

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

IN THE MATTER OF:)

Jerry Miller,)

**James David Browning, a/k/a Dave
Browning,**)

ER Urgent Care Management Co., Inc.,)
and its partners, members, officers, directors,)
agents, employees, affiliates, successors, and)
assigns,)

File No. 0800388

ER Urgent Care Holdings, Inc., and its)
partners, members, officers, directors,)
agents, employees, affiliates, successors,)
and assigns.)

ORDER OF PROHIBITION

TO THE RESPONDENT:

Jerry Miller
700 Ives Dairy Road
North Miami Beach, FL 33179

Jerry Miller
16590 Northeast 26th Avenue, Apt. 403
North Miami Beach, FL 33160

Jerry Miller
P.O. Box 300658
North Miami Beach, FL 33160

WHEREAS, the above-captioned matter came on to be heard on September 29, 2010 pursuant to the Notice of Hearing dated July 12, 2010 and the Order of Continuance dated September 13, 2010, served on the Respondents 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 proper and are hereby concurred with by the Secretary of State.

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WHEREAS, the proposed Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer, Soula J. Spyropoulos, in the above captioned matter have been read and examined by the Secretary of State or his duly authorized representative.

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

1. Section 11.E of the Act provides, in pertinent part, that, if the Secretary of State shall find that the offer or sale, or method of offer or sale, of any securities by any person in the State of Illinois is fraudulent, or would work, or tend to work, a fraud or deceit, or is being offered or sold in violation of Section 12 of the Act, or there has been a failure or refusal to submit any registration or notice filing or fee required under the Act, then the Secretary of State may, by written order, temporarily or permanently prohibit the person from engaging in the business of offering for sale or selling securities in the State of Illinois.

Subsection (3) of Section 11.E provides, further, in pertinent part, that, if the Secretary of State shall find that any person is engaging or has engaged in the business of offering for sale or selling securities as a dealer or salesperson, without prior thereto and at the time thereof having complied with the registration or notice filing requirements of the Act, then the Secretary of State may, by written order, prohibit the person from engaging in the business of offering for sale or selling securities.

As the transaction herewith involves the offer and sale by Respondent Miller of a security, stock, in the State of Illinois that is, first, fraudulent, as the Complainant was defrauded of the amount of \$20,000.00, second, in violation of Section 12 of the Act, and, third, made even though the security was not registered as required by the Act, the Secretary of State has jurisdiction to enforce the provisions of the Act under and by virtue of the provisions of Section 11.E of the Act.

2. Section 130.1102(f) 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 a notice of hearing at least 45 days before the first date set for any hearing under the Act. Proper notice under this section is given by depositing a notice of hearing with the U.S.P.S. for delivery via certified or registered mail, return receipt requested, or by delivering the notice of hearing via the personal service thereof to the last known address of the respondent. Once such notice is given, the Department shall notify the respondent in writing at the last known address of the respondent of any subsequent hearing date.

Any contention that improper notice was given shall be deemed waived unless a respondent raises same in the same respondent's answer, special appearance, or other responsive pleading. (Rules and Regulations, Subpart K, Section 130.1102(e))

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The Notice states that the first date set for hearing on the File is the date of September 14, 2010. The evidence per the Department's Exhibit 1 shows that, on July 12, 2010, the Department deposited the Notice with the U.S.P.S. for the delivery or mailing thereof to Respondent via certified U.S.P.S. mail, with a request for a return receipt from the addressee/Respondent. Because the Notice was deposited with the U.S.P.S. on July 12, 2010, the Notice was given as of that date. Because the date of July 12, 2010 is a date occurring more than forty-five (45) days before the date of September 14, 2010, the first date set for hearing on the File, the Department served the Notice properly, or in accordance with the provisions of the Rules and Regulations.

Section 11.F(1) of the Act provides, in pertinent part, that the Secretary of State shall not prohibit or suspend the offer or sale of any securities, prohibit or suspend any person from offering or selling any securities in the State of Illinois, prohibit or suspend a person from acting as an investment adviser or investment adviser representative, or impose a(ny) fine for a(ny) violation of the Act without first providing 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 hereinabove, the evidence per the Department's Exhibit 1 shows that the Notice was given on July 12, 2010, a date occurring not only more than ten (10) days before the first date set for hearing on the File (September 14, 2010), but also more than forty-five (45) days before the September 14th date. Hence, as Respondent was given more than ten (10) days' notice of the scheduled hearing date, Respondent was given proper notice of his opportunity to be heard on the File. Hence, service of process upon Respondent of the Notice as to the first date set for hearing on the File was properly given not only under the Rules and Regulations, but also under the Act.

Per the Department's Exhibits 3 and 4, on September 14, 2010, the Department also deposited the Order of Continuance (continuing hearing on the File from the first date set for hearing, September 14, 2010, to the subsequent/actual date set for hearing, September 29, 2010) with the U.S.P.S. for the certified mailing thereof, with a request for a return receipt from the addressee/Respondent, to not only Respondent's last known street address, but also to Respondent's last known P.O. Box address. Per the Department's Exhibit 4, on September 21, 2010, Respondent executed the green cards associated with both deposits or mailings. Hence, as the Order of Continuance was deposited with the U.S.P.S. for its mailing to Respondent on September 14, 2010, notice of the September 29th hearing date was given as of that date. Further, Respondent's execution, on September 21st, of the two (2) respective green cards associated with the respective mailings of the Order of Continuance to both his last known street and P.O. Box addresses is proof of actual notice to Respondent of the subsequent (and actual) hearing date on the File, which occurred eight (8) days later. As the Department gave proper written notice to Respondent at Respondent's last known street and P.O. Box addresses of not only the first date set for hearing on the File but also of the subsequent, actual date set for hearing on the File, the Department

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gave proper notice of all hearings dates on the File to Respondent under the provisions of the Rules and Regulations.

Further, no answer, special appearance, or other responsive pleading has been filed by or on behalf of Respondent, much less any document raising a contention of improper notice. Hence, any contention as to the Notice having been given improperly shall be deemed waived.

Therefore, as the Department gave proper notice to Respondent of not only the first date set for hearing on the File but also of the date to which (actual) hearing on the File was continued, the Department has established the personal jurisdiction of the Secretary of State over Respondent.

3. Respondent did not appear, and no counsel appeared on Respondent's behalf, at the hearing.
4. The Department offered exhibits, identified above, each of which was moved for entry into evidence, 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 as per Department Exhibits 5, 6, 7, 8, 9, and 10, Department investigator Bob Grogan offered his sworn testimony; and, as per Department Exhibits 11 and 12, the Complainant offered his sworn testimony; all witness testimony also becoming part of the evidence brought forth by the Department.
5. No outstanding petitions or objections exist as to the proceedings on the File, however, based on Respondent's failure to file an answer in response to the Notice, and on Respondent's failure to appear at the Hearing, at the hearing, the Department, accordingly, motioned for the entry of an order finding, first, that Respondent is to be deemed to have admitted to the allegations of the Notice, which motion was based upon Section 130.1104(b) of the Rules and Regulations, and, second, that Respondent is in default, which motion is based upon Section 130.1109 of the Rules and Regulations. Based on the evidence brought forth at the hearing, the Department's motions were granted, *instanter*, at the hearing on September 29, 2010.
6. In accordance with the Notice:
 - (1.)[COUNT I] Respondent is the founder and director of both ER Urgent Care Management Co., Inc. and ER Urgent Care Holdings, Inc. and has last known addresses of 700 Ives Dairy Road, North Miami Beach, FLA 33179, 16590 Northeast 26th Avenue, Apartment 403, North Miami Beach, FLA 33160, and P.O. Box 300658, North Miami Beach, FLA 33160.
 - (2.)ER Urgent Care Management Co., Inc. ("Respondent Management") is an entity with a last known address of 700 Ives Dairy Road, North Miami Beach, FLA 33179.

(3.) ER Urgent Care Holdings, Inc. ("Respondent Holdings") is an entity with a last known address of 700 Ives Dairy Road, North Miami Beach, FLA 33179.

(4.) Both Respondents Management and Holdings filed Annual Reports with the Secretary of State of Florida. Their February 22, 2006 filings indicate that Respondents Management and Holdings share the same business address at 700 Ives Dairy Road, North Miami Beach, FLA 33179, and that Respondent is (or was then) the director of both Respondents Management and Holdings.

(5.) Respondents Management and Holdings shall hereinafter be referred to collectively as "ER Urgent Care[.]"

(6.) As early as the year 2001, Respondent and others at ER Urgent Care began soliciting investments in ER Urgent Care stock.

(7.) Respondent corresponded with Illinois residents to discuss investments in ER Urgent Care, to provide information about ER Urgent Care to potential investors, and to address investor concerns.

(8.) Investor A (the "Complainant") is an Illinois resident who was initially contacted by Respondent in June of the year 2006. Respondent mailed information about ER Urgent Care and investments in the companies to the Complainant.

(9.) For example, on June 13, 2006, Respondent mailed a letter to the Complainant that lauded the progress and increased profitability of ER Urgent Care. In this letter, Respondent states:

We are very pleased with our progress this past year. Both our patient volume and revenues have increased[,] as well as the size of our organization. By the end of this year, we will have added a total of five new locations. We hope to at least double this growth next year. With our audits complete, we are now preparing our long-awaited SB-2 filings to change the venue of trading from Pink Sheets to the Bulletin Board. That filing is expected to go out by December 15th.

(10.) In this same letter, Respondent solicits an investment in ER Urgent Care's stock offering[, making] the following offer to the Complainant:

The Offering of Preferred Shares of ERUG is as follows:

**1 Unit = \$10,000.00 = Half Preferred and Half Common
at \$0.14 = 71,248 total shares.**

(11.) As a direct result of Respondent's solicitations, the Complainant invested the amount of \$20,000.00 (TWENTY THOUSAND & 00/100 DOLLARS) in ER Urgent Care's stock offering on June 29, 2006. The Complainant's investment was deposited via wire transfer into one of ER Urgent Care's bank accounts at Bank Atlantic, of which Respondent is the sole signatory.

(12.) In the process of offering and selling shares of ER Urgent Care's stock to the Complainant, Respondent omitted to inform the Complainant that Respondent and ER Urgent Care were named as defendants in a civil action alleging that Respondent and ER Urgent Care committed securities fraud in violation of federal and state securities laws.

(13.) The aforementioned civil action (referred to hereinbefore as the "Lawsuit") was filed in Federal District Court on September 18, 2003. Among the factual allegations that the Plaintiff states in the Complaint or Lawsuit against Respondent and ER Urgent Care:

3.36 The end result was that Plaintiff invested [the amount of] \$450,000.00 in the ER Urgent Care Center between September 19, 2002 and December 17, 2002. He purchased \$350,000.00 of common stock and \$100,000.00 of convertible notes with 12% interest. Plaintiff never received any signed writing from Defendants verifying their obligation to him or explaining his rights. He never received an accredited investor questionnaire, never discussed whether he was an accredited investor or what one was, and was in fact not an accredited investor.

3.37 The ER Urgent Care Center solicited investment funds from Plaintiff despite never having filed a Form D with the Securities Exchange Commission. The Securities were unregistered.

3.38 Since early 2003, the ER Urgent Care Center has repeatedly rebuked any and all requests by Plaintiff to inspect the company's financial statements and records.

3.39 Upon information and belief, Jerry Miller has absconded with a large portion of Plaintiff's funds and converted them to his own use to finance his own personal lifestyle and purchases.

3.40 Even after Plaintiff and his counsel made Jerry Miller and the ER Urgent Care Center aware that Plaintiff was certainly not an accredited investor, defendants Miller, [Nathan] Mirskey, and the ER Urgent Care Center persisted in trying to solicit investment funds from Plaintiff. This continued even through July 2003, via written materials mailed to Plaintiff. Miller and Nathan Mirskey also continued to call and promise to return all of Plaintiff's money back. They also repeatedly asked Plaintiff whether investigators had contacted him and promised to give back all of Plaintiff's money if he would not say anything to investigators.

3.41 Plaintiff has not received any of his invested funds back despite repeated requests for rescission.

(14.) As a result of the Lawsuit, on August 8, 2005, a civil judgment in the amount of \$494,489.10 (the "Judgment") was entered for Plaintiff and against Respondent, ER Urgent Care, and others.

(15.) As of June 13, 2006, the date that Respondent had initially solicited investments from the Complainant, the Judgment was unsatisfied.

WHEREAS, the following 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. As discussed, the Secretary of State has jurisdiction over the subject matter hereof pursuant to the Act, and has personal jurisdiction over Respondent under and by virtue of the provisions of both the Act and the Rules and Regulations.
2. At all relevant times, Respondent has never registered any securities for offer or sale within the State of Illinois.
3. At the hearing on September 29, 2010, Department witness Bob Grogan, a senior securities investigator with the Department, testified that his investigation of the File revealed that: Miller is listed with the Secretary of State of the State of Florida as the director of both Respondents Management and Holdings, per same Respondents' filings therewith as of February 22, 2006 (see Department Exhibits 5 and 6); Respondents Miller and Management were litigated against in the Lawsuit, filed on

September 18, 2003, the litigation resulting in a judgment in the amount of \$494,489.10 being entered against same Respondents on August 8, 2005, which judgment was not satisfied in full until June 17, 2008 (see Department Exhibits 7, 8, and 9); and that, per Department Exhibit 10, no securities as to any of the named Respondents as to the File have been registered in the State of Illinois.

At the hearing, the Complainant also provided testimony, stating that in early 2006, Respondent Browning contacted him via telephone to inform the Complainant as to the growth of Respondent Management, whereupon the Complainant then told same Respondent that he was interested in seeing information about Respondent Management's growth from Respondent Miller, who the Complainant understood to be the owner of Respondent Management.

The Complainant further testified that on June 13, 2006, Respondent Miller mailed him documentation that included specifically a letter directly addressed to the Complainant and signed by Respondent Miller as Executive Director of ER Urgent Care, which letter discusses the growth, expansion, and increased revenues of ER Urgent Care and solicits an investment from the Complainant in ER Urgent Care's stock offering, the offer of preferred shares in ER Urgent Care being made as follows: 1 unit = \$10,000.00 = half Preferred and half Common at \$0.14 = 71,248 total shares (see Department Exhibit 11).

The Complainant further testified that, after looking into the validity of ER Urgent Care (via reviewing the pink sheets that Respondent Miller had sent as part of the documentation mailed on June 13, 2006, and also via seeing that an ER Urgent Care building was then being erected in Miami, Florida), on June 29, 2006, the Complainant purchased 2 units of stock in ER Urgent Care, at the amount of \$20,000.00, which amount the Complainant delivered to Respondents Miller and ER Urgent Care via wire transfer from his account at LaSalle Bank to same Respondents' account at Bank Atlantic, pursuant to the instructions--both verbal and written--given him by Respondents Miller and ER Urgent Care; and that, a few days later, Respondent Miller called the Complainant, thanking him for the investment. (see Exhibits 11 and 12)

The Complainant further testified that, when he purchased the stock: based on his review of the pink sheets that Respondent Miller had mailed to him, he understood that the value of the stock was double, based on the then-current trading of the stock market; he was unaware of the Lawsuit filed on September 18, 2003 or the judgment in the amount of \$494,489.10 entered on August 8, 2005 against Respondents Miller and Management, per Exhibits 7 and 8; and that, had he then been aware of the Lawsuit (which he had first become aware of at the hearing itself, where he was presented with Exhibits 7 and 8 for his review), he would not have made the investment; noting that when he wired the funds, he did not realize that in exchange for the amount of \$20,000.00 Respondent Miller would provide a certificate of restricted shares, which meant that the Complainant would have to wait a period of one (1) year before his shares would be converted to common stock, and that, when

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he did receive his certificate, he was unable to trade his shares, as, by the time he did receive his shares, the stock was worthless.

The Complainant testified that he made various demands (via email and telephone/voice mail) to Respondent Miller for a refund of his investment, and that he ultimately hired an attorney to pursue the matter, however, the attorney was met with the response, from Respondent Miller, of same Respondent's inability to refund the money.

As of the hearing date: the Complainant had not received any amount(s) from Respondent Miller; and the only remaining named Respondent on the File against whom an order has not been entered is Respondent Miller.

Based on the allegations per the Notice of Hearing, on Respondent's failure or refusal to respond or appear at hearing to respond thereto, and on the witnesses' testimony at the hearing conducted on September 29, 2010, Respondent Miller should be found liable not only directly as to any and all allegations against him, but also via being a control person, as the violations of the Act were under his control.

Any note, stock, debenture, evidence of indebtedness, certificate of interest or participation in a profit-sharing agreement, investment contract, or, in general, any interest or instrument commonly known as a "security" is a "security[.]" as defined under Section 2.1 of the Act.

The Complainant purchased stock (or an interest in stock) and (ultimately) received a certificate of restricted shares in a stock. Stock is a security, and stock certificates are securities, as defined under Section 2.1 of the Act.

"Offer" shall include every offer to sell or otherwise dispose of, or solicitation of an offer to purchase, whether orally or by publication, a security or interest in a security for value. (Section 2.5a of the Act)

The letter that Respondent mailed to the Complainant, an Illinois resident, on June 13, 2006 was written on ER Urgent Care Centers letterhead and solicits an investment in ER Urgent Care's stock offering with "[t]he Offering of Preferred Shares of ERU[C] is as follows: 1 Unit - \$10,000.00 = Half Preferred and Half Common at \$0.14 = 71,428 total shares[;] the Preferred Shares are convertible 2 for 1 to Common Shares at [t]he time of the completion of the SB-2 Registration." The contents of the letter constitute Respondent Miller's and ER Urgent Care's written solicitation to the Complainant of an offer by the Complainant (to whom the letter is directly addressed) to purchase a security or interest in a security for value. The value involved is the amount of \$20,000.00 that the Complainant decided to, and did, tender (however, to Respondent Management, not to ER Urgent Care Centers, or to Respondent Miller, or to Respondent Holdings), for 2 units of the security or stock. (See the Department's Exhibit 12)

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"[S]ale" or "sell" shall include every contract of sale or disposition of a security or interest in a security for value. (Section 2.5 of the Act)

The Complainant's testimony reveals that while the Complainant thought that he was directly investing in a security--that the stock certificates would be issued when he purchased the stock, not at a later time--Respondent Miller, however, treated the Complainant's investment as one involving the Complainant's tendering value, the amount of \$20,000.00, for an interest in a security, as the stock certificate issued to the Complainant was issued at a later time than--not at the same time as--the investment, at a time when the Complainant was unable to convert or trade his stock successfully, as the stock was then worthless.

In any event, Respondent did sell a security to the Complainant, as a contract of sale or a disposition of a security or interest in a security for the value or amount of \$20,000.00 did occur. (Section 2.5 of the Act)

Hence, the transaction between the Complainant and Respondent Miller constitutes the offer and sale of a security to an Illinois investor in the State of Illinois, as defined under Sections 2.1, 2.5a, and 2.5 of the Act.

As to the Alleged Violations of the Act as per Count I of the Notice of Hearing:

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.

Respondent Miller offered (on June 13, 2006) and sold (on June 29, 2006), for the amount of \$20,000.00, to the Complainant stock in ER Urgent Care that had not only not been registered for offer or for sale within the State of Illinois, but that had also been subject to an unsatisfied judgment in the amount of \$494,489.10 against Respondents Miller and Management, entered on August 5, 2005, almost one year prior to the transaction. Therefore, the letter that Respondent Miller sent to the Complainant on June 13, 2006 misrepresented to the Complainant the growth of the company, as the letter contains no statements as to the then-unsatisfied judgment.

As Respondent Miller engaged in a transaction or course of business in connection with the sale to and purchase by the Complainant of ER Urgent Care stock, a security, that worked a fraud or deceit upon the Complainant, Respondent Miller violated the provisions of Section 12.F of the Act.

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.

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During the course of the dealings resulting in the transaction (on June 29, 2006) between Respondent Miller and the Complainant, Respondent never informed the Complainant of the fact of the unsatisfied judgment in the amount of \$494,489.10 entered on August 5, 2005 against Respondents Miller and Management, or of the fact that ER Urgent Care stock was not registered for offer or sale within the State of Illinois, the state where the Complainant resided; however, in the letter, dated June 13, 2006, Respondent Miller solicits an investment from the Complainant via touting the growth and expansion of ER Urgent Care. The Complainant testified that he entered into the transaction, and gave the amount of \$20,000.00, by means and on account of the letter, the pink sheets that were part of the documentation that accompanied the letter, and seeing that an ER Urgent Care building was under construction in Florida; and that he would not have entered into the transaction had he known of the then-unsatisfied judgment.

As Respondents Miller and Management obtained the amount of \$20,000.00 from the Complainant through the sale of a security by means of untrue statements of material fact--that Respondent was "pleased with [the] progress[,] patient volume, and revenues of ER Urgent Care "this past year" while, in that same past year, Respondents Miller and Management became judgment debtors in a judgment totaling almost \$500,000.00--and by omitting to state to the Complainant the facts of the judgment entered on August 5, 2005 and of how the judgment remained unsatisfied as of June 13, 2006, the date the statements were made in the letter of June 13, 2006, in order to make the statements about the growth of ER Urgent Care, in light of the circumstances under which the statements were made, not misleading, Respondent Miller violated the provisions of Section 12.G of the Act.

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

As Respondent Miller directly employed a device (the June 13th letter and accompanying documentation), scheme (his intentional omission of information as to the judgment and the unregistered security), and artifice (the building under construction--but never completed to be a going concern) to defraud the Complainant of the amount of \$20,000.00 in connection with the sale to, and purchase by, the Complainant of ER Urgent Care stock, Respondent Miller violated the provisions of Section 12.I of the Act.

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.

As Respondent Miller offered and sold stock, a security, in violation of the provisions of Sections 12.F, 12.G, and 12.I of the Act, Respondent violated the provisions of Section 12.A of the Act.

As to the Alleged Violations of the Act as per Count II of the Notice of Hearing:

Section 5 of the Act provides, in pertinent part, that all securities except those exempt under Section 3 of the Act or those offered or sold in transactions exempt under Section 4 of the Act "shall be registered either by coordination or qualification...prior to their offer or sale" in the State of Illinois.

Per Department Exhibit 10, no securities as to any of the named Respondents on the File were ever registered within the State of Illinois prior to their offer or sale. Hence, as the stock that Respondent Miller sold to the Complainant was not registered within the State of Illinois prior to their transaction, and as the stock is not exempt under the provisions of either of Section 3 or Section 4 of the Act, Respondent Miller violated the provisions of Section 5 of the Act.

Section 12.D of the Act provides, *inter alia*, that it shall be a violation of the Act for any person to fail to file with the Secretary of State 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, or to fail to comply with the terms of any order of the Secretary of State issued pursuant to Section 11 of the Act.

Per the Department's Exhibit 10, Respondent has never registered (or filed) with the (Illinois) Secretary of State any securities for offer or sale in the State of Illinois. Hence, as the stock that Respondent Miller sold to the Complainant was never registered in the State of Illinois, and registration of stock is required under Section 12.D of the Act, Respondent also violated the provisions of Section 12.D of the Act.

Section 12.A of the Act provide, *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.

Because Respondent Miller offered and sold stock, a security, in violation of the provisions of Section 12.D of the Act, Respondent has violated the provisions of Section 12.A of the Act, as well.

Every sale of a security made in violation of the provisions of [the] Act shall be voidable at the election of the purchaser...and the issuer, controlling person, underwriter, dealer[,] or other person by or on behalf of whom said sale was made, and each underwriter, dealer[,] or salesperson who shall have participated or aided in any way in making the sale, and in case the issuer, controlling person, underwriter[,] or dealer is a corporation or unincorporated association or organization, each of its officers and directors (or persons performing similar functions) who shall have participated or aided in making the sale, shall be jointly and severally liable to the purchaser[.] [Section 13 of the Act]

As Respondent Miller effected a transaction to sell a security to the Complainant in violation of the provisions of Sections 5, 12.A, 12.D, 12.F, 12.G, and 12.I of the Act,

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the sale so made in violation of the Act shall be voidable at the election of the Complainant; and as the issuer of the security, ER Urgent Care, is corporate in nature, Respondent Miller, director of ER Urgent Care, who directly aided and participated in making the sale, shall be jointly and severally liable to the Complainant-purchaser as a control person.

Further, as Respondents Miller and Management were judgment creditors as to an unsatisfied judgment that was entered just over ten (10) months before Respondent Miller sold stock in ER Urgent Care to the Complainant, as Respondent Miller touted the growth and expansion of ER Urgent Care over "the past year" in June 2006 (when the judgment was still unsatisfied and not even one (1) year in existence), as ER Urgent Care stock was never registered with the Illinois Secretary of State at the time of the transaction, as Respondent Miller was the only named director as to Respondents Management and Holdings, as Respondent Miller had direct control over the issuance and delivery of the letter solicitation to the Complainant of an investment in ER Urgent Care, as same letter is from "ER Urgent Care Centers" but the Complainant's funds were deposited into Respondent's Management's account (meaning Respondent Management and ER Urgent Care did not maintain an arm's-length relationship), and as the Complainant was defrauded of the amount of \$20,000.00 (as the Complainant would not have invested into ER Urgent Care had he known of the judgment entered not even one year before against Respondents Miller and Management), Respondent Miller should be held directly liable for any and all violations of the Act.

WHEREAS, the Hearing Officer recommends that:

1. The Hearing Officer herewith finds that, as to Counts I and II of the Notice alleging Respondent's violations of Sections 12.A, 12.D, 12.F, 12.G, and 12.I of the Act, Respondent is deemed to have admitted to the allegations of the Department therein, and that Respondent's failure to appear at the hearing constitutes a waiver of any and all rights Respondent had had with respect to disproving the Department's case.

The Hearing Officer, thus, recommends that the Secretary of State enter an appropriate order wherein, in addition to any other sanctions, a finding of default is to be entered against Respondent.

The Hearing Officer further recommends that the order of the Secretary of State will contain provisions prohibiting Respondent from offering for sale or from selling securities in the State of Illinois. [815 ILCS 5/5, 12.A, 12.D, 12.F, 12.G, and 12.I].

The Secretary of State adopts the Recommendations made by the Hearing Officer in their entirety.

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NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondent **Jerry Miller** is in default.
2. Respondent **Jerry Miller** is hereby **PROHIBITED** from offering or selling any securities in or from the State of Illinois.

Dated this 24th day of January, 2012.



JESSE WHITE
Secretary of State
State of Illinois

NOTICE: Failure to comply with the terms of this Order shall be a violation of the Section 12.D of the Act. Any person or entity who fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of the 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, Section 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:
James Gleffe
Office of the Secretary of State
Illinois Securities Department
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