

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

\_\_\_\_\_  
IN THE MATTTTER OF: **BRIAN A. KERNS** )  
\_\_\_\_\_)

**FILE NO. 0400272**

**ORDER OF REVOCATION**

**TO THE RESPONDENT:** Brian A. Kerns  
(CRD #: 4339980)  
1601 W. School Street  
Chicago, Illinois 60657

WHEREAS, the above-captioned matter came on to be heard on October 6, 2004, pursuant to the Notice of Hearing dated June 11, 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, James G. Athas, 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 under the Illinois Securities Law of 1953 (the "Rules and Regulations") states that each respondent shall be given Notice of Hearing at least 45 days prior to 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, either by certified or registered mail, return receipt requested, or by personal service of the Notice of Hearing, to the last known address of the respondent.

The filing of an application for registration under Section 8 of the Act, or the offer, sale, or delivery of securities in the State of Illinois, whether effected by mail or otherwise, by any person shall be equivalent to and shall constitute an

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appointment of the Secretary of State by the person and the issuer of the securities to be the true and lawful attorney for the person upon whom, may be served all lawful process in any action or proceeding against the person, arising out of the offer or sale of the securities. [815 ILCS 5/10(B)(1)]. Section 130.1001 of Subpart J of the Rules and Regulations provides, in part, that any notice to be served upon the Secretary of State under the Act shall be made by delivering personally to the Securities Director, or any employee of the Department designated by the Securities Director to accept such service on behalf of the secretary of state, or by sending by registered mail or certified mail return receipt requested, a copy of the notice to the Department. Service of any notice hereunder shall be made with the Springfield or Chicago office of the Department during regular business hours. Notice of the service of process upon the Secretary of State and a copy of the process shall, within 10 days after service is made or effected, be sent by registered or certified mail, return receipt requested, by the Department to the respondent at the last known address of the Respondent, [815 ILCS 5/10(B)(2)]. The Secretary of State shall keep a record of all such processes that shall show the date of service.

2. On June 11, 2004, the Department attempted to serve Respondent with the Notice of Hearing for File No. 04000272 with a hearing date set for August 11, 2004. As noted in Group Exhibit 1, on June 24, 2004, a Corrected Notice of Hearing was given Respondent to Respondent's last known address by the Department's deposit of the same with the United States Postal Service via certified mail, return receipt requested. The purpose of the Corrected Notice of Hearing was to give notice to Respondent at a new address. The mailing however, was returned to the Department as unclaimed by Respondent. The Department then proceeded to obtain service upon the Secretary of State to properly serve Respondent with the Notice. Hence, on July 9, 2004, the Secretary of State was personally delivered the Notice of Corrected Hearing by the Department. The Secretary of State then sent to Respondent at Respondent's last known address, via registered mail, return receipt requested, notice of the service thereupon of the Notice of Correct hearing on July 9, 2004. Further, the Department still pursuing service upon the Respondent personally, on July 8, 2004, a return receipt acknowledging the service of the Corrected Notice upon Respondent was via certified mailing was executed. Therefore, Respondent was served with the Notice of Corrected Hearing. However, as the hearing thereon was then scheduled to occur on August 11, 2004, the requisite 45 days notice prior to hearing was subsequently not satisfied by the Department.

On August 11, 2004, by mutual agreement of the parties herein, the Hearing Officer executed the Order of Continuance, which Order, dated August 11, 2004 (August 11' Order), continued the hearing on this file from August 11, 2004 to October 6, 2004. On August 13, 2004, the August 11<sup>th</sup> Order was given Respondent to Respondent's last known address by the Department's deposit of the same with the United States Postal Service via certified mail, return receipt requested. Further, on August 19, 2004, the Secretary of State was

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personally delivered the Order of Continuance by the Department. The Secretary of State then sent to Respondent at Respondent's last known address, via registered mail, return receipt requested, notice of the service thereupon of the Order of Continuance on August 19, 2004. Therefore, as either August 13<sup>th</sup> or August 19<sup>th</sup> are a date more than 45 days prior to the continued hearing date of October 6, 2004, Respondent was properly served with notice of the newly scheduled hearing date.

3. 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 given by personal service or registered mail or certified mail, return receipt requested, to the person concerned. Group Exhibit 1 demonstrates that on August 13, 2004 and August 19, 2004, the Department and the Secretary of State fulfilled their statutory obligations of providing at least 10 day's notice of the October 6, 2004 hearing date to Respondent by certified mail, return receipt requested and registered mail, return receipt requested. Testifying at the hearing was Neil Eisbart of the Department, who testified that the Department was utilizing Respondent's correct address as taken from the Department's records and the CRD. Hence the notice of the hearing date of October 6, 2004 was properly given Respondent. Therefore, as the Department gave proper notice of the hearing to Respondent, the Department has personal jurisdiction over Respondent.
4. The Hearing on this file occurred on October 6, 2004 at 10:00 A.M. The Department, through their enforcement officer Daniel A. Tunick, Esq., the Hearing Officer and Neil Eisbart, witness for the Department, were present. The Respondent was not present at the hearing and had not filed an Answer.
5. 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.
6. No outstanding petitions, motions or objections exist as to this file.
7. At all material and relevant times until July 9, 2003, Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
8. On February 20, 2004, without admitting or denying the NASD's alleged findings per their Letter of Acceptance, Waiver and Consent (see Exhibit 3), Respondent consented to the entry thereof, the AWC stating, in part:
  - a. Prior to and throughout his association with the Member as a registered representative, the Respondent was simultaneously employed by the

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Member's banking affiliate. Between about September, 2002 and about April, 2003, he caused the transfer of funds totaling \$88,340 from two bank accounts of customers of the Members banking affiliate without their knowledge and approval to a separate bank account over which Kerns exerted control, and converted the funds to his own personal use, in violation of NASD Conduct Rule 2110.

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)(j) of the Act provides, *inter alia*, that the registration of salespeople registered within the State of Illinois may be revoked if the Secretary of State finds that such has had membership in or association with any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act suspended, revoked, refused, expelled, cancelled, barred, limited in any capacity, or otherwise adversely affected in a similar manner arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulating organization.
3. Until July 9, 2003, Respondent has been registered salespersons of securities in the State of Illinois. On February 20, 2004, Respondent had entered against him, after due notice and opportunity for hearing from the NASD, the AWC, which states that, based on Respondent having caused the transfer of funds totaling \$88,340 from two bank accounts of customers of the Members banking affiliate without their knowledge and approval to a separate bank account over which Kerns exerted control, and converted the funds to his own personal use, Respondent's actions were in violation of NASD Conduct Rule 2110. Respondent's actions clearly arose from fraudulent or deceptive acts or practices in violation of statutes, rules or regulations administered or promulgated by the NASD, a self-regulatory organization registered under the Federal 1934 Act or Federal 1974 Act. Hence, Respondent's registration as a salesperson is subject to revocation under and by virtue of Section 8.E(1)(j) of the Act.

Further, because Respondent withdrew his registration, or his application for registration, as a salesperson of securities in the State of Illinois on July 9, 2003, a date less than two (2) years before the date on which the Department instituted revocation proceedings against Respondent, which date was June 11, 2004, the Secretary of State may enter a revocation or suspension order as of the last date on which Respondent's registration was effective, July 9, 2003, pursuant to Section 8.E(3) of the Act.

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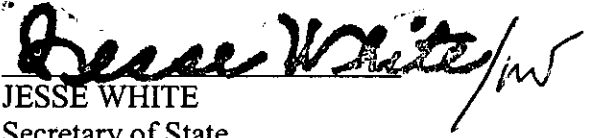
4. Under and by virtue of the foregoing, Respondent's registration as a salesperson of securities in the State of Illinois is subject to revocation pursuant to Sections 8.E (1)(j) and 8.E(3) of the Act.

WHEREAS, the Hearing Officer recommended that the Secretary of State should revoke 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.

NOW THEREFORE, IT SHALL BE AND IS HEREBY ORDERED:

1. That Brian A. Kerns' registration as a salesperson in the State of Illinois is revoked as of July 9, 2003 pursuant to the authority provided under Section 8.E(1)(j) of the Act.
2. That this matter is concluded without further proceedings.

DATED: ENTERED This 11<sup>th</sup> day of May 2005

  
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.