

State of Missouri
Office of Secretary of State

Case No. AP-06-37

IN THE MATTER OF:

DANNY LEE HARRIS, CRD No. 1235305,

Respondent.

Serve at:
1011 Carriage Drive
Jefferson City, MO 65109

ORDER TO CEASE AND DESIST

On September 1, 2006, the Enforcement Section of the Securities Division, by and through Lori Neidel, Chief Enforcement Counsel, submitted a Petition for a Cease and Desist and Other Relief. After reviewing the petition, the Commissioner of Securities issues the following findings of fact, conclusions of law and order: On September 1, 2006, the Enforcement Section of the Securities Division, by and through Lori Neidel, Chief Enforcement Counsel, submitted a Petition for a Cease and Desist and Other Relief. After reviewing the petition, the Commissioner of Securities issues the following findings of fact, conclusions of law and order:

I. FINDINGS OF FACT

1. Respondent Danny Lee Harris ("Harris") is an individual with an address at 1011 Carriage Drive, Jefferson City, Missouri, 65109. At all times pertinent hereto, Harris was registered in Missouri as a securities agent associated with PRUCO Securities Corp.
2. Pruco Securities LLC ("Pruco"), is a limited liability company located in Newark, NJ 07102-3777. Pruco is, and was, at all times pertinent hereto, registered as a broker-dealer, CRD Number 5685, in the State of Missouri. Pruco's registered agent in Missouri is CT Corporation, 120 South Central, Clayton, MO 63105.
3. Harris is currently registered as a securities agent in Missouri, associated with KCD Financial, Inc., CRD Number 127473.
4. Mutual Benefits Corporation ("Mutual Benefits") is a Florida corporation with a last known address of 200 East Broward Blvd., 10th Floor, Fort Lauderdale, Florida 33301. At all times pertinent hereto, Mutual Benefits was engaged in the business of offering and/or selling viatical settlement contracts. The State of Missouri issued a Cease and Desist Order, in case number AP-04-46, against Mutual Benefits in July 2004.
5. In December 2004 the Missouri Securities Division (the "Division") received a complaint alleging that in 1998 a Missouri resident ("MR") had "turned over" all of MR's Roth IRA holdings to Harris, based on Harris' statement that Harris could get MR better returns. The value of the IRA was \$200,285.27.
6. Harris told MR that by investing in viatical settlement contracts, MR could earn 12% in 12 months and that these were guaranteed returns.
7. Mutual Benefits literature provided to MR by Harris stated that the "actual yield should exceed those guaranteed returns, as the insured seldom lives to, or beyond the projected life expectancy determined by his doctor and the company's consulting physician."
8. MR told Harris that in five years, MR would need to be able to "pull out" the initial investment.
9. To facilitate the transaction, Harris gave MR a Mutual Benefits purchase agreement stating, in part, that Mutual Benefits, among other things, would identify life insurance policies of terminally ill individuals which complied with the following criteria, and/or would take the following actions:
 - a. The insurance carrier must have a current rating of "B+" or better from A.M. Best, Moody's or Standard & Poors;
 - b. The policy must be beyond the contestability period;¹
 - c. The insured must be diagnosed as terminally ill by an independent medical reviewing physician;
 - d. The purchaser would be provided, prior to closing, a summary of any policy to be purchased for review; and
 - e. After closing, the purchaser would be provided with a copy of the original insurance policy, a copy of the transfer of ownership, a copy of the re-assignment of beneficiary form, and a copy of the independent reviewing physician's report determining the maximum life expectancy.

10. Under the Mutual Benefit Purchase Agreement, investors could choose the type of policy to be purchased from a list that contained the fixed returns to be earned by the investor. These included a 12-month policy that provided a 12% fixed return (ostensibly a 12-month policy indicated that the life expectancy of the insured under the insurance policy was 12 months), an 18-month policy that provided a 21% fixed return, a 24-month policy that provided a 28% fixed return, and a 36-month policy that provided a 42% return.
11. From August 1998 through October 1998, Harris placed \$200,000 of MR's funds into four different viatical settlement contracts, through Mutual Benefits, with maximum life expectancies ranging from 12 to 18 months.
12. At least one of the four policies that MR was invested in, a policy carried by Prudential Insurance Company of America, was still within the contestability period. The sale of a viatical settlement contract that is within the contestability period does not comply with the required criteria identified by Mutual Benefits and Harris. Information received by MR after investing indicates that the policy in question was taken out on May 1, 1998. MR's funds were applied to the policy on or by September 1, 1998, and the reviewing physician's affidavit was not completed until October 15, 1998. Also, Respondent failed to provide to MR the date of onset for the viator's illness.
13. Respondent Harris failed to disclose to MR the dates on which three of the policies were issued to the viators.
14. Respondent Harris failed to disclose adequate information to MR concerning the viators' diagnoses and dates of onset of illnesses.
15. Paramount to the success or failure of an investment in a viatical settlement contract is Mutual Benefit's "expertise" in determining the projected life expectancy of the insureds. The projected life expectancy affects the discount rate paid to the insured for the policy and the price an investor pays to participate in the viatical settlement contract. Mutual Benefits and Harris did not disclose to MR information on the accuracy of the independent physician in determining the life expectancy of other viators.
16. The maximum life expectancies for two of the four policies underlying the viatical settlement contracts MR invested in were determined by Clark C. Mitchell, M.D. On or about June 28, 2001, Dr. Mitchell was charged by the State of Florida on 25 counts of engaging in an organized scheme to defraud, and communications fraud, in connection with his estimation of life expectancies for Mutual Benefits. This was not disclosed to MR.
17. As of November 14, 2004, none of the four policies in which MR had invested had matured within the life expectancy.
18. On January 3, 2001, the Commonwealth of Virginia, Division of Securities and Retail Franchising, entered a Settlement Order with Mutual Benefits finding that the viatical settlement contracts offered and sold by Mutual Benefits between February 1995 and July 1998, were investment contracts and therefore securities under Virginia law and requiring Mutual Benefits, among other things, to offer rescission to Virginia residents with 6% interest.
19. On April 25, 2003, the State of Arizona issued a Notice of Opportunity For Hearing Regarding Proposed Order to Cease and Desist against Mutual Benefits, based on the offer and sale of viatical settlement contracts from March 1995 through January 2002. The viatical settlement contracts sold by Mutual Benefits were found to constitute investment contracts and Mutual Benefits was ordered to cease and desist in the offer and sale of its viatical settlement contracts in Arizona and to make restitution to Arizona investors. Mutual Benefits was given 10 days to file a written request for hearing. No request was docketed.
20. On June 28, 2004, the State of Missouri issued an Order to Cease and Desist, Securities Division case number AP-04-46, against Mutual Benefits. This order was based on the offer and sale of viatical settlement contracts from April 1996 through July 1999. The viatical settlement contracts sold by Mutual Benefits were found to constitute investment contracts and Mutual Benefits was ordered to cease and desist in the offer and sale of its viatical settlement contracts in Missouri.
21. By letter dated February 17, 2005, the Division requested additional information from Harris concerning the viatical settlement contract offering to MR. In that letter, the Division requested a claim of exemption from registration, or exception from definition, upon which Harris relied in offering unregistered securities, or any claim that the securities, were federal covered securities. Harris' response was due March 19, 2005.
22. Harris failed to provide a written response, however, Harris did telephone an investigator with the Division and advise that all the information requested had already been provided to the Division, and that Harris no longer had any of the material requested.
23. A check of the Division's records indicated that Harris' spouse, by letter dated March 22, 2000, provided the Division with investor information on her clients, but that those materials did not contain the information for Harris' clients requested in the February 17, 2005, inquiry.
24. By letter dated November 10, 2005, Harris did respond to the Division's inquiry. Harris stated that he did not make any oral representations to MR, but simply relied on the information provided by Mutual Benefits.
25. Harris' letter of November 10, 2005, advised that from January 20, 1997, through July 1, 2000, Harris sold viatical

settlement contracts to seven Missouri residents (one of which was Harris' spouse), totaling at least \$280,000.

26. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for the securities offered by Harris.
27. The viatical settlement contracts sold by Harris were not federal covered securities.
28. In connection with the offer, sale or purchase of a security to a Missouri resident, Harris omitted to state material facts necessary in order to make the statements made not misleading, as follows:
 - a. That the viatical settlement contracts were not registered securities or federal covered securities;
 - b. That there were risks associated with the investment;
 - c. The dates the policies were purchased by the insured individuals;
 - d. Date of onset of illness for each viator; and
 - e. Statistics showing the accuracy rates of independent physicians used by Life Partners in setting life expectancies for the viators.
29. In connection with the offer, sale or purchase of a security to a Missouri resident, Harris made untrue statements of material facts, as follows:
 - a. That MR's funds would only be placed in viaticated insurance policies that were beyond the contestability period;
 - b. That MR was guaranteed returns of 12% in 12 months;
 - c. That the investor would receive a summary of any policy to be purchased with investor's funds prior to closing;
 - d. That after closing the investor would be provided with a copy of the original insurance policy and the reviewing physician's report determining the maximum life expectancy; and
 - e. The "actual yield should exceed the guaranteed returns, as the insured seldom lives to, or beyond the projected life expectancy determined by his doctor and the company's consulting physician."
30. This Order is in the public interest.

II. APPLICABLE STATUTORY PROVISIONS

31. Section 409.401, RSMo. (Cum. Supp. 1996), included "investment contracts" within the definition of a security. "Investment contract" is an investment of money in a common enterprise with the expectation of profit from the significant managerial efforts of others. *State v. Kramer*, 804 S.W.2d 845 (Mo. App. E.D. 1991). Under Missouri securities law, viatical settlement contracts, which satisfy the elements of an investment contract, are subject to securities law. *In the Matter of William R. Tweedy, et al.*, 2002 WL 1344587 (Mo. Div. Sec.). Under federal law, viatical settlement contracts issued by Mutual Benefits have been deemed investment contracts. *S.E.C. v. Mutual Benefits Corp., et al.*, case no. 04-60573, U. S. D. Ct. (Fla.), (May 4, 2004 *Temporary Restraining Order*).
32. Section 409.101, RSMo. (Cum. Supp. 1996), provided, "It is unlawful, in connection with the offer, sale or purchase of any security (1) to employ any device, scheme, or artifice to defraud, (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading or (3) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person."
33. Section 409.301, RSMo. (Cum. Supp. 1996), provided, "It is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this act or (2) the security or transaction is exempted under section 409.402."
34. Section 409.408(b), RSMo. (Cum. Supp. 1996), provided, in part, that:

If the Commissioner shall believe, from evidence satisfactory to him, that such person is engaged or about to engage in any of the fraudulent or illegal practices or transactions above in this subsection referred to, he may issue and cause to be served upon such person and any other person or persons concerned or in any way participating in or about to participate in such fraudulent or illegal practices or transactions, an order prohibiting such person and such other person or persons from continuing such fraudulent or illegal practices or transactions or engaging therein or doing any act or acts in furtherance thereof.
35. Offering or selling unregistered securities constitutes an illegal practice under Section 409.408(b), RSMo. (Cum. Supp. 1996).
36. Omitting to state material facts in connection with the offer and sale of securities constitutes an illegal practice under Section

409.408(b), RSMo. (Cum Supp. 1996).

37. Making an untrue statement of material fact, in connection with the offer or sale of a security, constitutes an illegal practice under Section 409.408(b), RSMo. (Cum Supp. 1996).
38. The Missouri Commissioner of Securities is empowered to issue such orders as he may deem just. Section 409.408(b), RSMo. (Cum Supp. 1996).

III. CONCLUSIONS OF LAW

Untrue statement of material fact and omission of necessary material facts.

39. Paragraphs 1 through 38 are referenced as though fully incorporated herein.
40. In connection with the offer, sale or purchase of a security to a Missouri resident, Harris omitted to state material facts necessary in order to make the statements made not misleading, as follows:
 - a. That the viatical settlement contracts were not registered securities or federal covered securities;
 - b. That there were risks associated with the investment;
 - c. The dates the policies were purchased by the insured individuals;
 - d. The date of onset of illness for each viator; and
 - e. The statistics showing the accuracy rates of independent physicians used by Life Partners in setting life expectancies for the viators.
41. In connection with the offer, sale or purchase of a security to a Missouri resident, Harris made untrue statements of material facts, as follows:
 - a. That MR's funds would only be placed in viaticated insurance policies that were beyond the contestability period;
 - b. That MR was guaranteed returns of 12% in 12 months;
 - c. That the investor would receive a summary of any policy to be purchased with investor's funds prior to closing;
 - d. That after closing the investor would be provided with a copy of the original insurance policy and the reviewing physician's report determining the maximum life expectancy; and
 - e. The "actual yield should exceed the guaranteed returns, as the insured seldom lives to, or beyond the projected life expectancy determined by his doctor and the company's consulting physician."
42. The omissions and untrue statements described in paragraphs 40 and 41 above are violations of Section 409.101, RSMo. (Cum Supp. 1996).

Sale of unregistered, nonexempt securities.

43. Paragraphs 1 through 38 are referenced as though fully incorporated herein.
44. The viatical settlement contracts offered and sold by Respondent are securities as defined by Missouri law, Section 409.401, RSMo. (Cum Supp. 1996).
45. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for the securities offered by Harris.
46. The sale of unregistered and nonexempt securities is a violation of Section 409.301, RSMo. (Cum Supp. 1996).

ORDER

NOW, THEREFORE, it is hereby ordered, pursuant to Section 409.408(b), RSMo. (Cum Supp. 1996), that Respondent, his 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. Violating Section 409.101, RSMo. (Cum Supp. 1996), by omitting to state, in connection with the offer, sale or purchase of any security, any material facts, including, but not limited to, the following:
 1. That viatical settlement contracts are not or may not be registered securities or federal covered securities;
 2. That there are risks associated with investments in viatical settlement contracts;

3. The dates on which policies were or are purchased by the insured individuals;
 4. The date of onset of illness for each viator; and
 5. The statistics showing the accuracy rates of independent physicians used in setting life expectancies for the viators.
- B. Violating Section 409.101, RSMo., (Cum. Supp. 1996), by making, in connection with the sale of any security, untrue statements of material fact, including the following:
1. That funds would only be placed in viaticated insurance policies that were beyond the contestability period, when in fact funds are placed in policies still within the contestability period;
 2. That investors are guaranteed returns of 12% in 12 months, when in fact such return cannot be guaranteed;
 3. That investors would receive a summary of any policy to be purchased with investor's funds prior to closing, when in fact such summary will not be or is not provided;
 4. That after closing, investors would be provided with a copy of the original insurance policy and the reviewing physician's report determining the maximum life expectancy, when in fact such information was not or will not be provided; and
 5. Statements such as the "actual yield should exceed the guaranteed returns, as the insured seldom lives to, or beyond the projected life expectancy determined by his doctor and the company's consulting physician," when such statement is not true.
- C. Violating Section 409.301, RSMo. (Cum. Supp. 1996), by offering or selling an unregistered security, in the form of an investment contract concerning a viatical settlement contract, or any other security in this State, unless the security is exempt from registration, or is a federal covered security under the Missouri Securities Act.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 8TH DAY OF SEPTEMBER, 2006.

State of Missouri
Office of Secretary of State

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Case No. AP-06-37

IN THE MATTER OF:

DANNY LEE HARRIS, CRD No. 1235305,

Respondents.

Serve Harris at:
1011 Carriage Drive
Jefferson City, MO 65109-0000

NOTICE

TO: Respondents and any unnamed representatives aggrieved by this Order:

You may request a hearing in this matter. Any request for a hearing should be sent, in writing to:

Matthew Kitzi
Commissioner of Securities
Office of the Secretary of State
Missouri State Information Center, Room 229
600 West Main Street
Jefferson City, Missouri, 65102

Said request must be made within thirty (30) days of the receipt of this Order pursuant to Section 409.412(a), RSMo., Cum. Supp. 2004 and 15 CSR 30-55.020.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2006, a copy of the foregoing notice, order and petition was mailed by certified U.S. Mail, postage prepaid, to the Respondent in this matter.

Beth Perkins
Administrative Aide