanted to die in her home;
- g. MR told Duke that Mark Kistler had rehabbed MR's duplex, but Duke walked through the upstairs unit once or twice with MR and saw that the rehab was not finished;
- h. MR did not want Mark Kistler to finish the rehab of MR's property because MR was nervous about having too many people in her home at one time;
- i. Duke did not know the specifics of the financial agreement between Mark Kistler and MR;
- j. Duke knew that Mark Kistler purchased three properties;
- k. these properties were put in Marilyn Kistler's name because Mark Kistler had bad credit;
- l. Mark Kistler had credit card debt and was worried that creditors may be able to take the properties if the properties were in Mark Kistler's name;
- m. the Brenner Property was in bad condition, there were "no walls," there was "no power," it was "full of junk," and it was "not livable by any means";
- n. in 2011, Duke became MR's durable power of attorney;
- o. Duke helped MR sell some of MR's stocks to pay, in part, for MR's stay at the assisted living facility;
- p. Duke talked to MR's stock broker on the telephone and once took MR to the bank to get a medallion signature guarantee in order to sell stock that was still in the name of MR's mother;
- q. Duke and Mark Kistler helped sell MR's car before MR went to the assisted living facility;
- r. Duke had MR evaluated by a doctor; and
- s. the doctor's report stated that MR was depressed and anxious, and suffered from hallucinations, dementia, and Alzheimer's.

19. A search on Missouri Case.net discovered the following two judgments against Mark Kistler:
 - a. On December 30, 2008, a judgment was issued against Mark Kistler for \$24,450.30. The related garnishment was issued on March 16, 2009, with a balance due as of June 23, 2014, of \$25,547.37; and
 - b. On October 7, 2009, a judgment was issued against Mark Kistler for \$30,418.54. The related garnishment, last issued on October 28, 2013, has a balance due as of June 23, 2014, of \$56,900.29.

The Commissioner's Cease and Desist Order

20. On August 18, 2014, the Enforcement Section of the Securities Division of the Office of Secretary of State, through Assistant Commissioner Mary S. Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Restitution, Civil Penalties, and Costs Should Not Be Imposed in this case.
21. On September 8, 2014, the Commissioner issued an Order to Cease and Desist and Order to Show Cause Why Restitution, Disgorgement, Civil Penalties, and Costs Should Not Be Imposed (the "C&D Order").

Mark Kistler's Withdrawn Hearing Request

37. In a letter dated September 30, 2014, and received by the Commissioner on October 6, 2014, Respondent Mark A. Kistler ("Mark Kistler") wrote: "Please accept this as my formal letter to request a hearing" in this matter.
38. On October 31, 2014, the Commissioner issued an Order ("October Order") stating that the Mark Kistler's September 30, 2014 letter did not meet the requirements of 15 CSR 30-55.020. Specifically, the letter failed to include a brief statement of the facts; a summary of the factual and legal issues involved; or a request for relief with suggestions in support. The Commissioner granted Mark Kistler until November 26, 2014, at 5 p.m., to submit an answer in compliance with 15 CSR 30-55.020.
39. The October Order was addressed to Mark Kistler and was mailed to Mark Kistler at his address on Albin Avenue in St. Louis ("Albin Address").⁵ USPS twice attempted delivery at the Albin Address, and left notice on November 6, 2014, that a certified letter could be picked up.
40. Mark Kistler never picked up the certified letter containing the October Order from the

⁵ The Certificate of Service from the October Order states that the order was mailed by Certified U.S. mail on October 31, 2014, to Mark A. Kistler, P.O. Box 142372, St. Louis, Missouri 63114. In fact, the certified mail receipt attached to Petitioner's Motion for Final Order with Respect to Mark A. Kistler shows that the United States Postal Service (USPS) attempted delivery of the October Order at the Albin Address on November 5, 2014. The following day, USPS left notice at the Albin Address that the certified letter could be picked up.

USPS.

41. Beginning on December 2, 2014, the Enforcement Section made multiple attempts to communicate with Mark Kistler regarding his failure to file a response to the Commissioner's October Order:
 - a. On December 2, 2014, representatives of the Enforcement Section left a message for Mark Kistler. The person answering the telephone stated that Mark Kistler would only communicate with the Enforcement Section by letter.
 - b. Further, on December 3, 2014, representatives of the Enforcement Section obtained an e-mail address for Mark Kistler and sent Mark Kistler a message regarding the Commissioner's Order and requested that Mark Kistler contact the Enforcement Section.
 - c. On December 5, 2014, the Enforcement Section obtained a telephone number for Mark Kistler and a representative of the Enforcement Section left a message for Mark Kistler to call the Enforcement Section.
42. On December 9, 2014, this office received a letter dated December 5, 2014, from Mark Kistler ("MK Letter").⁶
43. In the MK Letter, Mark Kistler withdrew his request for a hearing, stating "the matter of the need for a hearing closed," that Mr. Kistler did not do a variety of things, and that he expected to be arrested soon.
44. On December 12, 2014, the Enforcement Section filed a Motion for Final Order with Respect to Respondent Mark Kistler (the "Final Order Motion"), sending a copy to Mr. Kistler.
45. Mr. Kistler never responded to the Final Order Motion.

Marilyn Kistler

46. In a letter dated October 6, 2014, and received on October 10, 2014, attorney Richard H. Sindel entered his appearance on behalf of Marilyn H. Kistler, and wrote that Ms. Kistler "disputes the allegations" in the C&D Order of September 8, 2014.
47. On December 5, 2014, the Enforcement Section and Respondent Marilyn H. Kistler, through her attorney, Richard H. Sindel (the "Parties"), submitted a Joint Motion for a Final Order to Cease and Desist and Order Awarding Restitution, Civil Penalties, and Costs and Barring Respondent Marilyn H. Kistler from registration.

⁶ The return address on the MK Letter was the Albin Address, which was the same address used to send Mark Kistler a copy of the Order and the October Order. Moreover, this letter was sent after the October Order's November 26, 2014 deadline and still did not comply with 15 CSR 30-55.020.

III. CONCLUSIONS OF LAW

48. By withdrawing his request for a hearing, the C&D Order has become final as to Mark Kistler by operation of law. *See* Section 409.6-604(b), RSMo. (Cum. Supp. 2013).⁷ *See also*, *Coleman v. Missouri Sec’y of State*, 313 S.W.3d 148, 156 (Mo. App. W.D. 2010) (noting that a respondent’s withdrawal of his hearing request “was qualitatively identical to never having requested a hearing in the first place” and “pursuant to section 409.6–604(b), the Commissioner was free to take action to enter the Final Order without conducting a hearing”).

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

49. Respondent Marilyn Kistler violated Section 409.5-501(3) when, in connection with the offer or sale of a security to MR, Marilyn Kistler engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person by, among other things:
- a. obtaining a position of trust over MR, an elderly person with mental, physical, and emotional health problems;
 - b. failing to provide MR with a written contract disclosing the use of the investment funds;
 - c. receiving investment funds from MR in cash and failing to maintain documentation of the expenditures of investment funds;
 - d. suggesting that MR open a bank account to facilitate the distribution of investment funds to Mark Kistler;
 - e. adding Marilyn Kistler’s name to MR’s bank account;
 - f. obtaining investment funds from MR’s bank account through Marilyn Kistler’s signatory authority;
 - g. obtaining investment funds from MR’s bank account by drafting checks for MR’s signature;
 - h. obtaining investment funds from MR’s brokerage account by facilitating transfers to Marilyn Kistler’s personal bank account and/or MR’s bank account;
 - i. commingling MR’s investment funds with Marilyn Kistler’s personal funds in Marilyn Kistler’s bank account;

⁷ Unless otherwise noted, all statutory references are to the 2013 cumulative supplement of the Revised Statutes of Missouri.

- j. obtaining investment funds from MR's brokerage account through transfers from this brokerage account to the account of an associate of Mark Kistler; and/or
 - k. purchasing real estate with MR's investment funds and titling these properties in Marilyn Kistler's name.
50. At the time Respondent Marilyn Kistler 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).
51. Respondent Marilyn Kistler 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, and engaged 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.
52. 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).

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

53. Respondent Mark Kistler violated Section 409.3-301 when he offered and sold a security to MR by:
- a. soliciting MR to invest in the Real Estate Investment and received funds from MR. This activity constitutes the offer and sale of securities; and
 - b. offering and selling to MR investment contracts, in that:
 - i. MR invested funds in a common enterprise with Mark Kistler;
 - ii. MR's funds were to be used by Mark Kistler to purchase and/or rehab real estate;
 - iii. MR expected a profit from the efforts of Mark Kistler and not from MR's own efforts; and
 - iv. MR's expected profits were interwoven with and dependent upon the efforts of Mark Kistler.
54. 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 sold by Respondent Mark Kistler.
55. Respondent Mark Kistler offered and sold securities in Missouri without these securities being (1) a federal covered security, (2) exempt from registration under Sections 409.2-201 or 409.2-203, or (3) registered under the Missouri Securities Act of 2003.

56. Respondent Mark Kistler offered and sold unregistered securities in violation of Section 409.3-301, and engaged 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.

Multiple Violations of Transacting Business as an Unregistered Agent

57. Respondent Mark Kistler offered and/or sold securities to MR in Missouri. These activities constitute transacting business as an agent in the State of Missouri.
58. At all times relevant to this matter, Respondent Mark Kistler was not registered as a securities agent in the State of Missouri.
59. Respondent Mark Kistler offered and/or sold securities to an investor in Missouri without being registered or exempt from registration as an agent in violation of Section 409.4-402(a), and engaged 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.

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

60. Respondent Mark Kistler violated Section 409.5-501(3) when, in connection with the offer or sale of a security to MR, Mark Kistler engaged in an act, practice, or course of business that would operate as a fraud or deceit upon another person by, among other things:
- a. obtaining a position of trust over MR, an elderly woman with mental, physical, and emotional health problems;
 - b. providing financial advice to MR;
 - c. convincing MR, who was constantly worried about money, to invest in a risky Real Estate Investment;
 - d. failing to provide MR, who had memory problems, with a written contract regarding the Real Estate Investment or disclosing the use of her investment funds;
 - e. receiving investment funds from MR in cash and failing to maintain documentation of the expenditures of investment funds;
 - f. suggesting that MR open a bank account to facilitate the distribution of investment funds to Mark Kistler;
 - g. obtaining investment funds from MR's bank account by drafting checks for MR's signature;

- h. obtaining investment funds from MR's brokerage account by facilitating transfers to Marilyn Kistler's personal bank account and/or MR's bank account;
 - i. obtaining investment funds from MR's brokerage account through transfers from this brokerage account to the account of an associate of Mark Kistler;
 - j. purchasing real estate with MR's investment funds and titling these properties in Marilyn Kistler's name; and/or
 - k. failing to pay MR any rental income from any of the properties.
61. At the time Respondent Mark Kistler 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).
62. Respondent Mark Kistler 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, and engaged 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.
63. 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. violating or materially aiding in any violation of 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. violating or materially aiding in any violation of Section 409.4-402(a), by transacting business as an unregistered agent;
- C. violating or materially aiding in any violation of 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.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondent Marilyn H. Kistler shall pay restitution in the amount of twenty-four thousand dollars (\$24,000) for multiple violations of Section 409.5-501. This amount shall be payable to the Missouri Secretary of

State's Investor Restitution Fund ("Restitution Fund") and sent to that Restitution Fund at 600 West Main Street, Jefferson City, Missouri 65101 and the Commissioner will take reasonable and necessary actions to distribute all such funds to the investor detailed in Exhibit 1. Respondent Marilyn H. Kistler shall pay this amount in thirty (30) days from the execution of this order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondent Marilyn H. Kistler shall pay the costs of investigation in this matter in the amount of five thousand dollars (\$5,000). The full amount of these costs will be suspended provided Respondent complies with the terms of the Final Order and does not violate the Missouri Securities Act for a period of three (3) years.

IT IS FURTHER ORDERED that the suspended payment in the previous paragraph shall become immediately payable by Respondent Marilyn H. Kistler, under operation of law, upon the failure to comply with the terms of the Final Order, and such immediately due payments shall be in addition to all other penalties then available under the law. The Commissioner will refer this matter for enforcement as provided in Sections 409.6-603 and 409.6-604.

IT IS FURTHER ORDERED that Respondent Marilyn H. Kistler shall be barred from applying for registration as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative in the State of Missouri.

IT IS FURTHER ORDERED that Respondent Marilyn Kistler shall pay her own costs and attorney's fees in this matter.

IT IS FURTHER ORDERED that pursuant to Section 409.6-604(d), Respondent Mark Kistler shall pay restitution in the amount of one hundred ninety-seven thousand dollars (\$197,000) for multiple violations of Sections 409.3-301; 409.4-402(a); 409.5-501; and 409.6-604(d)(3)(B). This amount shall be payable to the Missouri Secretary of State's Investor Restitution Fund ("Restitution Fund") and sent to that Restitution Fund at 600 West Main Street, Jefferson City, Missouri 65101 and the Commissioner will take reasonable and necessary actions to distribute all such funds to the investor detailed in Exhibit 1. Respondent Mark Kistler shall pay this amount in thirty (30) days from the execution of this order.

IT IS FURTHER ORDERED that, Respondent Mark Kistler shall pay a civil penalty in the amount of forty thousand dollars (\$40,000), for multiple violations of Sections 409.3-301; 409.4-402(a); 409.5-501; and 409.6-604(d)(3)(B). Respondent Mark Kistler shall pay this amount in thirty (30) days from the execution of this order.

IT IS FURTHER ORDERED that pursuant to Section 409.6-604(d), Respondent Mark Kistler shall pay the costs of investigation in this matter in the amount of eighteen thousand four hundred nineteen dollars and three cents (\$18,419.03). These funds shall be made payable to the Investor Education and Protection Fund and be sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101. Respondent Mark Kistler shall pay this amount in thirty (30) days from the execution of this order.

IT IS FURTHER ORDERED that, Respondent Mark Kistler shall be barred from applying for registration as a broker-dealer, broker-dealer agent, investment adviser, or investment adviser representative in the State of Missouri.

IT IS FURTHER ORDERED that, Respondent Mark Kistler shall pay his own costs and attorney's fees in this matter.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS THIRTIETH DAY OF JANUARY, 2015.



JASON KANDER
SECRETARY OF STATE

Andrew M. Hartnett

Andrew M. Hartnett
Commissioner of Securities

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of January, 2015, a copy of the foregoing Final Order To Cease And Desist And Order Awarding Restitution, Civil Penalties, And Costs in the above styled case was **mailed by Certified U.S. mail to:**

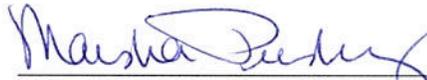
Mark A. Kistler
P.O. Box 142372
St. Louis, Missouri 63114

and mailed U.S. mail to:

Richard H. Sindel
8000 Maryland Ave. Suite 350
Clayton, Missouri 63105

and by hand delivery to:

Mary S. Hosmer
Assistant Commissioner
Missouri Securities Division



Marsha Presley, Securities Office Manager