

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: SCOTT D. SUTHERLAND

FILE NO. 0400468

CORRECTED  
ORDER OF DENIAL

**TO THE RESPONDENT:**

Scott D. Sutherland  
(CRD #: 1303204)  
348 Pondview Drive  
Palatine, Illinois 60067

c/o Prestwick Securities, Inc.  
5215 Old Orchard Road  
Suite 325  
Skokie, Illinois 60077

WHEREAS, the above-captioned matter came on to be heard on November 3, 2004, pursuant to the Notice of Hearing dated September 17, 2004, FILED BY Petitioner Secretary of State, 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, Conclusions of Law and Recommendations of the Hearing Officer, Soula J. Spyropoulos, Esq. in the above-captioned matter have been read and examined.

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

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

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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."), either by certified or registered mail, return receipt requested, or by the personal service of the Notice of Hearing to the last known address of the respondent.

Per the Notice: the Secretary of State issued the Order of Denial on August 30, 2004, which Order denied Respondent's application for registration as a salesperson of securities in the State of Illinois; on September 3, 2004, within thirty (30) days of the issuance of the Order of Denial, Respondent requested a hearing with the Secretary of State; and, on September 17, 2004, the Secretary of State, by and through the Department, gave or issued to Respondent the Notice, which scheduled the hearing to occur on November 3, 2004, a date occurring over forty-five (45) days after the Notice was given. Hence, the Department's service of the Notice upon Respondent was proper.

2. Section 11.F(1) of the Act provides that the Secretary of State shall not undertake any action or impose a fine against a registered salesperson of securities within the State of Illinois for a violation of the Act without first providing the salesperson an opportunity for hearing upon not less than 10 days' notice to the person concerned.

As discussed, Respondent was properly notified of his opportunity to be heard on the File via the Department's timely provision thereto of the Notice. The Department served the Notice upon Respondent on September 17, 2004, well over 10 days before the Respondent's first scheduled opportunity to be heard on November 3, 2004.

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

3. Respondent personally appeared at the hearing. Respondent did not have counsel present with him, however, after being duly sworn, Respondent did offer as evidence not only his own testimony, but also that of his witness, Paul Sikorski, along with Respondent's Exhibit 1, which testimony was heard and which evidence was received and admitted into evidence.
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.
5. No outstanding petitions, motions, or objections exist as to this proceeding.

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6. Since August 30, 2004, the Secretary of State has denied Respondent's registration as a salesperson of securities in the State of Illinois.
7. On February 18, 2004, without admitting or denying the findings alleged by NYSE as per their Decision, Respondent consented to NYSE's entry of the Decision, which Decision sanctions Respondent with censure and a three-month bar from membership, allied membership, approved person status, and employment or association in any capacity with any member or member organization.

On June 23, 2004, Prestwick Securities, Inc., a registered dealer, filed a form U-4 application for Respondent's registration as a salesperson of securities in the State of Illinois.

On August 30, 2004, the Secretary of State issued the Order of Denial, which Order denied Respondent's application. Pursuant to the terms of the Order, Respondent requested a hearing, which request was made on September 3, 2004.

On February 18, 2004, the NYSE's Exchange Hearing Panel, in their file 04-23, accepted a Stipulation of Facts and Consent to Penalty upon which the NYSE's Division of Enforcement and Respondent had agreed, which Stipulation and Consent, as memorialized in the Decision, imposed the following sanctions:

- (a.) censure; and
  - (b.) three-month bar from membership, allied membership, approved person status, and employment or association in any capacity with any member or member organization.
8. The Decision found:
    - (a.) Respondent made unauthorized trades in one customer account and failed to follow the instructions in the account of said customer and one additional customer;
    - (b.) JL is a physician and employed by Northwestern University Medical School. NL is also a physician. Between late August and December 2000, Respondent made unauthorized trades, on margin, in the Ls' account; and failed to eliminate margin in their account when authorized to do so.
    - (c.) On August 7, 2000, the Ls met with Respondent and instructed him to desist from further unauthorized purchases, to

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stop using margin, and to sell off stocks to eliminate the margin on their account.

- (d.) At the end of July 2000, the Ls had a margin balance in the amount of \$35,734.57, which balance was reduced to zero by the end of August 2000. Subsequently, Respondent made various unauthorized trades, and continued to use margin, beginning in late August and continuing through December 2000, including purchasing ABC, DE, GHI, and JKL, which purchases increased the Ls' margin balance and caused losses in the approximate amount of \$73,000.00.
- (e.) SS is the President of the United State division of XYZ, an international marketing information company with 21,000 employees worldwide.
- (f.) Between February and March 2000, Respondent failed to comply with SS's instructions to liquidate a specific security, and, subsequently, an instruction to liquidate all the securities, in his account.
- (g.) Specifically, during the week of February 17, 2000, SS instructed Respondent to sell his holdings of 11,000 shares of MNO, which traded on the NASDAQ market, when its price hit a specific target. When SS returned from vacation the following week, he learned that Respondent did not sell the stock as instructed, thereby causing a loss in the approximate amount of \$9,570.00. Subsequently, on March 31, 2000, SS telephoned Respondent and instructed him to liquidate his entire portfolio. Despite the instruction to do so, Respondent did not liquidate the positions held in the account, ultimately causing losses in the approximate amount of \$215,802.00.
- (h.) By virtue of the foregoing, Respondent engaged in conduct inconsistent with just and equitable principles of trade by effecting unauthorized trades in the accounts of one or more customers of his member firm employer; and by failing to follow the instructions of one or more customers of his member firm employer.

WHEREAS, the proposed Conclusions of Law made by the Hearing Officer are correct and are hereby adopted as the Conclusions of Law of the Secretary of State:

1. The Secretary of State has jurisdiction over the subject matter hereof pursuant to the Act.

2. Section 8.E(1)6) of the Act provides, *inter alia*, that the registration of a salesperson registered within the State of Illinois may be revoked if the Secretary of State finds that a salesperson has been barred from employment, membership, or association with, or suspended (or otherwise adversely affected in a similar manner) by, any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation, or standard duly promulgated by the self regulatory organization.
3. Until approximately June 23, 2004, Respondent had been a registered salesperson of securities in the State of Illinois.

In February of 2004, however, entered against Respondent was an order, the Decision, that, because of Respondent's having effected unauthorized trades in the accounts of one or more customers, and having failed to follow the instructions of one or more customers, of his member firm employer, barred him from being employed by or associated with any NYSE member firm or organization in any capacity for a period of three (3) months, and that sanctioned him with a censure. Respondent's actions were, thus, deemed to be inconsistent with just and equitable principles of trade by NYSE, a self regulatory organization registered under the Federal 1934 Act.

Therefore, the sanctions against Respondent per the order or Decision clearly arose from fraudulent or deceptive acts or practices in violation of rules, regulations, or standards duly promulgated by a self-regulatory organization, the NYSE, registered under the Federal 1934 Act.

4. Under and by virtue of the foregoing, Respondent's registration as a salesperson of securities in the State of Illinois is subject to denial pursuant to Section 8.E(1)6) of the Act.

WHEREAS, the Secretary of State makes the following additional Conclusion of Law:

That Section 8.E(1)( j) of the Act provides, inter alia, that the registration of a salesperson may be denied if the Secretary of State finds that such salesperson has been suspended by any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization.

WHEREAS, the Hearing Officer recommended that the Secretary of State should deny the Respondent's registration as a salesperson in the State of Illinois, and the Secretary of State adopts in it's entirety the Recommendation made by the Hearing Officer.

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WHEREAS, the prior Order of Denial entered April 13, 2005, and incorrectly dated August 13, 2005, is hereby VACATED;

NOW THEREFORE, IT SHALL BE AND IS HEREBY ORDERED:

1. That Scott D. Sutherland's registration as a salesperson in the State of Illinois is denied pursuant to the authority provided under Section 8.E(1)(j) of the Act.
2. That this matter is concluded without further proceedings.

ENTERED: This 25<sup>th</sup> day of April 2005.

  
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JESSE WHITE  
Secretary of State  
State of Illinois

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.