



STATE OF MISSOURI
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:)
)
AFLACASSIST.COM, LLC; LANCE HIMES;)
and LEARY DARLING,) Case No.: AP-15-26
)
Respondents.)

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

Now on this 23rd day of December, 2015, the Commissioner, having reviewed this matter, issues the following findings and order:

I. PROCEDURAL BACKGROUND

1. On June 19, 2015, the Enforcement Section, through Director of Enforcement John Phillips, filed a Petition for Order to Cease and Desist and Order to Show Cause why Restitution, Civil Penalties, and Costs Should not be Imposed (the "Petition").
2. On October 15, 2015, the Missouri Commissioner of Securities (the "Commissioner") issued an Order to Cease and Desist and Order to Show Cause why Restitution, Civil Penalties, and Costs Should not be Imposed (the "Order"). On that same day, a copy of the Order and Notice of Right to Request a Hearing were sent to Respondents AflacAssist.com LLC, Lance Himes, and Leary Darling, via certified mail, return receipt requested, to their last known addresses.
3. The Order and Notice of Right to Request a Hearing sent to Respondents AflacAssist.com LLC, Lance Himes, and Leary Darling were returned "unclaimed" to the Commissioner.
4. On October 22, 2015, Respondents were served with the Order pursuant to Section 409.6-611(b), RSMo. (Cum. Supp. 2013),¹ by providing a copy of the process to the office of the Commissioner. On that same day, the Petitioner filed an Affidavit of Compliance with Section 409.6-611(b).

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

5. On October 23, 2015, notice of service and a copy of the process were sent to Respondents AflacAssist.com LLC, Lance Himes, and Leary Darling, via certified mail, return receipt requested, to their last known addresses.
6. The notice of service and copy of process sent to Respondents AflacAssist.com LLC, Lance Himes, and Leary Darling were returned “unclaimed” to the Commissioner.
7. Respondents failed to request a hearing within the time allowed by Section 409.6-604.
8. The Commissioner has not ordered a hearing in this matter pursuant to Section 409.6-604.
9. On November 24, 2015, the Enforcement Section submitted a Motion for Final Order.
10. To date, the Respondents have failed to respond to the Motion for Final Order.

II. FINDING OF FACTS

A. Respondents and Related Parties

11. AflacAssist.com LLC (“AflacAssist.com”) is an Arizona-based limited liability company in the business of telemarketing. AflacAssist.com’s registered agent is Melvin McDonald with a mailing address of 2901 North Central Avenue, Phoenix, Arizona 85012. AflacAssist.com is not authorized to transact business in Missouri.
12. US Doc Assist LLC (“US Doc Assist”) is an Arizona-based limited liability company in the business of business registration and document service. US Doc Assist’s registered agent is Vanessa Hobbs with a mailing address of 3507 North Central Avenue, #403, Phoenix, Arizona 85012. US Doc Assist is not authorized to transact business in Missouri.
13. Lance Himes (“Himes”) is a principal of AflacAssist.com and US Doc Assist, and Himes’ last known mailing address is 10601 West Montecito Avenue, Phoenix, Arizona 85037.
14. Leary Darling (“Darling”) is a principal of AflacAssist.com and US Doc Assist, and Darling’s two last known mailing addresses are 2010 North Dayton, Phoenix, Arizona 85006 and 7101 West Beardley Road, Unit 531, Glendale, Arizona 85308.
15. At all times relevant to this matter, upon information and belief, the following individuals were agents of AflacAssist.com, US Doc Assist, Himes, or Darling: (a) Joe Campbell (“Campbell”); (b) Gerald Davis (“Davis”); (c) Stacy Lee (“Lee”); and (d) Sarah Periz (“Periz”). At all times relevant to this matter, none of the aforementioned individuals were registered as an investment adviser representative or agent in the State of Missouri.

16. Himes and Darling also operate Management AA LLC (“Management AA”), A Plus Fulfillment Center LLC (“A Plus Fulfillment Center”), and US Job Assist LLC (“US Job Assist”), which are all Arizona-based limited liability companies. Himes and Darling used Management AA, A Plus Fulfillment Center, and US Job Assist to conduct business for AflacAssist.com.
17. As used herein, the term “Respondents” refers to AflacAssist.com, Himes, and Darling.
18. At all times relevant to this matter, there was no registration, granted exemption, or notice filing indicating status as a “federal covered security” for any securities offered or sold by Respondents.
19. At all times relevant to this matter, none of Respondents’ employees or affiliates referenced herein was registered as agents of Respondents in the State of Missouri.
20. Himes and Darling were mailed, certified return receipt requested, requests for information to Himes’ and Darling’s respective last known addresses. Those requests for information were returned as unclaimed.

B. Missouri Resident

21. In November 2014 and February 2015, an investigator with the Enforcement Section spoke with and received documents from a Holts Summit, Missouri resident (“MR”). A review of the interviews and information received from MR revealed, among other things, the following:

Merchant Residual Accounts

22. On October 23, 2012, when MR was 61 years-old, MR received a cold call² from a telemarketer who identified himself as Campbell with AflacAssist.com to discuss an investment opportunity with MR. According to MR, Campbell told MR, among other things, that:
 - a. MR’s investment would be used to purchase merchant residual accounts;
 - b. MR was guaranteed income. Although the amount of income would vary monthly because of market performance, MR would make a “considerable amount of money” from the investment;
 - c. MR would not have to do anything to make money because “it’s all based on the [performance of the] merchant residual accounts. You [the investor] don’t do [anything].”
 - d. the merchant residual accounts were akin to stocks and mutual funds. MR believed that “if the market did well, [MR] would make more money;”

² “Cold call” meaning MR had no prior contact with the person conducting the call.

- e. the “more money [MR] invest[ed], the more money [MR would] make;”
 - f. MR had three investment options: the gold plan for \$20,000, the silver plan for \$15,000, and the bronze plan for \$10,000; and
 - g. MR should only make the “minimum payments” on MR’s credit card because of the “substantial amount of money [that would be] coming in soon.”
- 23. MR invested \$15,000 in the “silver plan” for the purchase of seven merchant residual accounts.
 - 24. Campbell told MR that, as a result of investing in the “silver plan,” MR would receive “money for five years.”
 - 25. MR agreed to pay \$319 to have US Doc Assist set up a business called SRG Services LLC (“SRG Services”) in MR’s name and to create three websites for SRG Services.
 - 26. On October 23, 2012, MR received an e-mail from Davis, who claimed to be an AflacAssist.com customer service representative, confirming MR’s decision to choose US Doc Assist to “register [MR’s] business entity.” The e-mail gave MR instructions to electronically review, sign, and return the documents in order to begin the registration process. The e-mail provided an attachment explaining the “benefits of an LLC.”
 - 27. MR received a letter dated October 24, 2012, addressed to SRG Services and MR containing an Employer Identification Number (“EIN”) from the Internal Revenue Service. The letter stated, among other things, that the EIN will “identify [MR], [MR’s] business accounts, tax returns, and documents, even if [MR has] no employees.”
 - 28. On October 29, 2012, MR was contacted by Davis. Davis created at least one website for MR that was to track the performance of MR’s seven merchant residual accounts.
 - 29. On October 29, 2012, MR received an e-mail from US Job Assist regarding SRG Services’ three websites. The e-mail stated that the websites were to do the following: “[refer] individuals who [want] to work from home...[refer] merchants (businesses) that are interested in receiving a free quote...[and] back office” work.
 - 30. However, based on what MR was told by Davis, MR believed that Davis created a single website for MR to track the progress of MR’s merchant residual accounts. Later on, MR realized the “website served no purpose.”
 - 31. On November 19, 2012, MR received an e-mail from AflacAssist.com with three documents attached. MR received a welcome letter, which indicated that there were two attached documents “for [MR’s] signature to confirm [MR’s] purchase” of seven merchant residual accounts and “to get [MR] started on [MR’s] path to success.”

32. MR electronically signed the AflacAssist.com marketing disclosure document, “agreeing to purchase the business package,” as well as the AflacAssist.com invoice establishing MR’s seven merchant residual accounts. Both forms documented MR’s one-time, online credit card payment in the amount of \$15,000. Management AA is listed as the business accepting the payment.
33. On November 20, 2012, MR received an e-mail from a customer service or administrative assistant with AflacAssist.com who identified herself as Wendy. The e-mail stated, among other things, the following:
 - a. AflacAssist.com provided MR with a list of thirteen available merchant residual accounts; and
 - b. MR was given instructions to select seven from the list of thirteen available merchant residual accounts.
34. On November 21, 2012, MR replied to the e-mail with MR’s seven selections from the list of available merchant residual accounts. The following transpired:
 - a. MR electronically signed a “guaranteed merchant residual account agreement” confirming the seven merchant residual accounts MR selected;
 - b. MR electronically signed a “confirmation of order and delivery” to purchase advertising and marketing products or materials on behalf of SRG Services; and
 - c. MR received a certificate confirming that the seven named merchant residual accounts MR selected had been acquired.
35. On November 27, 2012, MR received a package addressed to SRG Services and MR enclosed with the following:
 - a. “business/affiliate leads” in DVD format as well as a form advising MR to “contact” or “resell” the leads;
 - b. a “customized digital business card” in DVD format and a form with an online “link” to MR’s digital business card; and
 - c. a form explaining the benefits to marketing with electronic business cards and ways to use electronic business cards.
36. MR never used the DVD.
37. MR received a letter dated January 10, 2015, addressed to SRG Services and MR from A Plus Fulfillment Center. Enclosed in this letter were “residual checks for the last cycle of 2012” and the merchant residual account cycles “schedule for the year 2013.” However, upon information and belief, rather than receiving seven genuine and negotiable checks,

MR received accounting records or ledger sheets reflecting payments from seven merchant residual accounts that totaled \$298, but which did not reflect actual payment to MR.

38. MR contacted AflacAssist.com in or around March 2013 about not receiving actual investment returns for the months of January and February, which were cycles two and three. Davis informed MR that AflacAssist.com was in the process of changing banks, and MR's investment returns would be sent shortly.
39. In March 2013, MR was contacted by an individual who identified herself as Lee with AflacAssist.com regarding MR's investment returns for January and February. MR and Lee exchanged e-mails from March 10, 2013 to April 19, 2013. Lee kept assuring MR that the checks for January and February would be sent in the near future.
40. On April 19, 2013, Lee, on behalf of AflacAssist.com sent MR an e-mail confirming that "seven checks were mailed out on April 4, 2013." However, MR never received those seven checks, and thereafter Lee stopped responding to MR's e-mails and telephone calls.
41. On July 10, 2013, MR contacted AflacAssist.com and spoke with an individual who identified herself as Periz. MR explained that "residual revenue [checks] for cycles one, two, and three" still had not been sent.
42. In response, Periz stated that there was an issue with MR's account. When MR inquired about the issue, Periz said an account manager would contact MR about the specifics within three business days.
43. MR has not been contacted by AflacAssist.com since July 10, 2013.
44. In or around August 2013, MR lost all communication with AflacAssist.com.
45. By mid-summer 2013, MR could no longer access MR's website.
46. As of April 23, 2015, MR has not received any of MR's principal investment or residual revenue from MR's investment in merchant residual accounts with AflacAssist.com. MR is owed \$15,000.

Credit Card Swipe Machines

47. On October 23, 2012, after discussing the merchant residual accounts, Davis instructed MR to sell "new models of credit card swipe machines" to "mom and pop stores," which was separate from MR's investment. MR would be paid based on the number of credit card machines MR sold on behalf of US Job Assist.
48. In or around November 2012, MR e-mailed US Job Assist a list of "mom and pop stores" interested in purchasing credit card swipe machines. However, MR never received a response back from US Job Assist.

C. Additional Findings

49. On May 6, 2013, the Attorney General for the State of Oregon filed an Assurance of Voluntary Compliance (“AVC”) naming Himes, Darling, AflacAssist.com, US Doc Assist, Management AA, among others, in the Circuit Court of the State of Oregon for the County of Marion.
50. Upon execution of the AVC, Himes, Darling, AflacAssist.com, US Doc Assist, and Management AA, agreed, among others, that they “shall permanently cease doing business in the [State] of Oregon, including but not limited to, any type of involvement with any company that conducts telemarketing.”
51. Upon execution of the AVC, Himes, Darling, AflacAssist.com, US Doc Assist, and Management AA, among others, agreed that they “shall pay restitution to all consumers that filed or, within 180 days of execution of the AVC, file a complaint with the [Department of Justice].”
52. On August 29, 2013, the Attorney General for the State of Oregon filed an *ex parte* motion for Entry of General Judgement for a principal amount of \$400,000 against Himes, Darling, AflacAssist.com, US Doc Assist, and Management AA, among others, in the Circuit Court of the State of Oregon for the County of Marion.
53. On August 2, 2013, the Federal Trade Commission (“FTC”) filed *ex parte* for a temporary restraining order, asset freeze, appointment of temporary receiver, immediate access, other equitable relief, and an order to show cause why a preliminary injunction should not be issued against Himes, Darling, and US Doc Assist, among others, in The United States District Court for the District of Arizona.
54. On August 5, 2013, the FTC filed a Complaint for Permanent Injunction and Other Equitable Relief against Himes, Darling, and US Doc Assist, among others, in The United States District Court for the District of Arizona for playing an “integral role” in a telemarketing scheme (“FTC Complaint”). The FTC Complaint alleges, among other things, that:
 - a. Himes, Darling, and US Doc Assist were listed as “Initial Payment Defendants, who obtain consumers’ authorizations for their initial payment for the business opportunity and provide limited liability company and a website”;
 - b. US Doc Assist, acting alone or in concert with others, “advertised, marketed, distributed, or sold the business opportunities” to customers throughout the United States;
 - c. Himes is the beneficial owner and *de facto* manager of US Doc Assist;
 - d. Himes, acting alone or in concert with others, has “formulated, directed, controlled, had the authority to control, or participated in the acts and practices” of US Doc Assist;

- e. Darling is a member of US Doc Assist; and
 - f. Himes, acting alone or in concert with others, has “formulated, directed, controlled, had the authority to control, or participated in the acts and practices” of US Doc Assist.
55. On or about August 19, 2013, the FTC obtained a preliminary injunction consistent with the allegations set forth in the underlying Complaint in that matter.
56. The Enforcement Section sent requests via certified mail for information about AflacAssist.com and MR’s investment to Himes and Darling to their respective last known addresses on February 11, 2015. A written response from Himes and Darling was due on or before March 6, 2015. The requests for information were returned on March 17, 2015, and March 21, 2015, unclaimed.

III. CONCLUSIONS OF LAW

57. Because Respondents failed to request a hearing within the time allowed by Section 409.6-604, and because the Commissioner never ordered such a hearing, the Order issued on October 15, 2015, against Respondents became **FINAL** by operation of law.

Violation of Offering and Selling an Unregistered, Non-Exempt Security

58. **THE COMMISSIONER CONCLUDES** that the merchant residual accounts described above were investment contracts and thus securities as defined under Section 409.1-102(28).
59. **THE COMMISSIONER FURTHER CONCLUDES** that Campbell’s activities on behalf of Respondents described above qualify as an offer to sell, for purposes of Section 409.1-102(26), a security to MR on behalf of Respondents.
60. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents sold, for purposes of Section 409.1-102(26), a security to MR when MR purchased the merchant residual accounts offered by Campbell on behalf of Respondents.
61. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents violated Section 409.3-301 when, in the State of Missouri, Respondents both offered to sell and sold a security to MR when that security was not registered under the Missouri Securities Act of 2003.
62. Respondents’ 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.

Violation of Employing or Associating with an Unregistered Agent

63. **THE COMMISSIONER FURTHER CONCLUDES** that Campbell's actions on behalf of AflacAssist.com, Himes, or Darling qualify Campbell as an agent, as that term is defined under Section 409.1-102(1), for each Respondent.
64. **THE COMMISSIONER FURTHER CONCLUDES** that, for purposes of Section 409.4-402(a), Campbell transacted business as an agent in the State of Missouri on behalf of each Respondent when – on behalf of AflacAssist.com, Himes, or Darling – Campbell both offered to sell and sold the above security to MR; recommended to MR different investment options; and facilitated MR's investment with AflacAssist.com, Himes, or Darling.
65. **THE COMMISSIONER FURTHER CONCLUDES** that Respondents AflacAssist.com, Himes, and Darling each violated Section 409.4-402(d) when they employed or associated with Campbell, who transacted business in Missouri as an agent on Respondents' behalf when Campbell was not registered.
66. Respondent AflacAssist.com's, Himes', and Darling's 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 Making an Untrue Statement, 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

67. **THE COMMISSIONER FURTHER CONCLUDES** that, in connection with the offer, sale, or purchase of the security described above, Respondents violated Section 409.5-501(2) when Respondents made untrue statements of material fact when, through their agent or affiliated persons, Respondents:
- a. represented that MR's investment in merchant residual accounts was guaranteed income, when, in fact, MR's investment was not guaranteed to provide a profit and MR could lose money;
 - b. represented that MR would receive a "substantial amount of money...coming in soon," when there were no guaranteed returns on MR's investment;
 - c. represented that MR would receive "money for five years" as a result of investing \$15,000 in the "silver plan," when, in reality, this was not true, there was no such guarantee of returns over that time period, and MR could lose money;
 - d. represented to MR that "seven checks were mailed out on April 4, 2013," when, in reality, this was untrue, as MR never received such checks; and

- e. telling MR to make only “the minimum payments” on MR’s credit card because of the “substantial amount of money [that would be] coming soon,” when the investment was unlikely to provide revenue, let alone sufficient revenue, to cover any interest payments accrued on the credit card.
68. **THE COMMISSIONER FURTHER CONCLUDES** that, in connection with the offer, sale, or purchase of the security described above, Respondents violated Section 409.5-501(2) when Respondents omitted to state material facts necessary to make other statements made, in light of the circumstances under which they were made, not misleading. Respondents did so by making the above untrue statements of material fact, as well as asserting the legitimacy of the investment, while failing to state:
- a. that the security was not registered or exempt from registration in the State of Missouri;
 - b. that Campbell was not registered as an agent on behalf of Respondents; and
 - c. the specific risks associated with the investment including, the risk associated with investing in merchant residual accounts.
69. **THE COMMISSIONER FURTHER CONCLUDES** that, in connection with the offer, sale, or purchase of the security described above, Respondents violated Section 409.5-501(3) when Respondents engaged in an act, practice, or course of business that would operate as a fraud or deceit upon MR by, among other things:
- a. making numerous misrepresentations and omissions of material fact in order to facilitate the offer to sell and sale of a security to MR; and
 - b. lulling MR by claiming that return payments on the investment were or would be mailed and claiming payments were delayed because AflacAssist.com was in the process of changing banks. Both of these statements only served to avoid or delay detection by MR of the scheme.
70. At the time Respondents engaged in this conduct, MR was over 60 years-old and was an elderly person as that term is defined under Section 409.6-604(d)(3)(B).
71. 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.
72. This order is in the public interest and is consistent with the purposes of the Missouri Securities Act of 2003.

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 are prohibited from violating or materially aiding in any violation of:

- A. Section 409.3-301 by offering and selling any securities in the State of Missouri unless those securities are registered under the Missouri Securities Act of 2003;
- B. Section 409.4-402 by employing or associating with an unregistered agent in the State of Missouri; and
- C. Section 409.5-501 by, in connection with the offer or sale of securities, making an untrue statement of a material fact; 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; and 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), each Respondent shall pay a \$1,000 civil penalty for violating of Section 409.3-301. This amount shall be made payable to the State of Missouri. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within 30 days of the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), each Respondent shall pay a \$1,000 civil penalty for violating Section 409.4-402(d). This amount shall be made payable to the State of Missouri. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within 30 days of the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), each Respondent shall pay a \$15,000 civil penalty for more than one violation of Section 409.5-501, against an elderly person. This amount shall be made payable to the State of Missouri. The Secretary of State shall forward these funds to the state treasury for the benefit of county and township school funds as provided in Article IX, Section 7 of the Constitution of Missouri. Respondents shall send or deliver this payment to the Securities Division at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(d), Respondents shall pay jointly and severally restitution to MR in the amount of \$18,995.56. This amount shall be made payable to the Missouri Secretary of State's Investor Restitution Fund, and the Commissioner

will take reasonable and necessary actions to distribute such funds to MR. This amount shall be sent to the Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101, within 30 days from the date of this Final Order.

IT IS FURTHER ORDERED that, pursuant to Section 409.6-604(e), Respondents shall, jointly and severally, pay \$9,575 in actual costs for investigation into, and the proceedings associated with, this matter. This amount shall be made payable to the Investor Education and Protection Fund. This amount shall be sent to the Securities Division, at 600 West Main Street, P.O. Box 1276, Jefferson City, Missouri 65102, within 30 days of the date of this Final Order.

SO ORDERED:

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



JASON KANDER
SECRETARY OF STATE

Andrew M. Hartnett

ANDREW M. HARTNETT
COMMISSIONER OF SECURITIES

CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of December, 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, Return Receipt Requested, to:**

AflacAssist.com LLC
4444 North 105th Avenue
Phoenix, Arizona 85037

AflacAssist.com LLC
Melvin McDonald, Registered Agent
2901 North Central Avenue
Phoenix, Arizona 85012

Lance Himes
10601 West Montecito Avenue
Phoenix, Arizona 85037

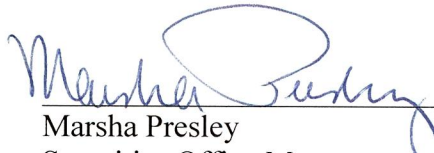
Leary Darling
2010 North Dayton
Phoenix, Arizona 85006

and

Leary Darling
7101 West Beardley Road, Unit 531
Glendale, Arizona 85308

And by hand-delivery to:

John Phillips
Director of Enforcement
600 West Main St.
Jefferson City, Missouri 65101



Marsha Presley
Securities Office Manager