

State of Missouri
Office of Secretary of State

Case No. AP-08-13

IN THE MATTER OF:

NEW CENTURY INVESTMENTS, LLC; and

H. KENT DESSELLE,

Respondents.

Serve New Century Investments, LLC at:
1425 South Noland Road
Independence, Missouri 64055

Serve H. Kent Desselle at:
c/o Desselle Law Office, LLC
1425 South Noland Road
Independence, Missouri 64055

**ORDER TO CEASE AND DESIST AND ORDER REFERRING
MATTER FOR FURTHER ACTION**

On May 9, 2008, the Enforcement Section of the Securities Division (the "Division") of the Office of Secretary of State, through its Assistant Commissioner of Securities 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 (the "Petition"). After reviewing the Petition, the Commissioner issues the following findings of fact, conclusions of law and order:

I. Findings of Fact

1. New Century Investments, LLC ("New Century"), is a limited liability company organized in the State of Missouri on December 4, 1997. New Century has a business address of 1425 South Noland Road, Independence, Missouri 64055. New Century's records on file with the Corporations Division of the Office of Missouri Secretary of State, indicate that New Century is in the business of property development and investments.
2. Harley Kent Desselle ("Desselle") is an organizer of New Century. Desselle is also a licensed attorney in the State of Missouri.
3. As used herein, the term "Respondents" refers to New Century and Desselle.
4. In the fall of 1996, a Missouri resident ("MR") met with attorney Desselle regarding the

death of MR's husband. MR had received approximately seven hundred and fifty thousand dollars (\$750,000.00) in insurance money.

5. MR stated that she trusted Desselle, who was an acquaintance of her late husband. Desselle, among other things, told MR that:

- a. he would assist her in investing a portion of these insurance funds; and
- b. all investments would be low risk.

6. Desselle subsequently received over four hundred thousand dollars via personal checks from MR made payable to Desselle, Desselle's law firm or New Century in the following amounts:

- a. on or about September 1, 1996, MR sent fifty thousand dollars (\$50,000.00) to Desselle to invest in a note with a maturity date of September 1, 2009 (the "Note");
- b. on or about November 1, 1996, MR sent two hundred and fifty thousand dollars (\$250,000.00) to Desselle to invest in a government backed investment in an SRS account ("SRS Investment") that was to be used or invested in HUD housing;
- c. on or after September 1, 1996, MR sent over forty thousand dollars (\$40,000.00) to Desselle to invest in an annuity with Allstate Insurance Company ("Allstate Annuity"); and
- d. on or about January 1, 1997, MR sent sixty thousand dollars (\$60,000.00) to Desselle to invest in a real estate investment trust ("REIT").

7. MR stated to an investigator with the Division, among other things, that:

- a. all investments were made by check; and
- b. she never signed or received any contracts.

8. In the fall of 2001, MR stated that Desselle began paying MR two thousand dollars (\$2,000.00) per month in interest.

9. On or about February 1, 2006, Desselle and New Century sent MR information that her current value of investments through New Century totaled six hundred and sixteen thousand, eight hundred and seventy-four dollars (\$616,874.00).

10. On October 7, 2007, MR received a statement from Desselle and New Century that stated, among other things, the following:

"New Century Investments, LLC
1425 South Noland Road
Independence, Missouri 64055

Investment Analysis: [MR] Investments through October 1, 2007;

Investment One: Secured \$250,000.00 SRS Note;

Date of Note: November 1, 1996

Balance; \$371,230.00; Maturity September 15, 2009;

Investment Two: Annuity (Balance Paid to Client)

Investment Three: \$60,000 REIT Note dated January 1, 1997;

Current value \$103,700; Matures January 2, 2009;

Investment Four: \$50,000 Note dated September 1, 1996; Matures September 1, 2009, Current Value \$92,124.00.

Total Current Value of all Investments: \$567,054.00

Monthly interest \$2126.45 (assuming only \$2,000.00 per month is taken); Amounts in excess of \$2,000 per month deducts from principal.”

11. On February 18, 2008, an article appeared on the website for the *Jefferson City News Tribune*, that stated, among other things, the following:

“Attorney for Porter fund invested money in own firm

Kansas City (AP) – The attorney overseeing a memorial fund for two murdered Independence children invested part of the \$30,000 in donations in a company he owns, a newspaper reported.

The Kansas City Star said in its Sunday editions that Independence attorney Kent Desselle took almost \$20,000 of the money collected to build a playground in the memory of Sam and Lindsey Porter and invested it in New Century Investments LLC”

12. On or around February 19, 2008, MR saw a news program that indicated that Desselle was being questioned in regard to the investment of certain charity monies (“Sam and Lindsey Porter Fund”) into his own investment company, New Century.

13. On February 19, 2008, MR wrote to Desselle via email. In this email MR stated, among other things, the following:

“I discovered on the news tonight the questioning of the investment company I am very concerned about this. Will all the funds be frozen from New Century Investments? I want to start the process of taking out my investments. My future is depending on the money that is in your company.”

14. On February 19, 2008, Desselle sent MR an email that stated, among other things, the following:

“No, there is no concern. The playground funds are being placed back in the Bank of Grain Valley today The attack by the Star is unwarranted. No one complained with the foundation, just the Star.

Your funds are secure and not dependent on New Century anyway.

I certainly understand your concern but there are no issues that have changed the value or protection in your investments.”

15. MR again requested a return of her funds and on February 27, 2008, Desselle sent MR an email that stated, among other things, that:

“through a series of poor decisions on my part your investment was lost between 1998 and 2000. All funds you have received over the last eight years have been from my personal earnings.”

16. On or about February 26, 2008, the Missouri Securities Division received information that indicated that Respondents allegedly offered and sold securities in Missouri.

17. A check of the records maintained by the Missouri Commissioner of Securities confirmed no registration or granted exemption for any of the securities offered by the Respondents in the State of Missouri.

18. On March 31, 2008, the Division sent a letter, via certified mail, to New Century and Desselle. The letter asked Respondents to provide the definitional or registration exemption upon which Respondents had relied in allegedly offering unregistered securities. The letter also requested additional information about the alleged offers and advised Respondents that failure to respond within a reasonable time as set by the Commissioner may result in further proceedings to prohibit Respondents from offering or selling securities in this State.

19. On April 3, 2008, Desselle replied to the Securities Division’s March 31, 2008, letter. In this response, Desselle stated, among other things, the following:

“I have your letter dated March 31, 2008 concerning the above referenced file. I am not sure I understand the question and I do not know what issue you are referencing. To my knowledge New Century Investments, LLC which is owned by me is not involved in selling securities.

New Century owns certain parcels of real estate in Missouri and Arkansas which is listed for sale. The only recent attempts at selling real estate was on a six plex which is owned by New Century and which is zoned for condominiums. I did a joint venture proposal to rehab the properties with New Century putting up the properties, an investor doing to [sic] cost of rehab and then selling and spitting [sic] the profits. I do not think this would fall within sale of securities and the proposal did not move forward. If there is something else please advise.

Yours truly,

DESSELLE LAW OFFICE, L.L.C.

By: H. Kent Dessells /s/”

20. A review of the records submitted by MR to the Division reveals that at least one check

for two thousand dollars (\$2,000.00) was received by MR from Desselle that was written on an account from the Sam and Linsey Porter Fund. The bank returned the check to Desselle and MR did not retain funds from this check.

21. Desselle omitted to tell the Missouri investor:

- a. that Desselle was not registered to offer or sell securities in the State of Missouri;
- b. that Desselle was not licensed to sell insurance;
- c. that the notes were not registered to be offered or sold in the State of Missouri;
- d. information about the specific risks associated with the investments;
- e. information about the financial condition of the issuers;
- f. the use of the investment proceeds;
- g. facts or information regarding the background, history and experience of Desselle;
- h. facts or information regarding the auditing, accounting and supervision practices of New Century; or
- i. for a period of over eight years, that the investments were “lost between 1998 and 2000.”

22. Desselle made misrepresentations to the Missouri investor, including the following:

- a. that the value of the investments on February 1, 2006, was six hundred and sixteen thousand, eight hundred and seventy-four dollars (\$616,874.00), when in fact the investments had no value;
- b. that the value of the investments on October 1, 2007, was five hundred sixty-seven thousand, and fifty-four dollars (\$567,054.00), when in fact the investments had no value;
- c. that the investments were low risk;
- d. that the SRS Note was backed by the government; or
- e. that the funds were secure on February 19, 2008, when in fact they were not.

II. STATUORY PROVISIONS **Missouri Uniform Securities Act**

23. Section 409.101, RSMo. states:

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

- (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.

24. Section 409.301, RSMo. states:

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

- (1) It is registered under this act;
- (2) The security or transaction is exempted under section 409.402; or
- (3) It is a federal covered security.

25. Section 409.401 (o), RSMo. included “notes; stock . . . evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement . . . investment contract” within the definition of a security.

26. Section 409.401 (m)(1), RSMo. defined “sale” or “sell” to include, “every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.”

27. Section 409.401 (m)(2), RSMo. defined “offer” or “offer to sell” to include, “every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.”

28. Section 409.404, RSMo. provided that, “It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.”

29. Section 409.408, RSMo. states, in part, that:

- (a) The commissioner may require any person, who is selling or offering for sale or who is about to sell or offer for sale or who has sold or offered for sale any security within this state, to file a statement of the claim of exemption or exception from a definition, if any, upon which such person is relying, and if at any time, in the opinion of the commissioner, the information contained in such statement filed is misleading, incorrect, inadequate or fails to establish the right of exemption or exception from a definition, he may require such person to file such further information as may in his opinion be necessary to establish the claimed exemption or exception from a definition. The refusal to furnish information as required by order of the commissioner pursuant to the provisions of this subsection, within a reasonable time to be fixed by the commissioner, shall be proper ground for the entry of an order by the commissioner suspending the right to sell such security
- (b) 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.

30. Section 409.412, RSMo. stated, “. . . any interested person aggrieved by any order of the commissioner under any provision of this chapter . . . shall be entitled to a hearing before the commissioner in accordance with the provisions of chapter 536, RSMo.”

31. 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. 2007).

III. CONCLUSIONS OF LAW

Offering or Selling Nonexempt, Unregistered Securities Pursuant to Missouri Uniform Securities Act

32. Paragraphs 1 through 31 are incorporated by reference as though fully set forth herein.

33. Respondents separately violated Section 409-301, RSMo. when they offered or sold securities to MR without those securities being: (1) a federal-covered security; (2) exempt from registration under section 409.402; or (3) registered under the Missouri Uniform Securities Act.

34. Respondents' Notes and REITs qualify as “securities” under Section 409.401 (o), RSMo.

35. Respondents' separate actions of offering securities to MR was an, “offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value” which satisfies the definition of “offer” or “offer to sell” under Section 409.401 (m) (2), RSMo.

36. Respondents' separate actions of selling securities to MR was a disposition of a security or interest in a security for value which satisfies the definition of “sale” or “sell” under Section 409.401 (m) (1), RSMo.

37. At all times relevant to this Petition, records maintained by the Missouri Commissioner of Securities contained no registration, granted exemption or notice filing indicating status as a “federal covered security” for any of the securities allegedly issued, offered or sold by Respondents in Missouri.

Omitting to State or Making Untrue Statements of Material Facts in Connection with the Sale of a Security Pursuant to Missouri Uniform Securities Act

38. Paragraphs 1 through 31 are incorporated by reference as though fully set forth herein.

39. Respondents separately violated Section 409.101 (2), RSMo. when, in connection with the offer and sale of securities:

a. they omitted to state the following material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, including, but not limited to:

i. the securities offered and sold by Respondents were not registered in the State of Missouri;

ii. the risks associated with the investments;

iii. accurate information regarding the financial condition of the entities where investor funds were placed including audited financials;

iv. accurate information regarding the operating history of these entities;

v. the true nature of Respondents' intended and actual use of the security proceeds;

b. they made untrue statements of material fact to MR, including but not limited to the following:

i. that the investments were low risk; or

ii. that the SRS Note was backed by the government.

40. Respondents' Notes and REITs qualify as "securities" under Section 409.401 (o), RSMo.

41. Respondents' separate actions of offering their securities to MR was an "offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value" which satisfies the definition of "offer" or "offer to sell" under Section 409.401 (m) (2), RSMo.

42. Respondents' separate actions of selling their securities to MR was a disposition of a security or interest in a security for value which satisfies the definition of "sale" or "sell" under Section 409.401 (m) (1), RSMo.

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:

A. violating or materially aiding in any violation of 409.3-301, RSMo. (Cum. Supp. 2007), by offering or selling any securities as defined by Section 409.1-102(28), RSMo. (Cum. Supp. 2007), 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 409.3-304;

B. violating or materially aiding in any violation of 409.4-402, RSMo. (Cum. Supp. 2007), by transacting business in this state as an agent without being

registered as an agent in this state under the Missouri Securities Act of 2003 or being exempt from registration as an agent; and

C. violating or materially aiding in any violation of Section 409.5-501, RSMo. (Cum. Supp. 2007), 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 or 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, based upon the facts alleged in the Petition and specifically restated herein, and given that several of the violations described herein are grounds for criminal action, this matter shall be referred to all appropriate agencies for further actions; and

IT IS FURTHER ORDERED that, where appropriate in connection with the referrals described above, the Securities Division shall pursue an appointment for Division Chief Counsel Patrick T. Morgan as a special assistant prosecutor or other special appointment.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 30TH DAY OF JUNE, 2008.

State of Missouri
Office of Secretary of State

ROBIN CARNAHAN
SECRETARY OF STATE

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

Case No. AP-08-13

IN THE MATTER OF:

NEW CENTURY INVESTMENTS, LLC; and

H. KENT DESSELLE,

Respondents.

Serve New Century Investments, LLC at:
1425 South Noland Road
Independence, Missouri 64055

Serve H. Kent Desselte at:
c/o Desselte Law Office, LLC
1425 South Noland Road
Independence, Missouri 64055

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 Section 409.6-604(b), RSMo. (Cum. Supp. 2007), and 15 CSR 30-55.020.

Within fifteen (15) days after receipt of a request in a record from a person or persons subject to this order, the Commissioner will schedule this matter for a hearing.

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

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

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2008, copies of the foregoing Order and Notice in the above styled case was **mailed by certified U.S. Mail, postage prepaid, to:**

New Century Investments, LLC
1425 South Noland Road
Independence, Missouri 64055

H. Kent Desselle
c/o Desselle Law Office, LLC
1425 South Noland Road
Independence, Missouri 64055

And hand delivered to:

Mary Hosmer
Assistant Commissioner
Securities Division

John Hale
Specialist