

**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

**IN THE MATTER OF: JAMES E. UPSHAW, SR., and
UPSHAW and ASSOCIATES, LLC, Its/his partners, officers
and directors, agents, employees, affiliates, successors, and
assigns.**

FILE NO. 0400222

CONSENT ORDER OF PROHIBITION

TO RESPONDENTS: James E. Upshaw, Sr.
1127 Mannheim Rd. #313
Westchester, Illinois 60154

Upshaw and Associates, LLC
1127 Mannheim Rd. #313
Westchester, Illinois 60154

WHEREAS, James E. Upshaw, Sr., and Upshaw and Associates, LLC, on the 7th day of November, 2004, executed a certain Stipulation to Enter Consent Order of Prohibition (the "Stipulation"), which hereby is incorporated by reference herein;

WHEREAS, by means of the Stipulation, Respondents J. Upshaw and Upshaw, LLC have admitted to the jurisdiction of the Secretary of State and service of the Temporary Order of Prohibition, dated July 20, 2004, in this proceeding and Respondents have consented to the entry of this Consent Order of Prohibition (the "Consent Order");

WHEREAS, by means of the Stipulation, the Respondents acknowledged, while neither admitting nor denying the truth thereof, that the following allegations contained in the Temporary Order of Prohibition shall be adopted as the Secretary of State's Findings of Fact:

1. That James E. Upshaw, Sr. (or "J. Upshaw", or collectively with Upshaw LLC, "Respondents") at all times referred to herein was a member/manager/organizer of Upshaw LLC, with address at 1127 Mannheim Rd., Suite 313, Westchester, Illinois 60154.

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2. That Upshaw and Associates, LLC (or "Upshaw LLC", or collectively with James E. Upshaw, Sr., "Respondents") was at all times referred to herein, an Illinois Limited Liability Company with address at 1127 Mannheim Rd. Suite 313, Westchester, Illinois 60154.
3. That James E. Upshaw, Sr. (or "J. Upshaw", or collectively with Upshaw LLC, "Respondents") at all times referred to herein was the member/manager/organizer of Upshaw LLC, with address at 1127 Mannheim Rd., Westchester, Illinois 60154.

UNREGISTERED INVESTMENT ADVISORS

4. That Respondents Upshaw LLC and J. Upshaw are in the business of providing investment and financial management, for compensation, to the general public within the State of Illinois.
5. That between August of 2000 and August of 2002 Respondents conducted, or held themselves out as conducting, investment advisory services to others for compensation. In this Respondents claimed that they were "award winning financial consultants", and promised that, "Every client receives the same knowledge and experience used by Upshaw and Associates as they served McDonalds Corporation, Transamerica Commercial Finance Corporation, Walter E. Heller & Company, U.S. Department of Education, Budget Car Rental, et al".
6. That the activities described in paragraphs 4 and 5 above constitute the business of giving, or holding themselves out as giving, investment advice to others, and being an "investment adviser", as that term is defined in Sec 2.11 of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act").
7. That Respondents failed to file with the Secretary of State an application for registration as investment advisors as required by the Act and that as a result the Respondents were not registered pursuant to Section 8 prior to acting as investment advisors in the State of Illinois.
8. That Section 12.C of the Act provides, inter alia, that it shall be a violation for any person to act as an investment advisor except in accordance with the provisions of the Act.
9. That Section 12.D of the Act provides, inter alia, that it shall be a violation for any person to fail to file with the Secretary of State, Securities Department ("Department") any application, report or document required to be filed under the provisions of the Act or any rule or regulation made by the Secretary of State pursuant to the Act.

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10. That by virtue of the foregoing, Respondents have violated Sections 12.C and 12.D of the Act.

SALE OF UNREGISTERED SECURITIES

11. That between August of 2000 and August 2002 Respondents, offered and sold interest bearing promissory notes issued by Upshaw LLC in aggregate amount of at least \$139,000, to one or more residents of the State of Illinois.
12. That Section 5 of the Act provides inter alia that all securities except those exempt under Section 3 or those offered or sold in transactions exempt under Section 4 shall be registered either by coordination or by qualification prior to their offer or sale in this State.
13. That Respondents failed to file with the Secretary of State an application for registration of the securities described above as required by the Act and that as a result the security was not registered pursuant to Section 5 of the Act prior to being offered and sold in the State of Illinois
14. That Section 12.A of the Act provides it shall be a violation of the provisions of this Act for any person to offer or sell any security except in accordance with the provisions of this Act.
15. That by virtue of the foregoing, Respondents have violated Sections 12.A and 12.D of the Act.

NOW THEREFORE IT IS HEREBY ORDERED THAT: pursuant to the authority granted by Section 11.F of the Act, Respondents James E. Upshaw, Sr., and Upshaw and Associates LLC., its/his officers and directors, agents, employees, affiliates, successors and assigns shall be and are:


1. **PROHIBITED** from issuing, offering or selling any securities in or from the State of Illinois, AND
2. **PROHIBITED** from being in the business of giving investment advice, or holding themselves out as giving investment advice, to others and being investment advisers in or from the State of Illinois; AND

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3. they shall pay the sum of Seven Hundred Fifty dollars (\$750.00) to the Office of the Secretary of State, Investors Education Fund as reimbursement to cover the cost of investigation of this matter. Said sum shall be payable by means of certified or cashier's check within thirty (30) days of the entry of this order.

Dated: This 16th day of November, 2004.



JESSE WHITE
Secretary of State
State of Illinois

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