

STATE OF ARKANSAS
SECURITIES DEPARTMENT

IN THE MATTER OF

MILLENNIUM INTERACTIVE TECHNOLOGIES CORP.,
DAVID HELMSTETTER, LOU KOWAL
and ALL PERSONS
EMPLOYED BY OR OTHERWISE
AFFILIATED WITH THAT ENTITY OR THOSE PERSONS

No. 99-69-S

CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (the Staff) has received information and has in its possession certain evidence which indicates that MILLENNIUM INTERACTIVE TECHNOLOGIES CORP., DAVID HELMSTETTER and LOU KOWAL have violated provisions of the Arkansas Securities Act (the Act), codified at Ark. Code Ann. §§ 23-42-101, *et seq.* (Repl. 1994), as well as various Rules of the Arkansas Securities Commissioner (the Rules).

FINDINGS OF FACT

An ongoing investigation has revealed the following facts:

1. Millennium Interactive Technologies Corp. (Millennium) is a Delaware corporation. Although it lists its principal office as being located at 350 Fifth Avenue, Suite 3304, New York, New York 10118-0069, that address is not actually an office, but a mail drop, i.e., a commercial establishment set up to receive mail. The actual operations of Millennium have been carried out at a number of private residences in New Jersey, most recently at 1101 Elberon Avenue, Elberon, New Jersey, 07740, a private residence.

2. David Helmstetter (Helmstetter) is the chairman of the board and chief operating officer of Millennium. He had not been registered in any jurisdiction as a registered agent of a broker-dealer since March, 1995. Although Helmstetter claims a “legal address” in Middletown, New Jersey, he has lived at all of the private residences at which Millennium has been operated.

3. Lou Kowal (Kowal) was at all times relevant to this order a salesman for Millennium. He has never been registered in any jurisdiction as a registered agent of a broker-dealer.

4. On 7 August 1997 the Securities Commissioner of the State of Kansas issued an emergency cease and desist order against Millennium, Helmstetter and one other individual not involved in this matter. It was found that the respondents had sold stock in Millennium without its being registered and without the registration of the persons offering it for sale. The respondents were ordered to cease and desist from offering to sell any stock of Millennium in Kansas without first registering the stock and the persons selling the stock.

5. An Arkansas investor (the Investor) was solicited to purchase stock in Millennium some time in August, 1997, by means of electronic mail (e-mail). The Investor responded by e-mail to find out more about the stock and received a telephone call back from Kowal. Kowal sent the investor a printed prospectus dated 1 July 1997 and called back again, eventually persuading this investor to purchase 3,000 shares of Millennium @ \$1.60 per share, for a total of \$4,800. Millennium was said to have been developing “smart cards,” items similar to bank cards, to be used for payment over the internet as an alternative to credit cards. It was important, Kowal said, to buy the shares before 30 September 1997 because the stock would be listed on a stock exchange within the next month. The Investor sent payment of \$4,800 via Airborne

Express overnight delivery (arranged and paid for by Millennium) on 29 August 1997. A stock certificate for 3,000 shares of Millennium was issued to the Investor on 18 September 1997.

Kowal said nothing about the emergency cease and desist order issued by the Kansas Securities Commissioner, and nothing about it appeared in any of the written materials given this investor.

The prospectus dated 1 July 1997 sent to the Investor contained what was purported to be a balance sheet as of 1 June 1997 prepared by Alex P. Shverts & Co. as Millennium's certified public accountants. Alexander P. Shvarts was an accountant known to Helmstetter, but Shvarts never prepared or audited Millennium's balance sheet, never consented to being named in the 1 July 1997 prospectus and was not a certified public accountant. This prospectus was revised by Millennium on 2 April 1998 by the attachment of a supplementary page which stated that the balance sheet was prepared by the management of Millennium.

6. In April of 1998 the Investor decided to sell the Millennium stock and communicated this to Millennium. Helmstetter called the Investor on the telephone and said he would send her forms to sell her stock back to or through Millennium. By letter dated 24 April 1998, Helmstetter informed the Investor that she could fill out an attached form and send it back with the stock certificate and have Millennium sell the shares for the Investor. Millennium would perform this service, Helmstetter said, "because we continually receive information requests from outside parties interested in buying stock in our company. We simply match up these requests with current shareholders who have a need to sell, and facilitate the purchase." The Investor was encouraged to wait to sell her shares until Millennium made another offering of Millennium stock @ \$2.50 per share. It was stated that Millennium had "recently been issued an

engagement letter from an Investment Banking firm” to assist in selling Millennium stock @ \$2.50 a share, and an unsigned letter of engagement from an investment banking firm was enclosed as evidence of the upcoming offering. It was stated that Millennium was waiting “until the offering materials concerning this deal to come back from the printers, and be reviewed by the SEC.”

To date, no such offering has been made. The Staff found in its investigation that there was no business relationship between Millennium and the investment banking firm named by Millennium—actually a broker-dealer in New York—and that the purported engagement letter from that broker-dealer was not a valid engagement letter.

7. Believing that things would get better and that she might be able to sell this stock and make \$.90 per share, the Investor held on to the stock for the next year. During that time, the Investor was led to believe from Millennium’s internet web site that Millennium was involved in several commercial ventures, including smart cards, bulk foods and earth magnets. The Investor would from time to time check Millennium’s internet web site for information about the anticipated stock offering and was always implicitly assured that it would be soon.

8. Beginning on 14 June 1999, the Investor began trying to verify by means of e-mail that the instructions for mailing the stock sale request form and the stock certificate were the same as originally stated. Primarily, she wanted to make sure that Millennium’s address was the same. After the second e-mail on 30 June 1999 to a second e-mail address was sent, the Investor received an e-mail back from Millennium dated 1 July 1999 advising her that the instructions were the same and again intimating that a stock offering was in the works: “the time frame [for

selling the Investor's shares] depends upon the success of the stock offering we are conducting for this purpose." On 13 July 1999 the Investor filled out the form, signed the back of the stock certificate and sent it to Millennium.

9. To date, the Investor has not received a check from Millennium or any other entity or person for the sale of those shares of stock, and no stock offering of any kind on any stock exchange has taken place.

10. The Staff's investigation has discovered four other Arkansas investors. Together with the Investor discussed above, they invested a total of \$13,200. Most of these investors had experiences similar to those described above by the Investor.

11. In a statement found at Millennium's internet web site entitled "LEGAL AND COMPLIANCE ISSUES" dated 6 January 1999, Millennium disclosed the existence of the Kansas cease and desist order, but discounted its effect by intimating that only the securities regulator of its home state, which was New Jersey, actually had jurisdiction over it. Having attempted to formally register with New Jersey, but to no avail, Millennium stated that it simply moved its operations to New York, where it was registered.

12. The New Jersey Bureau of Securities filed an action against Millennium, Kowal and others involved with Millennium on 12 October 1999, alleging fraud in the offer, sale or purchase of securities; offering and selling unregistered securities; misleading filings with the New Jersey Bureau of Securities; acting as agents without being registered; and employing unregistered agents.

13. A search of the files at the Arkansas Securities Department shows no filing by Millennium to register its stock or to seek an exemption from registration under the Act.

CONCLUSIONS OF LAW

14. Ark. Code Ann. § 23-42-301(a) (Supp. 1997) provides that it is unlawful for any person to transact business as an agent without first being registered under the Act.

15. Ark. Code Ann. § 23-42-102(2)(A) (Supp. 1997) defines an agent in pertinent part as an individual other than a broker-dealer who represents an issuer in effecting or attempting to effect purchases or sales of securities.

16. Ark. Code Ann. § 23-42-501 (Supp. 1997) provides that it is unlawful for any person to offer or sell any security which is not registered or which is not exempt from registration under the terms of the Act.

17. Ark. Code Ann. § 23-42-507(2) (Repl. 1994) provides that it is unlawful for any person in connection with the offer or sale of any security to make any untrue statement or omit to state a material fact which is necessary to make the statements made not misleading in the light of the circumstances under which they are made.

OPINION

18. This matter has been properly brought before the Arkansas Securities Commissioner in accordance with Ark. Code Ann. §§ 23-42-201 and 209 (Repl. 1994).

19. The respondents have offered to sell stock without prior registration of those securities or the persons and entities offering to sell them in violation of Ark. Code Ann. § 23-42-501 (Repl. 1994).

20. The respondents made misrepresentations of fact in connection with the offer to sell Millennium stock, both in the initial purchase of stock by the Investor and in the attempted repurchase of the stock, in violation of Ark. Code Ann. § 23-42-507(2)

21. The respondents failed to inform Arkansas investors that the Securities Commissioner of Kansas had issued an emergency cease and desist order against Millennium, Helmstetter and one other individual, as set out in ¶ 5, *supra*. The failure to inform investors of this action was the omission of a material fact in violation of Ark. Code Ann. § 23-42-507(2) (Repl. 1994).

21. Pursuant to Ark. Code Ann. § 23-42-209(a)(1) (Supp. 1997), the Arkansas Securities Commissioner can and should order the respondents to immediately cease and desist from the further solicitation and sale of the securities described above, to immediately cease and desist from the collection of additional funds from any current investors and to immediately cease and desist from further violations of the Arkansas Securities Act.

21. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that MILLENNIUM INTERACTIVE TECHNOLOGIES CORPORATION, DAVID HELMSTETTER, and LOU KOWAL, as well as others whose identities are not yet known who are in positions of control of Millennium and who are employed by or otherwise affiliated with Millennium or enterprises associated with Millennium, directly or through other companies, **CEASE AND DESIST** from any further actions in the State of Arkansas in connection with the offer and sale of the securities described above until such time as the securities are properly registered or exempted from registration pursuant to the Arkansas Securities Act and the persons offering them for sale are properly registered pursuant to the Arkansas Securities Act.

WITNESS MY HAND AND SEAL this 3rd day of December, 1999.



Mac Dodson
ARKANSAS SECURITIES COMMISSIONER