

BEFORE THE IOWA INSURANCE COMMISSIONER
330 Maple Street Des Moines, Iowa 50319

IN THE MATTER OF)	CEASE AND DESIST ORDER
)	
JOHN HOLTSINGER)	DOCKET NO: 70273

Now comes the Iowa Insurance Division ("Division"), pursuant to the provisions of Iowa Uniform Securities Act – Iowa Code Chapter 502 and finds as follows:

PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Susan Voss, pursuant to Iowa Code section 502.601 (2011), administers the Iowa Uniform Securities Act.
2. John Holtsinger ("Holtsinger") is an individual with a last known mailing address of 38 Kinglsey Drive, Ottumwa, Iowa 52501.
3. Holtsinger is not and has never been licensed as a securities agent or an investment adviser representative in the state of Iowa.
4. Holtsinger has engaged in acts or practices within the state of Iowa constituting violations of Iowa Code Chapter 502 and/or any rule or order adopted or issued pursuant to Iowa Code Chapter 502. The Commissioner of Insurance is authorized to issue a summary order directed to any person requiring the person to cease and desist from engaging in such acts or practices or take other affirmative action as in her judgment is necessary to comply with the requirements of Iowa Code Chapter 502 pursuant to Iowa Code §502.604 (2011).

FACTUAL BACKGROUND

5. Holtsinger sold at least three promissory notes to at least one Iowa investor between April 2008 and April 2009.
6. The promissory notes were for a period of between seventeen months and forty-eight months and had annual interest rates of nine and twelve percent.
7. The promissory notes were for amounts of \$150,000, \$30,000, and \$16,000.
8. The promissory notes included clauses that stated: "Upon default in payment of any interest, or any installment of principal, the whole amount then unpaid shall become immediately due and payable at the option of the holder without notice."
9. Holtsinger has defaulted on interest payments to the Iowa investor.
10. The Iowa investor has made repeated demands for a return of all money owed to him, including the original principal investment.
11. Holtsinger refuses to return the principal and interest owed to the Iowa investor.
12. Holtsinger has made misrepresentations and omissions of material fact to investor(s) including, but not limited to, the following:
 - a. misrepresented the investment risk(s) being taken by investors;
 - b. misrepresented the returns being earned by investors on their investment;
 - c. failed to disclose to investors the scope of the investors' risk; and
 - d. failed to disclose to investors a timely and adequate accounting of how investor funds were expended.

COUNT I

UNREGISTERED AND NON-EXEMPT SECURITIES

13. The promissory notes are "securities" as defined by Iowa Code Section 502.102(28) (2011).
14. The securities were promoted, offered and sold by John Holtsinger. The securities were not registered with the Iowa Securities Bureau pursuant to Iowa Code sections 502.303 or 502.304 (2011).
15. The securities are not federally covered securities.
16. The exemptions in Iowa Code sections 502.201 and 502.202 (2011) do not apply, nor has Holtsinger filed for an exemption.
17. Therefore, Holtsinger has violated Iowa Code section 502.301 (2011) by offering and/or selling unregistered, non-exempt, and non-federally covered securities in Iowa.
18. This action is necessary, appropriate and in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

COUNT II

UNREGISTERED AGENT

19. Holtsinger has acted as a securities agent as that term is defined in Iowa Code section 502.102(2) (2011).
20. Holtsinger is not and has never been registered as a securities agent with the Iowa Insurance Division.

21. Holsinger does not appear to qualify for any of the exemptions from registration set forth in Iowa Code section 502.402(2) (2011).

22. Therefore, Holsinger has offered or sold promissory notes to persons within Iowa in violation of Iowa Code section 502.402(1) (2011).

23. This action is necessary, appropriate and in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

COUNT III

OMISSIONS

24. Holsinger made omissions of material fact in the sale of these securities.

25. The omission of these material facts, in light of the circumstances surrounding the sale of securities, is misleading.

26. Therefore, Holsinger has violated Iowa Code section 502.501(2) (2011) by failing to state material facts.

27. This action is necessary, appropriate and in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Iowa Code Chapter 502 (The Iowa Uniform Securities Act).

ORDER

Wherefore, it is hereby ordered pursuant to the powers granted to the Iowa Insurance Commissioner by Iowa Code section 502.604 (2011) that:

1. John Holtsinger shall cease and desist the offer and sale of securities in the State of Iowa while those securities are unregistered and non-exempt in violation of Iowa Code section 502.301 (2011);
2. John Holtsinger shall cease and desist acting as an agent in the State of Iowa without registration in violation of Iowa code section 502.402(1) (2011);
3. John Holtsinger shall cease and desist omitting material facts in the sale of securities in violation of Iowa Code section 502.501(2) (2011);
4. John Holtsinger shall be assessed a civil penalty in the amount of \$15,000 for violating provisions of the Iowa Uniform Securities Act pursuant to Iowa Code section 502.604(4) (2011).

NOTICE REGARDING FAILURE TO REQUEST A HEARING

If you fail to request a hearing within thirty (30) days of the date of this Cease and Desist Order, the Order shall be a final Order of the Commissioner of Insurance and shall be enforceable by the Commissioner of Insurance in an administrative or court proceeding.

NOTICE REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RIGHT TO SEEK JUDICIAL REVIEW

The failure to request a hearing can constitute a failure to exhaust your administrative remedies and limit the issues subject to judicial review. You may seek judicial review of this Order pursuant to Iowa Code chapter 17A after the Order becomes final. The Order becomes final thirty (30) days after it is issued if you do not timely request a contested case hearing, or following hearing if you do timely request a contested case hearing.

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that any person who willfully violates this order shall be deemed in contempt of the order pursuant to Iowa Code section 502.604. The administrator may petition the district court to hold a hearing to enforce the order as certified by the administrator. The district court may assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation and may issue further orders as it deems appropriate.

YOU ARE ALSO NOTIFIED that a person who willfully violates any provision of this chapter, or any rule or order under this chapter, is guilty of a class "D" felony pursuant to Iowa Code section 502.605(1)(a). A person who willfully violates section 502.401, 502.402, 502.403, or section 502.408, subsection (1) or (2), resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony pursuant to Iowa Code section 502.605(1)(b).

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final Cease and Desist Order may adversely affect existing business or professional licenses and result in license revocation or disciplinary action. For example, a final Cease and Desist Order issued to a licensed insurance agent may subject the insurance agent to insurance license revocation or other disciplinary action. Further notice is given that the Iowa Insurance Division may review this Cease and Desist Order for a potential license revocation or disciplinary action.

NOTICE OF RIGHT TO REQUEST HEARING

NOTICE IS HEREBY GIVEN that Holtsinger or any individual representing any Respondent, may request a hearing in this matter. This request must be in writing and must be filed within thirty (30) calendar days of the date of this Order with Emily Zach, Enforcement Attorney, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. A notice of the hearing shall be prepared and shall be given at least fifteen (15) days before the date of the hearing unless the parties agree to an earlier date. The hearing shall be held within forty-five (45) days after the date of the notice of the hearing

unless extended by the presiding officer for good cause with at least fifteen days notice to the parties. The resulting hearing will be held in accordance with Iowa Code Chapter 17A (2009).

Dated this 22nd day of February 2011.

Iowa Insurance Division

A handwritten signature in cursive script that reads "Bob Koppin". The signature is written in black ink and is positioned above a horizontal line.

by Bob Koppin
Enforcement Bureau Chief

ORIGINAL PERSONALLY SERVED UPON:

John Holtsinger
38 Kingsley Drive
Ottumwa, Iowa 52501

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319

IN THE MATTER OF) **PROPOSED DECISION**
)
JOHN HOLTSINGER.) Docket No. 11IID014

The parties to this proceeding are John Holtsinger and the Iowa Insurance Division (“Division”). An in-person hearing was scheduled at the Wallace State Office Building for September 26, 2011 at 9:00 a.m. The Division filed copies of its exhibits for the hearing on September 23, 2011. A copy was produced to Holtsinger’s attorney on September 22, 2011. A deadline for exchange of exhibits was not set prior to hearing. The parties did not request a prehearing conference to set any deadlines for the case.

On the afternoon of September 23, 2011, Holtsinger’s attorney, Brad Schroeder, sent electronic correspondence indicating he would be filing a motion to continue because “there are several documents that we had never seen before Thursday. For example the key seven-page spreadsheet which is your Exhibits 20.” At 8:28 September 26, 2011, Holtsinger sent a Motion to Continue by e-mail. Schroeder’s secretary indicated Schroeder would be available by telephone to discuss the Motion. I responded that the matter was scheduled for an in-person hearing at 9:00 a.m. Schroeder replied “[m]y client and I will not be appearing, as your ruling on the Motion to Continue will be dispositive at this point on the issue of whether a full and fair hearing can be afforded him for the reasons I have cited.”

At approximately 8:55 a.m. Schroeder was connected by telephone to argue the Motion. Attorney Emily Zach represented the Division. When asked which exhibits he had never seen before, Schroeder replied, Exhibit 20. When asked whether he had an objection to any of the additional exhibits he stated he was uncertain. I told him it was date of the hearing and that I needed to know which exhibits he had an objection to because the Division may be willing to withdraw the objectionable exhibits. Schroeder identified Exhibits 5, 6 and 20. While the Division argued it provided the information previously to Holtsinger, the Division withdrew Exhibits 5, 6, and 20.

In support of his Motion, Schroeder further indicated he had been on a vacation that had been scheduled for a number of months. If Schroeder’s vacation posed a conflict in this case he could have requested a continuance before he left for vacation and not on the day of the hearing. I discussed the possibility of leaving the record open at the conclusion of argument and denied the Motion. As I proceeded to identify the remaining documents contained in the administrative appeal file, Schroeder’s call disconnected abruptly. I contacted Schroeder’s office and he stated he thought he was clear that he would not be participating in the hearing and ended the call.

Zach proceeded with her case. Holtsinger and his attorney did not participate in the hearing. Exhibits 1 through 4, 7 through 19, and 21 through 36 were admitted into the record. The Division offered Exhibits 5, 6, and 20 after Schroeder disconnected the call. Exhibits 5, 6 and 20 were not admitted into the record and were returned to the Division. Jay Karteus and Sue Fagen appeared and testified on behalf of the Division.

FINDINGS OF FACT

Jay Karteus works in the construction industry. During his work he became acquainted with Erv Graver, a roofer. Graver told Karteus that Holtsinger could assist him with investments. In May 2005, Karteus gave Graver \$50,000 for Holtsinger to invest in securities. Representations were made to Karteus that Holtsinger worked at the Chicago Exchange and that was a good trader. While Holtsinger never represented he was a stock broker or investment adviser, he told Karteus he had qualifications.

Karteus testified he sent Holtsinger a total of \$193,486.35 to invest. Karteus began to question whether Holtsinger was properly investing his money. In April 2008, Holtsinger began making monthly payments of \$1,500 to Karteus. Karteus testified Holtsinger owes him \$251,439.34 in combined principal and interest.

After Karteus's wife filed for divorce, Holtsinger issued three promissory notes executed for April 11, 2008, March 11, 2009, and April 9, 2009. The April 11, 2008 promissory note is for \$150,000, with interest at the rate of 12%. The March 11, 2009 promissory note is for \$16,000, with interest at the rate of 9%. The April 9, 2009 promissory note is for \$30,000, with interest at the rate of 9%. Holtsinger agreed to pay the principal and interest on each of the promissory notes.

Karteus continued to be concerned about his investments and contacted the Division. Karteus spoke with Fagen and asked her for assistance in getting his money back from Holtsinger. Karteus reported he had sent Karteus money to invest on his behalf. Fagen commenced an investigation.

Fagen determined Karteus was not licensed as a securities agent or investment adviser in the state of Iowa. Fagen testified the promissory notes executed by Holtsinger for Karteus are not registered as securities in Iowa.

Karteus provided Fagen with an account holding Wells Fargo stock. Karteus told Fagen Holtsinger had indicated the account contained Karteus's investments. Fagen found the account did not belong to Karteus. During her investigation Fagen learned Holtsinger was involved with customer accounts held with Interactive Brokers, LLC ("Interactive Brokers").

The Division contacted Interactive Brokers to inquire about Holtsinger's involvement with customer accounts. Interactive Brokers prepared a response letter, Exhibit 12. Interactive Brokers reported it is a deep discount, online broker that provides trade execution and clearing services to public customers around the world. Interactive Brokers does not employ and human brokers or advisers. Interactive Brokers reported

that trades are entered by the customer or the customer's adviser on a personal computer and transmitted over the Internet to Interactive Brokers for execution on various exchanges and market centers, either directly or through one of Interactive Broker's affiliates.

Interactive Brokers stated Holtsinger was the owner or had connections to seven customer accounts. One of the accounts was in Holtsinger's name. Holtsinger was listed as an authorized user for Delores Holtsinger's account. Delores Holtsinger is believed to be Holtsinger's mother. Interactive Brokers found that five additional customer accounts were accessed by three Media Access Control addresses ("MACs"), which were used to access Holtsinger's personal account and Delores Holtsinger's account. Interactive Brokers reported Holtsinger was not listed as an authorized user for the five additional customer accounts and had no authority to access or trade on any of the five accounts.

Fagen determined Holtsinger was not investing funds he received from other people and that he was using funds for his living expenses.

The Division issued a Cease and Desist Order on February 22, 2011 finding Holtsinger violated: (1) Iowa Code section 502.301 by offering and selling nonexempt, unregistered securities in Iowa; (2) Iowa Code section 502.401 by transacting business in Iowa without obtaining a registration or possessing an exemption from registration as an agent in Iowa; and (3) Iowa Code section 502.501 by making omissions of material fact in the sale of securities. Holtsinger requested a contested case hearing.

CONCLUSIONS OF LAW

I. DEFAULT

The administrative law judge may enter a default decision or proceed with the hearing if a party fails to appear at a contested case hearing after receiving proper notice.¹ Holtsinger was in default when his counsel elected not to participate in the proceeding on September 26, 2011 and when Holtsinger failed to appear separately from his counsel. I elected to proceed with the hearing in Holtsinger's absence.

II. VIOLATIONS OF THE IOWA UNIFORM SECURITIES ACT

This case concerns the offer and sale of promissory notes. Iowa has adopted the Iowa Uniform Securities Act, which governs the offering and sale of securities in Iowa.² The Insurance Commissioner administers the Iowa Uniform Securities Act.³ The term "security" is defined to include notes.⁴

¹ 191 IAC 3.22(1).

² Iowa Code chapter 502.

³ *Id.* § 502.601.

⁴ *Id.* § 502.102(28).

If the Insurance Commissioner determines a person has engaged in, is engaging in, or is about to engage in an act, practice, or course of business constituting a violation of Iowa Code chapter 502, the Insurance Commissioner may proceed with civil or administrative enforcement.⁵ When the Insurance Commissioner seeks administrative enforcement, the Insurance Commissioner may issue a cease and desist order, and assess penalties and actual costs of an investigation or proceeding.⁶

A. Unregistered Securities

The Division alleges Holsinger violated the Iowa Uniform Securities Act by promoting, offering, and selling securities that were not registered with the Iowa Securities Bureau or exempt from registration. It is unlawful for a person to offer or sell a security in Iowa unless one of the following applies: (1) the security is a federally covered security; (2) the security, transaction, or offer is exempted from registration under Iowa Code sections 502.201 through 502.203; or (3) the security is registered under Iowa Code chapter 502.⁷ Fagen testified the promissory notes are not registered under Iowa Code chapter 502. Fagen reported the promissory notes are not federally covered securities, and that Holsinger has not received or requested an exemption from registration. Holsinger did not attend the hearing to argue the promissory notes at issue were federally covered securities, or that the securities were exempt from registration under Iowa law. The Division has proven Holsinger violated Iowa law by offering and selling unregistered securities.

B. Unregistered Agent

The Division next alleges Holsinger violated Iowa Code section 502.402 by offering and selling promissory notes in Iowa without being a registered agent or exempt from registration. It is unlawful for an individual to transact business in Iowa as an agent unless the individual is registered under Iowa Code chapter 502 or is exempt from registration as an agent under Iowa Code section 502.402(2).⁸ An agent is a person, “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.”⁹ An “issuer” is person who “issues or proposes to issue a security . . .”¹⁰

The following individuals are exempt from registration: (1) an individual representing a broker-dealer in effecting transactions in Iowa limited to those described in 15 U.S.C. section 78(h)(2); (2) an individual who represents a broker-dealer that is exempt under section 502.401(2) or (4); (3) an individual who represents an issuer with respect to an offer or sale of the issuer’s own securities or those of the issuer’s parent or any of the issuer’s subsidiaries, and who is not compensated in connection with the individual’s

⁵ *Id.* §§ 502.603, .604.

⁶ *Id.* § 502.604.

⁷ *Id.* § 502.301.

⁸ *Id.* § 502.401(1).

⁹ *Id.* § 502.102(2).

¹⁰ *Id.* § 502.102(17).

participation by the payment of commissions or other remuneration based on transactions in those securities; (4) an individual who represents an issuer who effects transactions in the issuer's securities exempted by Iowa Code section 502.202; (5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer; (6) an individual who represents a broker-dealer registered in Iowa or is exempt from registration under Iowa Code sections 502.401(2), in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record; (7) an individual who represents an issuer in connection with the purchase of the issuer's own securities; (8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; and (9) any other individual exempted by rule or order.¹¹

Fagen testified Holtsinger is not a registered agent in Iowa. There is no evidence Holtsinger is exempt from registration in Iowa. The evidence reveals Holtsinger acted as an agent by offering and selling promissory notes to Karteus without being registered or exempt from registration. The Division has proven Holtsinger's acts violated Iowa Code section 502.401(1).

C. Omissions of Material Fact

The Division alleges Holtsinger made omissions of material fact in the sale of securities. It is unlawful for a person, in connection with the offer, sale, or purchase of a security to make an untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made not misleading.¹² Holtsinger offered and sold promissory notes to Karteus. Representations were made to Karteus that Holtsinger worked at the Chicago Exchange and was a good trader. While Holtsinger never represented he was a stock broker or investment adviser, he told Karteus he had qualifications. Holtsinger failed to inform Karteus he has never been licensed or registered in the area of securities. When questioned by the Division whether he was licensed to conduct securities transactions, Holtsinger responded he was not licensed, but reported "I was a member of the Chicago Mercantile Exchange and the Chicago Board of Options Exchange during the 1980's." (Exhibit 10). Fagen found no evidence supporting Holtsinger's contention.

Holtsinger produced a Wells Fargo account statement to Karteus and reported it included Karteus's investments. During her investigation Fagen determined the Wells Fargo account belonged to another individual and not Karteus. Holtsinger failed to inform Karteus the account belonged to another individual and represented the account contained Karteus' investments. The Division has established Holtsinger made omissions of material fact in the offering and sale of securities.

¹¹ *Id.* § 502.402(2).

¹² *Id.* § 502.501.

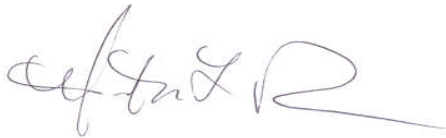
III. Imposition of a Civil Penalty

The Division seeks imposition of a \$15,000 civil penalty against Holtsinger for violating the Iowa Uniform Securities Act. When the Insurance Commissioner determines a person has violated Iowa Code chapter 502, the Insurance Commissioner may impose a civil penalty of \$5,000 for a single violation or \$500,000 for more than one violation, and may recover the actual cost of an investigation or proceeding.¹³ Holtsinger offered for sale and sold unregistered securities in Iowa. Holtsinger transacted business without being registered as an agent with the Division. Holtsinger also made omissions of material fact in the offering and sale of securities in Iowa. I cannot conclude imposition of a \$15,000 civil penalty is improper.

ORDER

Holtsinger was in default by failing to participate in the contested case hearing. Holtsinger violated Iowa Code section 502.301 by offering and selling nonexempt, unregistered securities in Iowa. Holtsinger shall cease and desist from offering and selling unregistered, nonexempt securities in Iowa. Holtsinger violated Iowa Code section 502.401 by transacting business in Iowa without obtaining a registration or possessing an exemption from registration as an agent in Iowa. Holtsinger shall cease and desist from transacting business in Iowa without obtaining a registration or an exemption from registration as an agent. Holtsinger violated Iowa Code section 502.501 by making omissions of material fact in the sale of securities. Holtsinger shall pay a \$15,000 civil penalty. The Division shall take any steps necessary to implement this decision.

Dated this 5th day of October, 2011.



Heather L. Palmer
Administrative Law Judge
515-281-7183

cc: John Holtsinger (First Class Mail)
Brad Schroeder (First Class Mail)
Emily Zach and Christina Hazelbaker (Electronic Mail)

Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.¹⁴ The appeal must be filed with the commissioner's office in writing. The commissioner's office is at 330 Maple

¹³ *Id.* § 502.604.

¹⁴ 191 IAC 3.27.

Street, Des Moines, Iowa 50319. The notice shall specify: (1) the proposed decision or order appealed from; (2) the party initiating the appeal; (3) the specific findings or conclusions to which exception is taken; (4) the grounds for relief; and (5) the relief sought.