

State of Missouri  
Office of Secretary of State

Case No. AP-09-28

IN THE MATTER OF:

MARK ANDREW MCEWEN,  
CRD# 4613500

Respondent.

Serve Mark McEwen at:  
2403 Charam  
Saint Peters, Missouri 63301

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

On June 26, 2009, the Enforcement Section of the Securities Division of the Office of Secretary of State (the "Enforcement Section"), through its Assistant Commissioner Mary S. Hosmer, submitted a Petition for Order to Cease and Desist and Order to Show Cause Why Civil Penalties and Costs Should Not Be Imposed and Petition for Order of Revocation of Agent Registration and Imposition of a Civil Penalty. After reviewing the petition, the Commissioner issues the following order:

**I. FINDINGS OF FACT**

1. Mark Andrew McEwen ("McEwen") was a Missouri-registered agent with World Group Securities, Inc. ("World Group"), a Missouri-registered broker-dealer. McEwen was registered in Missouri through the Central Registration Depository ("CRD") system and has a CRD number of 4613500. McEwen was registered with World Group in Missouri from March 2003 through September 15, 2008. McEwen has an address of 2403 Charam, Saint Peters, Missouri 63301.
2. World Group is a Delaware corporation with an address of 11315 Johns Creek Parkway, Duluth, Georgia 30097-1517. World Group has been registered in Missouri through the CRD system as a broker-dealer since January 2002. World Group has a CRD number of 114473. World Group had a branch office in Missouri located at 16690 Swingley Ridge Road Suite 100, Chesterfield, Missouri 63017.
3. On September 15, 2008, World Group filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") with the CRD system terminating McEwen's agent registration in Missouri. On McEwen's Form U5, World Group stated that the reason for this termination was the "representative improperly obtained funds from a client." McEwen's registration was automatically withdrawn in Missouri on September 15, 2008.
4. During the period that McEwen was registered as an agent of World Group, McEwen was also associated with a marketing firm, World Financial Group ("World Financial"). McEwen was an investment adviser representative with Investment Advisers International, Inc. ("IAI"), from July 2006 through September 16, 2008. McEwen has been a Missouri-licensed insurance agent since October 21, 2003.
5. World Financial is a Delaware corporation with an address of 11315 Johns Creek Parkway, Duluth, Georgia 30097-1517. World Financial is a marketing firm for its affiliated companies, including World Group and IAI. World Financial is not registered as a broker-dealer or an investment adviser in the State of Missouri.
6. IAI is a Delaware corporation with an address of 11315 Johns Creek Parkway, Duluth, Georgia 30097-1517. IAI has been a Missouri-registered investment adviser since May 17, 2006, with the Investment Advisers Registration Depository ("IARD") system and has an IARD number of 139233.
7. Western Reserve Life Assurance Company of Ohio ("Western") is an Ohio corporation and has an address of 570 Carillon Parkway, Saint Petersburg, Florida 33716. Western is an insurance company affiliated with World Financial and World Group.
8. Steven G. Tornatore ("Tornatore") has been a Missouri-registered agent with World Group since January 26, 2004. Tornatore is registered in Missouri with World Group through the CRD system and has a CRD number of 4744295. Tornatore is also a World Financial associate.
9. At all times relevant, Tornatore did business as Secure Mortgage at the Chesterfield Branch. Secure Mortgage had an address of 11329 Bridgeton Valley Court, Bridgeton, Missouri 63044. Beginning in April 2003 and at all times relevant, Secure Mortgage was a World Financial-approved mortgage broker ("AMB").
10. To qualify as an AMB, Secure Mortgage agreed to pay twenty-five percent (25%) of its commissions to World Financial.

11. JoLee M. Martin ("Martin") was a World Financial associate and was a Missouri-registered agent with World Group from October 2003 through June 2008. Martin was a Missouri-registered investment adviser representative with IAI from June 2007 through August 2007. Martin is currently a Missouri-registered agent with Brookstone Securities, Inc. ("Brookstone"). Martin is registered in Missouri through the CRD system and has a CRD number of 2452488.
12. As used herein, the term "Respondent" refers to McEwen.
13. From 2004 to 2008, McEwen, through World Financial and World Group, offered to "help families" get their finances in order.
14. McEwen often recommended that his clients refinance their fixed rate home mortgages through Secure Mortgage.
15. The mortgages offered by Secure Mortgage often contained a "pick a payment" feature that allowed a monthly mortgage payment that was less than the interest owed on the loan (known as "negative amortization").
16. When these Customers complained about these mortgages to McEwen, World Financial, or World Group, the complaint was referred to Tomatore d/b/a Secure Mortgage.
17. Neither McEwen nor World Group filed updates with the CRD system regarding these mortgage complaints.

### **Missouri Residents 1 and 2**

18. In the summer of 2005, two residents of Alton, Missouri, both in their thirties ("MR1" and "MR2"), met with McEwen.
19. In 2007, MR1 and MR2 filed a complaint with the Enforcement Section regarding the recommendations of World Group, World Financial and McEwen to MR1 and MR2.
20. On June 25, 2009, MR1 talked to a representative of the Enforcement Section and confirmed the following information regarding MR1's and MR2's complaint:
  - a. McEwen prepared a financial plan for MR1 and MR2;
  - b. McEwen recommended that MR1 and MR2 refinance their thirty (30) year fixed-rate mortgage into a adjustable rate mortgage;
  - c. McEwen stated that MR1 and MR2 could save hundreds of dollars every month in interest through this new mortgage;
  - d. McEwen stated that MR1 and MR2 could use these savings from the mortgage to invest;
  - e. McEwen recommended that MR1 and MR2 purchase a money market fund through World Group. McEwen recommended that MR1 and MR2 pay two hundred dollars (\$200) a month into this money market fund;
  - f. McEwen recommended that MR1 and MR2 purchase a variable universal life policy ("VUL") or multiple VULs from Western through World Group. McEwen recommended that MR1 and MR2 each pay one hundred fifty dollars (\$150) a month into these Western VULs;
  - g. on July 27, 2005, MR1 and MR2 refinanced their thirty (30) year fixed-rate loan into a negative amortization, pick-a-payment, adjustable rate mortgage through McEwen and Secure Mortgage. This mortgage contained a prepayment penalty of over two thousand five hundred dollars (\$2,500);
  - h. MR1 and MR2 paid over four thousand five hundred dollars (\$4,500) in refinancing fees;
  - i. shortly after refinancing their mortgage, the mortgage rate adjusted and MR1 and MR2 were concerned that they would have difficulty making future payments and paying for the other products McEwen recommended;
  - j. MR1 and MR2 decided to pay the prepayment penalty and refinance again into a fixed-rate mortgage. This new fixed-rate mortgage was fourteen thousand dollars (\$14,000) more than their original mortgage because of the fees and penalties MR1 and MR2 incurred;
  - k. MR1 and MR2 cancelled the Western VULs they purchased from World Group under the free look period;
  - l. MR1 and MR2 stopped contributing to the money market fund;
  - m. in late 2005, MR1 and MR2 complained to World Financial and World Group Securities regarding the financial advice they received from McEwen to refinance their mortgage and to purchase investments;
  - n. in this complaint MR1 and MR2 stated that McEwen engaged in "unethical and illegal" activity and that as a result of McEwen's recommendations and deceptive business practices MR1 and MR2 had lost approximately thirteen

thousand dollars (\$13,000);

- o. in 2006, MR1 and MR2 complained to the Missouri Division of Finance regarding McEwen's activities;
- p. MR1 and MR2 received a copy of McEwen's September 6, 2006, response to the Missouri Division of Finance regarding MR1 and MR2. In that letter McEwen stated, among other things, the following:
  - i. at the time of the refinance MR1 and MR2 had a negative cash flow between fifty dollars (\$50) to one hundred dollars (\$100) each month;
  - ii. MR1 and MR2 had personal and credit card debt of over twenty five thousand dollars (\$25,000);
  - iii. "[a]t the time of the refinance [MR1 and MR2] had \$100.00 (one hundred dollars) in a savings account, a zero balance in their checking account and \$1,703.00 in a qualified plan with [MR1's] employer. This was their total current financial holdings. . ."

21. A review of MR1 and MR2's records at World Group by a representative of the Enforcement Section indicates that:

- a. on July 25, 2005, McEwen completed a World Group document titled Client Account Form ("CAF") for MR1;
- b. on MR1's CAF, McEwen indicated that MR1 and MR2 had discretionary income each month of one thousand five hundred dollars (\$1,500), a liquid net worth of five thousand dollars (\$5,000) and cash of three hundred seventy-five dollars (\$375); and
- c. McEwen completed an application for the purchase of a money market fund for MR1 and MR2. On this application McEwen claimed that the two hundred dollar (\$200) monthly contribution would come from MR1 and MR2's savings account.

#### **Missouri Residents 3 and 4**

22. On April 17, 2009, a representative of the Enforcement Section spoke to two Missouri residents ("MR3" and "MR4"). MR3 and MR4 stated, among other things, the following:

- a. MR3 is a sixty-one (61) year-old citizen of the United Kingdom. MR4 is forty-one (41) year-old citizen of the United States. They both live in the St. Louis area and have a 3 ½ year-old child;
- b. in late 2005, they heard about World Financial, World Group and McEwen from a former co-worker;
- c. the co-worker was actively soliciting individuals to come to a group introductory meeting at World Financial;
- d. the group introductory meeting was to both recruit individuals to become associates of World Financial and to solicit these individuals to set up one on one meetings to discuss individual financial plans;
- e. MR3 and MR4 attended a group meeting;
- f. shortly after the group meeting, MR3 and MR4 met with McEwen to discuss their financial plans. After these discussions, McEwen prepared a document for MR3 and MR4 titled *Financial Considerations*;
- g. as part of the financial plan, McEwen wanted to "free up cash" so that the MR3 and MR4 could purchase a VUL. One option McEwen suggested to obtain cash to purchase a VUL was for MR3 and MR4 to refinance their home. McEwen stated that real estate property prices were going up for the foreseeable future;
- h. when the refinance option appeared unfeasible, McEwen recommended that MR3 and MR4 stop paying into a 401k plan to generate additional monthly funds in order to purchase a VUL. MR3 and MR4 did not take this advice;
- i. MR3 and MR4 told McEwen they would be interested in again reviewing the possibility of refinancing their home;
- j. MR3 and MR4 had purchased their home in 2003 for six hundred twenty-four thousand dollars (\$624,000) and had a 30-year fixed-rate mortgage and a home equity line of credit, with a monthly payment for both totaling three thousand, seven hundred dollars (\$3,700);
- k. MR3 and MR4 agreed to refinance their mortgage through McEwen and Secure Mortgage;
- l. at the time of the closing, MR4 was on a business trip out of town, leaving MR3 to complete these documents alone. While MR3 understood that the interest was adjustable he did not understand when this interest would adjust or that the payments MR3 was to make under the "pick a payment loan" application were not sufficient to cover the interest payments on the refinanced amount. Because these payments were insufficient to cover the interest payments, MR3 and MR4 began increasing the amount they owed on the mortgage each month;
- m. when the home was refinanced, the mortgage was put into MR3's name only;

- n. McEwen recommended MR3 purchase a VUL with a premium of one thousand one hundred dollars (\$1,100) a month;
- o. MR3 purchased the VUL policy;
- p. shortly after the refinancing, the adjustable rate loan payment began to increase;
- q. after a year, the mortgage payment had increased to the point that MR3 and MR4 could not afford to make the payments on the VUL and had to let the VUL policy lapse; when the VUL policy lapsed, MR3 and MR4 forfeited the entire amount of money they had invested in the VUL, approximately eighteen thousand dollars (\$18,000);
- r. MR3 and MR4 are still struggling to make their mortgage payments. They are currently making a minimum payment and by doing so they continue to add to the mortgage amount. They currently owe approximately fifty thousand dollars (\$50,000.00) more on their house than before they refinanced the mortgage. In addition, MR3 and MR4 stated because their house has depreciated, they currently owe more on their house than their house is worth;
- s. MR3 and MR4 have not been able to find a mortgage company that will refinance their mortgage. They are considering foreclosure;
- t. MR3 and MR4 stated they are not sleeping at night, are constantly worried and MR4 has periods of "weepiness" at work due to the financial stress associated with the refinance;
- u. MR3 stated that the financial advice they received from World Financial, World Group and McEwen "could not have been more destructive to their financial situation;" and
- v. MR3 and MR4 complained to McEwen, but they were never contacted by anyone from World Financial or World Group.

#### Martin Consent Order

23. On November 27, 2006, the Missouri Commissioner of Securities issued a Consent Order, *In the matter of JoLee M. Martin, CRD #2452488*, Missouri Commissioner of Securities 2006 ("Martin Consent Order"). The Martin Consent Order, among other things:
- a. suspended Martin's Missouri agent registration for four (4) months, commencing August 24, 2006;
  - b. prohibited Martin for a period of five (5) years, from:
    - i. selling variable annuities or **handling**, managing or providing advice related to **any accounts for an individual over the age of 65**; (emphasis added)
    - ii. selling equity-indexed annuities; and
    - iii. serving as a supervisor.

#### World Group Consent Order

24. On November 27, 2006, the Missouri Commissioner of Securities issued a Consent Order, *In the matter of World Group Securities, Inc. AP-06-48*, Missouri Commissioner of Securities 2006 ("World Group Consent Order"). This World Group Consent Order, among other things, required that World Group:
- a. retain an outside consultant to review World Group's supervisory and compliance policies, procedures, and practices relating to the suitability of sales of variable annuities to persons over sixty-five years old;
  - b. pay approximately ninety eight thousand dollars (\$98,000) to the Missouri residents that were the subject of the Order;
  - c. pay the Missouri Secretary of State's Investor Education and Protection Fund the sum of seventy-five thousand dollars (\$75,000);
  - d. pay a civil penalty of fifty thousand dollars (\$50,000); and
  - e. pay five thousand, six hundred dollars (\$5,600) as the cost of the investigation.
25. On December 21, 2006, pursuant to this World Group Consent Order, World Group paid a St. Charles, Missouri resident ("MR5") thirty-two thousand five hundred twenty-eight dollars and fifty-six cents (\$32,528.56) for the unsuitable sale of a variable annuity to MR5 by McEwen.

#### Missouri Resident 5

26. On September 18, 2008, an investigator with the Enforcement Section interviewed MR5. MR5 stated, among other things,

that:

- a. on January 11, 2007, McEwen went to MR5's home and told MR5, among other things, that:
  - i. the check MR5 received from World Group [as a result of the World Group Consent Order] was McEwen's commission on MR5's variable annuity;
  - ii. this check was accidentally sent to MR5;
  - iii. MR5 needed to give this money back to McEwen;
  - iv. MR5 could not sign over the check from World Group but should cash the check; and
  - v. MR5 should write McEwen a personal check for thirty-two thousand five hundred twenty-eight dollars and fifty-six cents (\$32,528.56);
- b. on January 11, 2007, MR5 wrote a check to McEwen in the amount of thirty-two thousand five hundred twenty-eight dollars and fifty-six cents (\$32,528.56).

27. During this September 18, 2008 interview, MR5 also stated, among other things, that:

- a. McEwen told MR5 that he could help MR5's grandchildren with this employment;
- b. McEwen asked MR5 for payments to cover the expenses McEwen incurred for getting MR5's grandchildren employed; and
- c. from November 1, 2006 to January 1, 2007, MR5 paid over thirty-one thousand dollars (\$31,000) to McEwen for assisting MR5's grandchildren.

#### **Sanction by World Group**

28. On May 29, 2008, World Group sent McEwen a letter of sanction ("Sanction Letter") and fined McEwen five hundred dollars (\$500) for transactions in MR5's account. World Group alleged that McEwen engaged in acts that were inconsistent with their procedures, including:

- a. "taking possession of stock certificates without appropriate registration;"
- b. "soliciting bonds sales without appropriate registration;"
- c. "switching products including products held less than a year;"
- d. "investing all of MR5's funds which necessitated the liquidation of securities to pay for expenses or emergencies;"
- e. "misrepresenting the source of MR5's funds on applications for VULs and mutual funds;"
- f. "acting with discretion without authority;" and
- g. "reallocating variable products without authority."

29. A review of this activity by the Enforcement Section revealed that:

- a. McEwen effected numerous transactions in MR5's accounts that were processed through World Group and approved by a branch office manager of World Group. These trades included, among others things, the following:
  - i. liquidating investments in MR5's trust account of over four hundred twenty thousand dollars (\$420,000) that resulted in the payment of surrender fees;
  - ii. purchasing a Western Reserve Life variable annuity ("Western VA") of over three hundred thousand dollars (\$300,000). Within a month of the purchase of the Western VA, MR5 withdrew over forty-seven thousand dollars for expenses and MR5 paid over one thousand, six hundred dollars (\$1,600) in surrender charges on this withdrawal;
  - iii. purchasing a Hartford Variable Universal Life Joint Life policy for over five hundred thousand dollars (\$500,000); and
  - iv. purchasing ten thousand dollars (\$10,000) of mutual funds for each of seven trusts McEwen set up for MR5's grandchildren. The client account forms and trade tickets indicated the funds were for long term investment and would not be needed for over thirty years, however, eight months later the mutual funds were liquidated and four of the accounts were closed. The proceeds for the remaining trusts were transferred to VUL policies.

30. In the Sanction Letter, World Group stated, "World Group takes very seriously the importance of complying with all laws and regulations as well as company procedures and guidelines."
31. The five hundred dollar fine McEwen incurred was less than the commissions he generated from the activity in MR5's account. In addition, as part of the "sanction" World Group required that McEwen complete training to be promoted to a branch office manager.

#### Illinois Resident

32. On November 6, 2008, an investigator with the Securities Division contacted an eighty-three (83) year-old Illinois resident ("IR"). IR had been Martin's customer at World Group and the account was taken over by McEwen when Martin's agent registration was suspended in Missouri. IR stated, among other things, that:
  - a. McEwen and Martin came to IR's house three times from November 2007 to June 2008 and requested money;
  - b. IR wrote three checks to McEwen for a total of one hundred thirty thousand dollars (\$130,000); and
  - c. IR understood that this money was to take care of IR's accounts at World Group and to help McEwen start a securities business.

#### World Financial Bank Account

33. McEwen maintained a personal bank account at Commerce Bank that included "WFG" in the name of the account ("McEwen's WFG Bank Account"). McEwen deposited checks from MR5 and IR into this account.
34. Records obtained from McEwen's WFG Bank Account revealed that over a period of three years McEwen wrote checks on this account to World Group, Stuckey, and Henderson.

#### World Group Policies and Procedures

35. The Enforcement Section reviewed a copy of World Group's policies and procedures manual ("Policies and Procedures Manual") for registered agents and a copy of a document titled, *World Group Non-Registered Person Conduct Guide* ("Conduct Guide").
  - a. the Policies and Procedures Manual stated, among other things, the following:
    - i. Section 8.09 Page 94 - Bank Accounts and contracts - A Field Representative is prohibited from opening any bank or other account in the name of World Group, World Financial Group, AEGON or any affiliated company; including these names of logos on any bank or other account; identifying these names or logos on his business or personal checks; or utilizing checks or accounts which in any way suggest that they represent World Group, World Financial Group, AEGON or any affiliated company;
    - ii. Section 8.19 Page 97 - A Field Representative is prohibited from borrowing or lending money or securities from or to a customer of his unless the lending or borrowing arrangements meets one of the following conditions: (1) the individual is a member of such person's immediate family; (2) the individual is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business; (3) The individual and the Field Representative are both registered persons of World Group; (4) the lending arrangement is based on a personal relationship with the individual, such that the loan would not have been solicited, offered, or given had the individual and the Field Representative not maintained a relationship outside of the broker/customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship.

All such arrangements must be pre-approved, in writing, by the Field Representative's Immediate Supervisor and evidence of such approval must be maintained in the Field Representative's Registered Representative File.

Written, pre-approval is not required for arrangements between a Field Representative and (1) a member of his immediate family (parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, or any other person whom a Field Representative supports, directly or indirectly, to a material extent); and (2) a financial institution, entity or person regularly engaged in the business of providing credit, financing, or loans as long as the loan has been made on commercial terms that the customer generally makes available to members of the general public similarly situated as to need, purpose and creditworthiness; (3) another registered representative to pay for exams, form U4 filings, renewals, courses or other business expenses where such payment is not tied to the achievement of any sales goal.
    - iii. Section 8.20 Page 98 - Credit for Purchasing Securities - A Field Representative may not recommend to a client that he take out a policy loan, home equity line of credit, or any other loan to pay for a securities purchase. If,

however, a client inquires about borrowing against or realizing the cash value of a life insurance policy, a Field Representative may outline the implications of such transactions, but must limit his advice to the procedures which the client would follow in accordance with customary life insurance practice.

- iv. Section 8.29 Page 102 - Gifts and Gratuities - A Field Representative may receive from or give to a client or prospective client a gift or gratuity as long as the aggregated value of the gift or gratuity does not exceed \$100 per year. Additionally the gift(s) or gratuity(ies) cannot be preconditioned based on the sale or purchase of a securities product.
  - v. Section 15.01 Page 145 - 146 - Outside Business Activities - Specific requirements apply to any Field Representative who engages in outside business activities. An outside business activity is any business activity in which the Field Representative is engaged as a proprietor, partner, officer, director, trustee, employee, agent, contractor or otherwise, and includes, among many other activities, investment advisory services, mortgages, and appointments with insurance companies not through World Financial or World Financial Insurance Agencies to sell annuities, life, disability, health, long-term care and, property/casualty insurance. A Field Representative who wishes to engage in an approved activity must obtain the prior written approval of his Immediate Supervisor.
- b. the Conduct Guide stated a non-registered person may not, among other things:
- i. make suitability determinations;
  - ii. process or transmit orders to purchase or sell securities;
  - iii. pre-screen potential clients;
  - iv. engage in the solicitation of securities;
  - v. **open new accounts or assist in preparation of new account forms** (emphasis added); or
  - vi. take orders from customers.

#### McEwen's Statement

36. On December 2, 2008, the Enforcement Section sent a subpoena to McEwen to appear on January 2, 2009, for an on-the-record interview ("McEwen OTR").
37. During the McEwen OTR, McEwen stated, among other things, the following:
- a. McEwen believed that Secure Mortgage was acting as a predatory lender;
  - b. McEwen believed that individuals at World Group were aware of these predatory lending practices;
  - c. MR5 paid McEwen to help her grandchildren become affiliated with World Group;
  - d. McEwen did not keep any account of what he actually expended to assist MR5's grandchildren;
  - e. McEwen had a conversation with a branch office manager regarding the checks McEwen was receiving from MR5 regarding MR5's grandchildren;
  - f. McEwen took over IR's security accounts at World Group because Martin was suspended;
  - g. McEwen went to IR's home "all the time;"
  - h. IR loaned money to McEwen;
  - i. McEwen provided no written document to IR evidencing this loan;
  - j. McEwen was to pay four percent (4%) interest annually to IR on this loan;
  - k. the loan was due in November 2008;
  - l. McEwen had not made any payments on the loan;
  - m. McEwen had not called IR regarding the loan;
  - n. McEwen believed that IR wanted to give this money to McEwen because IR had no one else;
  - o. McEwen did not make anyone at World Group, IAI or World Financial aware of IR's loan to McEwen;
  - p. McEwen was not aware of any prohibition at World Financial against borrowing money from securities customers;

- q. McEwen had a personal checking account that contained the letters WFG, which stood for World Financial; and
- r. Martin was McEwen's assistant.Â Martin signed account forms for McEwen.Â Until sometime in 2007, all the assistants signed forms for their superiors.

**Martin's Statement**

- 38. On December 2, 2008, the Enforcement Section sent a subpoena to Martin to appear on January 2, 2009, for an on-the-record interview ("Martin OTR").
- 39. During the Martin OTR, Martin stated, among other things, the following:
  - a. her securities registration with World Group was suspended by the Commissioner of Securities in Missouri in 2006;
  - b. during the period she was suspended, she worked as an assistant for McEwen who was then a Marketing Director at World Financial and a registered agent of World Group;
  - c. during the period of Martin's suspension McEwen paid Martin's salary;
  - d. as McEwen's assistant, Martin completed new account forms for McEwen's customers and signed McEwen's name on these new account forms;
  - e. Martin filled out and signed McEwen's name to new account forms for IR;
  - f. Martin filled out and signed McEwen's name to new account forms for other McEwen customers at World Group;
  - g. prior to her suspension, Martin helped a few of her securities customers refinance their mortgages through Secure Mortgage;
  - h. Martin stopped assisting customers refinance through Secure Mortgage because Martin felt that the fees Secure Mortgage charged were too high;
  - i. Martin believed that some of the marketing directors at World Financial "didn't use mortgages appropriately;" and
  - j. Martin understood that assisting a customer with refinancing a mortgage "was to assist that customer in being able to save dollars and pay off, you know, credit cards . . . dollars that were freed up were not to be used to go into the securities market.Â And those dollars were being used, in my understanding, for variable life insurance premiums and some of these other things."

**II.Â Â Â STATUTORY PROVISIONS**

- 40. Section 409.6-601(a), RSMo. (Cum. Supp. 2008), provides that the Missouri Securities Act of 2003 "shall be administered by the commissioner of securities . . . ."
- 41. Section 409.1-102(1), RSMo. (Cum. Supp. 2008), defines "Agent" as "an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities."
- 42. Section 409.1-102(26), RSMo. (Cum. Supp. 2008), defines "Sale" to include, "every contract of sale, contract to sell, or disposition of, a security or interest in a security for value."Â 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."
- 43. Section 409.1-102(28), RSMo. (Cum. Supp. 2008), provides the definition of a "Security."Â That definition includes:
  - a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.
- 44. Section 409.5-501, RSMo. (Cum. Supp. 2008), provides that it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:
  - (1)Â To employ a device, scheme, or artifice to defraud;
  - (2)Â To make an untrue statement of a material fact or to omit to state a material fact necessary in order to



make the statement made, in light of the circumstances under which it is made, not misleading; or

(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 409.6-604(a), RSMo. (Cum. Supp. 2008), provides that:

...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 or that a person has materially aided . . . an act, practice or course of business constituting a violation of this act . . . the commissioner may . . . 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 . . .

46. Section 409.6-604(d), RSMo. (Cum. Supp. 2008), provides that:

... In a final order . . . the commissioner may impose a civil penalty up to one thousand dollars (\$1,000) for a single violation or up to ten thousand dollars (\$10,000) for more than one violation.

47. Section 409.6-604(e), RSMo. (Cum. Supp. 2008), provides that:

...In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this act or a rule adopted or order issued under this act. These funds may be paid into the investor education and protection fund.

### **III. CONCLUSIONS OF LAW**

#### **Multiple Violations of Making an Untrue Statement or Omitting to State Material Facts in Connection with the Offer or Sale of a Security**

48. Paragraphs 1 through 47 are incorporated by reference as though fully set forth herein.

49. In connection with the offer, sale or purchase of a security, Respondent omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to, the following:

a. Respondent failed to disclose to MR5 that:

- i. World Group was not aware that Respondent had requested the return of Respondent's commission from MR5;
- ii. the funds sent to MR5 by World Group included World Group's commission as well as Respondent's commission; and/or
- iii. Respondent was sanctioned by World Group for activity in MR5's accounts including:
  - aa. "taking possession of stock certificates without appropriate registration;"
  - bb. "soliciting bonds sales without appropriate registration;"
  - cc. "switching products including products held less than a year;"
  - dd. "investing all of MR5's funds which necessitated the liquidation of securities to pay for expenses or emergencies;"
  - ee. "misrepresenting the source of MR5's funds on applications for VULs and mutual funds;" and/or
  - ff. "acting with discretion without authority."

b. Respondent failed to disclose to IR that:

- i. accepting gifts from a customer in excess of one hundred dollars (\$100) was a violation of the World Group Policies and Procedures Manual;
- ii. accepting loans from a customer was a violation of the World Group Policies and Procedures Manual;
- iii. accepting loans from a customer was a dishonest or unethical practice under the Missouri Code of State Regulations;
- iv. borrowing of funds from IR with a promise to pay IR four percent (4%) interest was the offer and sale of a

security and effecting securities transactions not recorded on the books and records of the broker-dealer the agent represents was a dishonest or unethical practice under the Missouri Code of State Regulations;

- v. Martin was prohibited from handling IR's accounts and from completing IR's new account forms by the World Group Conduct Guide;
  - vi. Martin was prohibited from handling IR's accounts by the Martin Consent Order; and/or
  - vii. Martin was signing McEwen's name to IR's new account forms at World Group.
- c. Respondent failed to disclose to MR1, MR2, MR3 and/or MR4 that:
- i. Secure Mortgage had agreed to pay twenty-five percent (25%) of its fees for refinancing mortgages to World Financial;
  - ii. Respondent believed that Secure Mortgage was engaging in predatory lending;
  - iii. Respondent believed that World Group was aware of the predatory lending practices of Secure Mortgage;
  - iv. recommending that a customer take out a loan to pay for a securities purchase was a violation of the World Group Policies and Procedures Manual; and/or
  - v. World Financial was not registered in Missouri as a broker-dealer or financial adviser.
50. Respondent violated Section 409.5-501(2), RSMo. (Cum. Supp. 2008), when, in connection with the offer or sale of a security, he omitted to state material facts as described in paragraph 49, above.
51. Respondent's actions in omitting to state material facts in connection with the offer or sale of securities constitute illegal acts, practices, or course of business and such actions are therefore subject to the commissioner's authority under Section 409.6-604(a), RSMo. (Cum. Supp. 2008).
52. This Order is in the public interest and consistent with the purposes intended by the Missouri Securities Act of 2003. See Section 409.6-605(b), RSMo. (Cum. Supp. 2008).

### **Order**

**NOW THEREFORE**, it is hereby ordered 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 violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2008), by, in connection with the offer or sale of securities, making an untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

**IT IS FURTHER ORDERED** that, pursuant to Section 409.6-604(d), RSMo. (Cum. Supp. 2008), the Commissioner will determine whether to grant the Enforcement Section's petition for an imposition of a civil penalty of up to ten thousand dollars (\$10,000) against Respondent for multiple violations of Section 409.5-501(2), RSMo. (Cum. Supp. 2008), in a final order, unless Respondents request a hearing and shows cause why the penalty should not be imposed.

**IT IS FURTHER ORDERED** that, as the Enforcement Section has petitioned for an award for the costs of the investigation against Respondents in this proceeding, the Commissioner will issue a final order pursuant to Section 409.6-604(e), RSMo. (Cum. Supp. 2008), awarding an amount to be determined after review of evidence submitted by the Enforcement Section, unless Respondent requests a hearing and shows cause why such an award should not be made.

### **SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 9<sup>TH</sup> DAY OF JULY, 2009.

ROBIN CARNAHAN  
SECRETARY OF STATE

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

Office of Secretary of State

Case No. AP-09-28

IN THE MATTER OF:

MARK ANDREW MCEWEN,  
CRD# 4613500

*Respondent.*

Serve Mark McEwen at:  
2403 Charann  
Saint Peters, Missouri 63301

### NOTICE

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

You may request a hearing in this matter within thirty (30) days of the receipt of this Order pursuant to § 409.6-604(b), RSMo Supp. 2005, and 15 CSR 30-55.020.

A request for a hearing must be mailed or delivered, in writing, to:

**Matthew D. Kitz, Commissioner of Securities**  
**Office of the Secretary of State, Missouri**  
**600 West Main Street, Room 229**  
**Jefferson City, Missouri, 65102.**

### CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2009, copies of the foregoing Order and Notice in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

Mark McEwen  
2403 Charann  
Saint Peters, Missouri 63301

**And hand delivered to:**

Mary Hosmer  
Assistant Commissioner  
Securities Division

John Hale  
Specialist