

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF SECURITIES

In the Matter of
THOMAS W. SCHMITZ,

PETITION FOR ORDER

Respondent.

File No. S-04078(EX)

The staff of the State of Wisconsin, Department of Financial Institutions, Division of Securities, Bureau of Registration & Enforcement, has conducted an investigation in this matter pursuant to sec. 551.56, Wis. Stats. and as a result thereof alleges as follows:

1. Thomas W. Schmitz ("Schmitz") is an individual with a date of birth of September 24, 1949, with a last known home and business address at that of 2311 Maywood Circle, Middleton, Wisconsin 53562;
2. During the period of 2002 and 2003, Schmitz offered and sold to at least one person in Wisconsin investment interests, in which Schmitz told the person that the person's money was pooled, with that of other investors, and invested in the investment market, with the investors sharing in the profits based on the participation of the investor, which was managed by Schmitz;
3. In connection with the offers and sales of the securities described above, Schmitz transacted business in Wisconsin as an "investment adviser," as that term is defined by sec. 551.02(7), Wis. Stats.;
4. According to the "Letter of Understanding" signed between Schmitz and the person in Wisconsin referred to in Paragraph 2 above "...Said capital shall be put to work (traded) by **Thomas W. Schmitz** (emphasis included) in the stock and futures markets. The capital shall be traded as opposed to invested whereby the measure of success shall be the maximization of percent per year yield on capital traded. ..."
5. At no time has Schmitz been licensed as a securities investment adviser pursuant to Ch. 551, Wis. Stats.
6. Schmitz has violated sec. 551.31(1), Wis. Stats., by transacting business in Wisconsin as an investment adviser without a license;
7. On July 24, 2002, Schmitz was arrested in Dane County, Wisconsin, and charged with felony Burglary and misdemeanor Criminal Damage to Property;
8. On November 27, 2002, Schmitz was convicted in Dane County (Wisconsin) Court for felony Burglary and sentenced to 24 months of probation, among other things;
9. In connection with the offer and sale of the securities described in Paragraph 2 above, Schmitz omitted to disclose his arrest and conviction for the offense referred to in Paragraphs 7 and 8 above;

10. Schmitz has violated § 551.41(2), Wis. Stats., by omitting 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, in connection with the offer and sale of securities to a person in Wisconsin;

11. In connection with the offer and sale of the securities to the person in Wisconsin, referred to in Paragraph 2 above, Schmitz represented to staff of the Bureau of Registration & Enforcement that he had invested and lost their money in the investment market, when in fact he withdrew money, in numerous transactions, from the investment-related account to use for unknown purposes;

12. Schmitz has violated § 551.41(3), Wis. Stats., by engaging in an act, practice or course of business which operates or would operate as a fraud or deceit upon any person; and

13. The staff of the Bureau of Registration & Enforcement wrote to Schmitz to request information and documents concerning his securities-related transactions with persons in Wisconsin, and the Administrator of the Division of Securities caused a subpoena for testimony and documents to be served on Schmitz, but to date has not received the information and documents and/or the testimony and documents.

Therefore, the staff of the Bureau of Registration & Enforcement petitions the Administrator of the Division of Securities for the issuance of the attached Order pursuant to Ch. 551, Wis. Stats.

 5-26-04

Mark E. Dorman Date
Examiner

 6/3/04

David A. Cohen Date
Supervising Attorney