

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF JOSE HERNANDEZ

FILE NO. 0400791

**ORDER OF REVOCATION AND PROHIBITION**

**TO THE RESPONDENT:** Jose Hernandez  
(CRD#: 1976668)  
8770 W. Bryn Mawr  
Suite 1300  
Chicago, Illinois 60631

WHEREAS, the above-captioned matter came on to be heard on August 4, 2005, pursuant to the Notice of Hearing dated May 27, 2005, 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 Hearing Officer found that there existed jurisdiction over the Respondent, and further found that pursuant to Sections 130.1104(b) and 130.1109 of Rules and Regulations under the Illinois Securities Law of 1953 Respondent has admitted all factual allegations contained within the Notice of Hearing and therefore these allegations have been included in the proposed Findings of Fact.

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. At all relevant times, Respondent was registered with the Secretary of State as a Salesperson and Investment Adviser Representative in the State of Illinois pursuant to Section 8 of the Act.

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2. From April 2002 through July 2003, Respondent was employed by New England Financial as a salesperson and investment advisor representative, working from the Northbrook, Illinois branch office at 707 Skokie Boulevard.
3. During his employment at New England Financial, Respondent was under special supervision due to his mismanagement of his finances and filing for bankruptcy protection in 1999.
4. Mary Zurita ("Mary," or the "Complainant") is a citizen of the state of Illinois, residing at 2716 W. 23<sup>rd</sup> Place, Chicago, Illinois.
5. Ever since the untimely passing of her daughter, Mary lives with and cares for her ten-year-old granddaughter, Shirley.
6. On or about June 11, 2002, Respondent met with Mary at her home. Mary wanted to start a college savings plan for then seven-year-old Shirley.
7. At the meeting on June 11, 2002 Respondent advised Mary to invest in a College America 529 Plan issued by American Funds. Respondent filled out the application with Mary, but omitted the name and information of his firm, New England Financial.
8. At the meeting, Mary gave Respondent the amount of \$3,500.00 (THREE THOUSAND FIVE HUNDRED & 00/100 DOLLARS) in cash, made up of gifts given to Shirley on her birthdays, holidays, First Communion and other church events, as well as personal and familial celebrations.
9. Despite receiving the cash investment in the amount of \$3,500.00, Respondent filled out the application indicating a deposit by check of only the amount of \$3,000.00 (THREE THOUSAND & 00/100 DOLLARS).
10. Despite assurances to the contrary, Respondent never invested any of the same amount of \$3,500.00 into the College America 529 Plan, nor invested it in any other fund to secure Shirley's college education.
11. Instead, Respondent took the money for personal use, using the money for repairs of his personal car and for other, personal, expenses.
12. On at least two subsequent occasions Mary and Shirley entrusted the Respondent with additional money to invest into Shirley's future.
13. On or about April 26, 2003, Mary gave Respondent another three hundred dollars (\$300.00) in cash to deposit into Shirley's account and Respondent provided a receipt, written on New England Financial letterhead, for the money.

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14. Mary made a second three-hundred dollar (\$300.00) investment to Respondent of which Respondent wrote an undated receipt on the cover of a New England Financial "Education Goals" computer module print-out.
15. Despite assurances otherwise, Respondent never invested either of the subsequent deposits in the amount of \$300.00 into the College America 529 Plan, nor invested it in any fund to secure Shirley's college education.
16. As with the initial deposit, Respondent converted the subsequent deposits for personal use.
17. In or around April of the year 2003, Respondent manufactured and mailed to Mary what was purported to be a Quarterly Statement of Shirley's American Funds Account.
18. The manufactured statement was dated for the period January 1 though March 31, 2003 and indicated that the account held 246.95 shares of the American Balanced Fund at a value of \$13.97 per share with a total account value indicated in the amount of as \$3,449.99.
19. Mary complained to Respondent that the total amount of the investment's worth was less than the actual investment.
20. In response, Respondent hand wrote "\$4,123.65" at the bottom of the statement, and signed his name next to the change.
21. In July of the year 2003, Respondent manufactured and mailed what purported to be another quarterly statement. The alleged statement was dated April 1 though June 30, 2003, showing the investment as holding 259.48 shares at the same value, \$13.97 each, and a total value in the amount of \$3,624.99 (THREE THOUSAND SIX HUNDRED TWENTY-FOUR & 99/100 DOLLARS), almost \$500.00 lower than Respondent's handwritten amount on the previous purported statement.
22. In October of the year 2003, Respondent manufactured and mailed what purported to be another quarterly statement. The alleged statement was dated July 1 through September 30, 2003, showing 296.17 shares held at a value of \$13.97 each, now with a total value in the amount of \$4,123.65, the same amount Respondent had hand-written on the purported statement for the first quarter of the 2003 year.
23. In April of the year 2004, Respondent manufactured and mailed what purported to be another quarterly statement. The alleged statement was dated January through March 30, 2004, showing 366.89 shares held at a value of \$13.97 each, a total of \$5,125.51.

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24. On or about July 28, 2004, Mary, unhappy with Respondent's activity regarding the college account, contacted Respondent and requested that Shirley's money be returned.
25. Respondent advised Mary that to "get the most for [her] account" she should withdraw the money in \$1,350.00 increments on August 6, September 16, October 29, and December 15 (2004).
26. Respondent mailed Mary a letter stating the \$1,350.00 withdrawal dates, and also stating that she would receive a total of the amount of \$5,400.00 by withdrawing the investment per his instructions.
27. The letter was written on the letterhead of New Horizons Insurance and Financial Services, LLC, Respondent's place of employment after leaving New England Financial.
28. On or about August 4, 2004, Respondent purchased a check from Fifth Third Bank, Chicago, to pay Mary the amount of \$1,350.00 (ONE THOUSAND THREE HUNDRED FIFTY & 00/100 DOLLARS).
29. As of May 20, 2005, Mary received the above-identified August 4<sup>th</sup> check, but did not receive any other payments from Respondent.
30. In late September of the year 2004, Mary contacted American Funds to obtain information about Shirley's college account.
31. Chris Herbert of American Funds advised Mary to contact the police. Chris Herbert indicated that there was no record of either Mary or Shirley investing in any mutual funds or 529 plans offered by American Funds.
32. On or about December 9, 2004, Mary contacted New England Financial to obtain information about Shirley's college account; she also then forwarded the application, statements, and correspondence she received from Respondent to New England Financial.
33. New England Financial investigated the matter and found no documentation, records or information of Mary or her granddaughter, Shirley, and the purported investment in the files of same.
34. New England Financial then contacted American Funds; on December 16, 2004, same was advised by American Funds that no account in Mary's or Shirley's name existed.
35. New England Financial also informed Mary that the statements that Respondent had provided were fraudulent; that the date listed for the price of the shares did not match with the period of time the statements purported to cover; and that the

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values of the shares listed on the statements did not reflect the net asset value of the American Balanced Fund shares.

36. Respondent never told Mary that he had not invested Shirley's total funds in the amount of \$4,100.00 into a college fund.
37. On April 14, 2005, Senior Investigator Richard Diaz of the Illinois Securities Department interviewed Respondent regarding the fraudulent investment. Respondent admitted to meeting Mary at her home for financial advice regarding Shirley, advising to invest into the College America 529 Plan, taking Shirley's money from Mary, and never investing the money into the College America 529 Plan.
38. Respondent subsequently provided a signed and notarized statement to the Department where Respondent admitted not investing the money into a college account, to manufacturing and providing the false account statements, and to not informing Mary that the money was never invested into a college account.

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 12.F of the Act provides, *inter alia*, that it shall be a violation of the Act for any 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.

Section 12.H of the Act provides, in pertinent part, that it is a violation of the provisions of the Act for a person "(t)o sign or circulate any statement, prospectus, or other paper document required by any provision of this Act or pertaining to any security knowing or having reasonable grounds to know any material representation therein contained to be false or untrue."

Section 12.I of the Act provides, *inter alia*, that it is a violation of the Act for any person to employ any device, scheme, or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly.

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Section 8.E(1)(b), (c), (g), (m), and (q) of the Act provide, in pertinent part, that the registration of a dealer, salesperson, investment adviser, or investment adviser representative may be denied, suspended, or revoked if the Secretary of State finds that the investment adviser or investment adviser representative:

- a. Has engaged in any unethical practice in connection with any security, the offer or sale of securities, or in any fraudulent business practice (815 ILCS 5/8(E)(1)(b)).
  - b. Has failed to account for any money or property, or has failed to deliver any security, to any person entitled thereto when due or within a reasonable time thereafter (815 ILCS 5/8(E)(1)(c)).
  - c. Has violated any provisions of this Act (815 ILCS 5/8(E)(1)(g)).
  - d. Has conducted a continuing course of dealing of such nature as to demonstrate an inability to properly conduct the business of a dealer, limited Canadian dealer, salesperson, investment adviser, or investment adviser representative (815 ILCS 5/8(E)(1)(m)).
  - e. Has failed to maintain the books and records required under this Act or the rules and regulations promulgated under this Act or under any requirements established by the Securities and Exchange Commission or a self-regulatory organization (815 ILCS 5/8(E)(1)(q)).
3. At all relevant times, Respondent has been a registered salesperson of securities and investment adviser representative in the State of Illinois.
  4. The allegations as per paragraphs 2, 6, and 8 of the Findings of Fact, hereinabove, constitute the offer and sale of investment fund shares, which shares are securities under Section 2.I of the Act.
  5. Paragraphs 1 through 38 of the Findings of Fact allege that Respondent did not invest the Complainant's funds into the college account, and that Respondent mailed to the Complainant fraudulent statements to mislead her into believing that the funds had been invested into a college account for her granddaughter. Hence, because Respondent engaged in a practice or course of business in connection with the purchase and sale of securities that works a fraud or deceit upon the purchaser thereof, Respondent violated Section 12.F of the Act.
  6. Paragraphs 1 through 38 of the Findings of Fact allege that Respondent did not inform the Complainant that her funds were not invested in the college account, that Respondent supplied the Complainant with fraudulent account statements to mislead her into believing that her funds were invested in the college account, and that, when the Complainant asked for her money back, Respondent produced a false document purporting to inform the Complainant of the best manner by

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which to withdraw her funds from the account so as to receive the most from her investment). Hence, because Respondent made untrue statements of material fact and omitted to make statements of material fact to the Complainant to procure her funds, Respondent violated Section 12.G of the Act.

7. Paragraphs 1 through 38 of the Findings of Fact allege that Respondent mailed to the Complainant 4 (four) purported statements regarding an investment in the college account, despite Respondent's not having invested the Complainant's funds into the same, "College 529," account. Because Respondent circulated a statement pertaining to securities knowing that material representations contained in same were false or untrue, Respondent violated Section 12.H of the Act.
8. Paragraphs 1 through 38 of the Findings of Fact allege that Respondent mailed manufactured account statements to the Complainant, and the Respondent used the Complainant's funds for his own, personal, use and benefit. Because Respondent employed a device, scheme, or artifice (creating statements purporting to show an investment in securities that was never actually made) to defraud in connection with the sale or purchase of securities, Respondent violated Section 12.I of the Act.
9. Because Respondent was directed by the Complainant to invest her funds into a College 529 Account and Respondent failed or refused to so invest the funds, because Respondent mailed fraudulent statements to the Complainant to mislead her into believing that the funds she had given to Respondent were invested in the College 529 Account, and because Respondent further failed to inform the Complainant that the funds were not invested into the College 529 Account, Respondent: engaged in an unethical practice in connection with the offer and sale of securities; failed to account for Complainant's money; circulated manufactured statements containing material misrepresentations; and conducted a continuing course of dealing demonstrating an inability to properly conduct the business of a salesperson, an investment adviser, or an investment adviser representative; Respondent's registration is subject to statutory disqualification pursuant to Sections 8.E(1)(b), (c), (g), and (m).

WHEREAS, the Hearing Officer has recommended that the Secretary of State should revoke Respondent's registration as an Investment Advisor and Salesperson, and that the Secretary of State should prohibit Respondent from selling, offering for sale, or advising as to the investing in, purchase and sale of securities for compensation in the State of Illinois.

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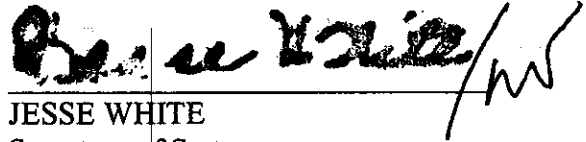
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WHEREAS, Section 8.E(3) of the Act provides that the Secretary of State may institute a revocation or suspension proceeding within 2 years after withdrawal from registration as a salesperson or investment advisor.

NOW THEREFORE, IT SHALL BE AND IS HEREBY ORDERED:

1. That Jose Hernandez's registration as an Investment Advisor and Salesperson in the State of Illinois is **REVOKED**, effective July 23, 2003, pursuant to the authority provided under Sections 8.E(1)(b), (c), (g) and (m), and 8.E(3) of the Act.
2. That Jose Hernandez is permanently **PROHIBITED** from selling, offering for sale, or advising as to the sale of securities in the State of Illinois.
3. That this matter is concluded without further proceedings.

ENTERED: This 8<sup>TH</sup> day of March, 2006.

  
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 Act. Any person or entity that fails to comply with the terms of this Order of the Secretary 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 Illinois Securities Act (14 Ill. Admin. Code, Ch. I, 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.