

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

IN THE MATTER OF: **DOUGLAS A. BRIAN**

)
) Case No. 0200064
)

ORDER OF PROHIBITION

TO RESPONDENT: Douglas A. Brian
 1001 South Main Street
 Yorkville, IL 60560

Douglas A. Brian
C/o Brigid A. Duffield, Esq.
1749 S. Naperville Road
Suite 201
Wheaton, IL 60187

WHEREAS, the above-captioned matter came to be heard on August 11, 2004, pursuant to a Notice of Hearing dated May 13, 2004 and an Order of Continuance dated July 14, 2004, and the record of the matter under the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") has been reviewed by the Secretary of State or his duly authorized representative;

WHEREAS, the rulings of the Hearing Officer on the admission of evidence and all motions are deemed to be proper and are hereby concurred with by the Secretary of State;

WHEREAS, the proposed Findings of Fact and Conclusions of Law and Recommendation of the Hearing Officer, Soula J. Spyropoulos, in the above-captioned matter have been read and examined;

WHEREAS, the Findings of Fact of the Hearing Officer are accepted and are hereby adopted as the Findings of Fact of the Secretary of State as follows:

1. Section 130.1102 of Subpart K of the Rules and Regulations of the Illinois Securities Law of 1953 (the "Rules and Regulations") states that each respondent shall be given a Notice of Hearing at least 45 days before the first date set for any hearing under the Act. Proper notice is given by depositing a Notice of Hearing with the United States Postal Service (the "U.S.P.S."), by certified or registered mail,

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return receipt requested; by the personal service of the Notice of Hearing to the last known address of the respondent; or by the indexing of the Notice of Hearing with the Secretary of State. The evidence provided in the Department's Group Exhibit A shows that the Department deposited the Notice with the U.S.P.S. by certified mail, return receipt requested, to Respondent's and to Respondent's attorney's last known address on May 13, 2004. Thus, the Department gave Respondent the Notice on May 13, 2004. The Notice marks as the first date set for hearing the date of July 14, 2004, a date occurring more than forty-five (45) days after Respondent was first given the Notice on May 13, 2004. Therefore, the service of the Notice of the first date set for hearing on the File upon Respondent by the Department was proper.

2. Section 11.F(1) of the Act provides that the Secretary of State shall not undertake any action, impose a fine, or prohibit or suspend any person from selling or from offering any securities within the State of Illinois for a violation of the Act without first providing a person an opportunity for hearing upon not less than 10 (ten) days' notice given by personal service or registered mail or certified mail, return receipt requested, to the person concerned.

As discussed, the Notice was given to both Respondent and his attorney on May 13, 2004. Hence, as to the first date set for hearing on the File (July 14, 2004), because this date is a date occurring over two months, (and, thus, obviously well over ten days)--after Respondent and his counsel were given the Notice, and because the Department could have undertaken an action or imposed a fine against Respondent for a violation of the Act on that date, the Department's service of the Notice upon Respondent was proper.

Respondent then requested that hearing on the File be continued from July 14, 2004 to August 11, 2004. Pursuant to the Order of Continuance dated July 14, 2004, this request was granted; and hearing on the File was, thus, continued to August 11, 2004.

On July 14, 2004, the Department deposited the Order of Continuance with the U.S.P.S. for delivery via certified U.S.P.S. Mail, with a request for a return receipt from the addressee, to both Respondent's last known address and to Respondent's attorney's address, c/o Respondent. Hence, on July 14, 2004, the Order of Continuance was given to Respondent. Further, as evidenced by Department's Exhibit A2, on July 17, 2004, Respondent himself executed the return receipt associated with the Department's delivery of the Order of Continuance to him, thus directly acknowledging his receipt of said Order more than ten (10) days before the hearing date of August 11, 2004. Also, as evidenced by Department's Exhibit A5, on July 15,

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2005, Respondent's attorney's offices executed the return receipt associated with the Department's delivery thereto of the Order of Continuance. July 15, 2005 also is a date occurring more than ten (10) days before the then-scheduled hearing date of August 11, 2004. Therefore, as Respondent was given more than ten (10) days notice of the then-scheduled hearing date (which date is also the actual hearing date), Respondent was given proper notice of his opportunity to be heard on the File.

Therefore, because the Department gave proper notice of the scheduled hearing date to Respondent, the Department has personal jurisdiction over Respondent.

3. Respondent appeared at the hearing with his counsel of record.
4. The Department offered exhibits, identified above, each of which was received and admitted into evidence, a proper record of all proceedings having been made and preserved as required. To prove the authenticity of the documentation in Department Exhibit H, Richard Diaz offered his sworn testimony, which testimony also became part of the evidence brought forth by the Department.
5. The Department's Oral Motion for Default, along with Respondent's Oral Motions for Summary Judgment and for Dismissal, are outstanding matters as to the proceedings for the File. As to the Department's Motion: the Department represented that Respondent had not had on file therewith an Answer to the Notice; and Respondent and his counsel represented that an Answer had been timely sent to the Department. As to Respondent's Motions: Respondent alleged that no offer or sale of a security was involved, so no violation of the Act could have occurred.
6. At all material and relevant times Respondent has not been registered with the Secretary of State as a salesperson.
7. The Notice alleged:
 - (1) Respondent, an individual, has a last known address of 1001 South Main Street, Yorkville, Illinois 60560.
 - (2) The Stonehedge Group, Inc. ("Stonehedge"), a New York corporation, maintained a place of business at the 35th floor of 20 Exchange Place, New York, New York 10005.
 - (3) In or about 1998, Respondent offered to more than one Illinois resident (the "Investor(s)") an investment opportunity in

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Stonehedge. Respondent gave the Investor(s) an informational packet (the "Informational Packet") soliciting their investment in Stonehedge.

- (4) The Informational Packet contains an offering memorandum (the "Offering"), a subscription agreement (the "Agreement"), and a summary of the company.
 - A. The Offering states that Stonehedge is "offering [the amount of] \$2,000,000.00 of preferred stock (the "Preferred Stock") of [the amount of] \$1,000.00 each with a minimum purchase of [the amount of] \$5,000.00."
 - B. The Offering states that the "Preferred Stock will pay a 10% per annum non-cumulative calendar quarterly dividend to the Investor."
 - C. The Agreement states that Stonehedge will "use its funds to provide bridge loans or mezzanine financing to companies on the verge of making a public stock offering, or other equity interests, notes of various types, and other business opportunities that may present themselves, or joint ventures with already existing businesses.
- (5) From about August 1999 to November 1999, Investor(s) gave Respondent checks made payable to Stonehedge for investment in Stonehedge.
- (6) For Respondent's sales of the Stonehedge investment Respondent was paid aggregate commissions in the amount of \$35,500.00.
- (7) Respondent was not, and is not, a registered salesperson with the Department or Illinois Secretary of State.
- (8) Respondent and Stonehedge failed to file with the Illinois Secretary of State an application for registration of the security described hereinabove, as required by the Act; and, as a result, the securities were not registered prior to their offer and sale in the State of Illinois.
- (9) Respondent contacted several of the Investor(s) and recommended the Stonehedge investment program, telling the Investor(s) that same had a 10% return without drawing their attention to the risk factors of Stonehedge's business mix and to investing in Stonehedge. Instead, Respondent told the Investor(s) that he had "checked out" Stonehedge and that this was a "good

investment" for them. However, Respondent never conducted any due diligence or further research into either the investment or Stonehedge; and Respondent had no reasonable basis for recommending Stonehedge.

- (10) Respondent also encouraged the Investor(s) by telling them that he had personally invested money into Stonehedge, and that he would like to invest more in the future, when Respondent had not invested in Stonehedge.

WHEREAS, the proposed Conclusions of Law are accepted and are hereby adopted by the Secretary of State as follows:

1. The Secretary of State has jurisdiction over the subject matter hereof pursuant to the Act.
2. Section 12.A of the Act provides, *inter alia*, that it shall be a violation of the Act for any person to offer or sell any security except in accordance with the provisions of the Act.

Section 12.C of the Act provides, *inter alia*, that it shall be a violation of the Act for a person to act as a dealer, salesperson, investment adviser, or investment adviser representative unless the person is registered accordingly with the Illinois Secretary of State where registration therewith is required under the Act.

Section 12.D of the Act provides, *inter alia*, that it shall be a violation of the Act for a person to fail to file with the Illinois Secretary of State a required application, report, or document required to be filed under the Act, or under any rule or regulation made by the Illinois Secretary of State pursuant to the Act.

Section 12.F of the Act provides, *inter alia*, that it shall be a violation of the Act for a person to engage in any transaction, practice, or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.

Section 12.G of the Act provides, *inter alia*, that it shall be a violation of the Act for any person to obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

3. Section 2.1 of the Act provides that any stock or investment contract is a security. Clearly, the Offering and the Agreement, photocopies of which documents are contained in Department Exhibits B and K, involve stock and investment contracts in Stonehedge. Further, at the hearing: first, Mr. Theis testified that Respondent had given him photocopies of the Offering and of the Agreement; and that Respondent then told him that Stonehedge was an investment deal; and, second, during cross-examination, Respondent admitted that the business of Stonehedge was, ultimately, to help small companies raise capital. Hence, the subjects of the Offering and the Agreement are securities.

Under Section 2.5a of the Act, an "offer" includes every offer to sell or otherwise dispose of, or solicitation of an offer to purchase, whether orally or by means of publication, including, but not limited to, electronic media, a security or interest in a security for value. Under Section 2.5 of the Act, in part, to "sell" a security is to dispose of a security or an interest in a security for value.

At the hearing, Mr. Theis testified that Respondent personally told him about investing in Stonehedge, and that Respondent had "put his own money" in Stonehedge. Mr., Theis, who, at the time that Respondent told him about Stonehedge (September 1999), considered Respondent a friend, then gave Respondent a check--no. 15032, in the amount of \$10,000.00, per the Department's Exhibit C--payable to the order of Stonehedge Group. After the check was given, Mr. Theis received a certificate from Stonehedge certifying that Mr. Theis's trust is the registered holder of 10,000 shares of preferred stock in Stonehedge.

Respondent testified that Mr. Theis had decided to invest in Stonehedge; that this decision was made in front of his family and Respondent in September 1999, at a time when Mr. Theis was already discussing with Respondent annuity plans and other pending matters between Mr. Theis and Respondent in Respondent's capacity as Mr. Theis's insurance agent; and that it was in response to Mr. Theis's prompting that Respondent provided to Mr. Theis photocopies of the private placement memorandum with Stonehedge. Respondent stated that he became involved with Stonehedge as a representative in July 1999; and that, in September 1999, he stopped all association with Stonehedge. Respondent admitted that he had never registered with the Illinois Secretary of State to sell securities, however, he also maintained that he never sold securities. Further, during cross-examination, Respondent admitted that he found prospective investors for Stonehedge via his insurance business.

According to the Department, and, as admitted by Respondent during cross-examination, Respondent obtained money from referring people to Stonehedge. When shown photocopies of the 1099 form, which photocopies are part of the Department's Exhibit K, Respondent admitted that the funds in the amount of \$35,500.00, as shown in that Exhibit, were funds received by him as a "finder's fee" in connection with referring people to Stonehedge.

The testimony provided by Mr. Theis is found to be more credible than that provided by Respondent. Therefore, because Respondent personally offered to sell to Mr. Theis, or solicited from Mr. Theis an offer to purchase, stock in Stonehedge, and because stock in Stonehedge is a security, an offer to sell securities was made. Hence, Respondent's oral motions for summary judgment and for default are, accordingly, denied. Because a security was disposed of or sold for value, a sale of a security was made.

4. Respondent, thus, acted as a salesperson of securities within the State of Illinois, even though he, admittedly, never registered with the Illinois Secretary of State as a salesperson of securities, as required under the Act. This being the case, Respondent violated Sections 12.C and 12.D of the Act.

Because Respondent, whom Mr. Theis considered to be a friend, falsely told Mr. Theis that he had invested his own money in Stonehedge when he had not, in fact, done so, Respondent's actions constitute violations of Section 12.F and 12.G of the Act, as Respondent thus obtained money from Mr. Theis by engaging in a course of business or practice in connection with the sale to Mr. Theis of Stonehedge stock or securities that worked as a fraud or deceit upon Mr. Theis by means of a false statement of a material fact. Thus Respondent violated Sections 12.F and 12.G of the Act.

Also, because Respondent had told investors, including Mr. Theis, prior to their ultimate investment in Stonehedge that the Stonehedge investment program would bring a 10% return without drawing their attention to the risk factors associated with the business of, and government investigations into, Stonehedge, and with investing in Stonehedge, and because no investor in Stonehedge ever received the promised 10% return, Respondent obtained money through the offer and sale of securities by means of untrue statements of facts and by omitting to state material facts necessary to make the statements made, in light of the circumstances under which same were made, not misleading.

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Thus Respondent violated Section 12.G of the Act.

Because Respondent offered and sold securities in violation of Sections 12.C, 12.D, 12.F, and 12.G of the Act, Respondent violated Section 12.A of the Act.

5. Under and by virtue of the foregoing, an Order may be entered wherein Respondent shall be prohibited from selling or offering for sale securities within the State of Illinois, and fined in the maximum amount pursuant to Section 11.E(4) of the Act, payable within ten (10) days of the entry of the order.

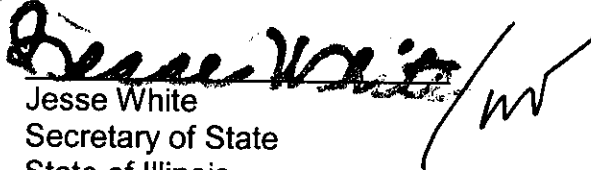
WHEREAS, an order of prohibition is in all respects authorized and appropriate in this case under Section 11 of the Act; and

WHEREAS, the Secretary of State adopts the Hearing Officer's Recommendation that an order be entered permanently prohibiting the Respondent from offering or selling any securities in the State of Illinois and the Secretary of State should also impose a fine in the amount of \$40,000;

NOW THEREFORE IT IS HEREBY ORDERED that, pursuant to the foregoing Findings of Fact and Conclusions of Law, and the Recommendation of the Hearing Officer, and pursuant to the authority provided under Section 11.E(2) of the Act:

1. Respondent Douglas A. Brian is permanently **PROHIBITED** from offering or selling any securities in the State of Illinois.
2. Respondent Douglas A. Brian is fined \$40,000. Said sum shall be payable by means of certified or cashiers check and made to the order of the Secretary of State, Investor Education Fund and shall be due within ten (10) days from the entry of this Order.

Dated: This 15th day of April, 2005.


Jesse White
Secretary of State
State of Illinois

Notice: Failure to comply with the terms of this Order shall be a violation of Section 12.D of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act"). Any person or entity who fails to comply with the terms of this Order of the Secretary

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of State, having knowledge of the existence of this Order, shall be guilty of a Class 4 felony.

This is a final order subject to administrative review pursuant to the Administrative Review Law [735 ILCS 5/3-101 et seq.] and the Rules and Regulations of the Act (14 Ill. Admin. Code, Ch.1, Sec. 130.1123). Any action for judicial review must be commenced within thirty-five (35) days from the date a copy of this Order is served upon the party seeking review.

Attorney for the Secretary of State:

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