

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

IN THE MATTER OF:)	
)	
Exceptional Investment, Inc.,)	
)	
Peter Guzman,)	File No: 0500621
)	
Jimmy Rivera.)	
)	

ORDER OF PROHIBITION

TO THE RESPONDENT: Exceptional Investment, Inc.
 2101 N. Western Avenue
 Chicago, Illinois 60647

 Peter Guzman
 336 N. Minneola
 Hinsdale, Illinois 60521

 Jimmy Rivera
 5518 W. North Avenue
 Chicago, Illinois 60639

WHEREAS, the above-captioned matter came on to be heard on March 26, 2009 pursuant to the Notice of Hearing dated November 7, 2008 and the Orders of Continuance dated January 13, 2009 and March 16, 2009, 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.

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.

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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 130.1102 of Subpart K of the Rules and Regulations of the Illinois Securities Law of 1953 (the "Rules and Regulations") states, in part, 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, 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.

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

Actions arising out of or founded upon the offer or sale of any securities in violation of the Act may be commenced against a person who has executed the consent to service of process by the service of process upon the Secretary of State. The filing of an application for registration under 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 appointment of the Secretary of State by the person to be the true and lawful attorney for the person upon whom may be served all lawful process or pleading in any action or proceeding against the person, arising out of the offer or sale of the securities. Service of process or pleadings upon the Secretary of State shall be made by serving a copy upon the Secretary of State or upon any employee in his or her office designated by the Secretary of State to accept such service for him or her, provided notice of such and a copy of the process are, within ten (10) days thereafter, sent by registered mail or certified mail, return receipt requested, by the plaintiff to the defendant. (Section 10(A), (B) of the Act.)

2. The evidence provided in the Department's Group Exhibit D and in the Department's testimony shows that the Department deposited the Notice with the U.S.P.S. by certified mail, return receipt requested, to Respondent Exceptional Investment's last known address on November 20, 2008. Thus, the Department gave Respondent Exceptional Investment the Notice on November 20, 2008. As amended at the hearing pursuant to the hearing officer's granting of the Department's oral motion to amend the first page of the Notice to correct the scrivener's error of "January 13, 2006[,]," the Notice marks as the first date set for hearing the date of January 13, 2009, a date over forty-five (45) days after Respondent Exceptional Investment was first given the Notice on November 20, 2008. Therefore, the service of the Notice of the first date set for hearing on the File upon Respondent by the Department was

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proper under Section 130.1102 of the Rules and Regulations. Further, given that the first date set for hearing (January 13, 2009) is a date over ten (10) days after Respondent Exceptional Investment was first given the Notice on November 20, 2008, service of the Notice of the first date set for hearing was proper also under Section 11.F(1) of the Act.

Lastly, on November 25, 2008, the Department provided Respondent Exceptional Investment, as well as Respondents Guzman and Rivera, adequate notice of their opportunity to be heard on the File via their service (or indexing) of the Notice upon the Secretary of State. Because, on November 25, 2008, (1.) the service of the Notice upon the Secretary of State was made by serving a copy thereof upon an employee thereof in their office designated by the Secretary of State to accept such service for same; (2.) notice of the service of the Notice and a copy of the Notice were, on November 25, 2008, the same date of the service, sent by certified U.S.P.S. mail, return receipt requested, by the Secretary of State to each of Respondents; and (3.) the date of November 25, 2008 is a date occurring more than forty-five (45) days before the then-scheduled hearing date of January 13, 2009, service of the Notice upon Respondents via the service thereof upon, or the indexing thereof with, the Secretary of State was proper under Section 130.1102 of the Rules and Regulations. Further, as the date of November 25, 2008 is a date occurring more than ten (10) days before the then-scheduled hearing date of January 13, 2009, the Department's service of the Notice upon Respondents via their serving the Secretary of State was proper under Section 11.F(1) of the Act.

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

3. Respondents failed or refused to appear at the hearing.
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, Richard Diaz offered his sworn testimony, which testimony also became part of the evidence brought forth by the Department.
5. Further, at the hearing, pursuant to Section 130.1109 of the Rules and Regulations, the Department moved, and argued, for a finding of default against Respondent, which motion was granted *instanter* by the hearing officer.
6. No outstanding petitions, motions, or objections exist as to the File.
7. Per the Notice:

(1.) Respondent Guzman's last known address is 336 North Minneola,
Hinsdale, Illinois 60521.

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- (2.) Respondent Rivera's last known address is 5518 West North Avenue, Chicago, Illinois 60639.
- (3.) Respondent Exceptional Investment's last known address is 2101 North Western Avenue, Chicago, Illinois 60647.
- (4.) At all relevant times, Respondents Guzman and Rivera owned Respondent Exceptional Investment.
- (5.) At all relevant times, W.D. and H.R. have been Illinois residents.
- (6.) On or about November 24, 2004, Respondents solicited H.R. to purchase a promissory note.
- (7.) On November 24, 2004, H.R. did purchase from Respondents a promissory note ("Note #1") for the amount of \$50,000.00.
- (8.) Respondents represented to H.R. that the funds received by Respondents were to be used for the purchase of a real estate project in Illinois.
- (9.) The terms of Note #1 state that H.R. shall earn a 30% to 40% rate of return within six (6) to eight (8) months from November 24, 2004, plus a return of H.R.'s principal.
- (10.) Respondents requested that H.R. pay them the amount of \$50,000.00 in the form of a series of checks made out to Stella Juarez and a final check, in the amount of \$10,000.00, made to W.D.
- (11.) Respondents represented to H.R. that W.D. was Respondents' accountant.
- (12.) W.D. is not an accountant and has never been an accountant for any of Respondents.
- (13.) In fact, W.D. was a creditor of Respondents who was owed money by Respondents at the time of the sale of Note #1 for a previously executed note purchased by W.D. from Respondents.
- (14.) The check in the amount of \$10,000.00 that H.R. wrote to W.D. and gave to Respondents for Note #1 was actually used to pay W.D. money that was owed to W.D. on a prior note that he had purchased from Respondents.
- (15.) Respondents failed to disclose to H.R. that the check in the amount of \$10,000.00 that H.R. wrote to W.D. was not going to be used for

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investment purposes by Respondents but rather to pay off a prior creditor.

- (16.) Furthermore, Respondents failed to disclose that they had defaulted on a note similar to Note #1, that Respondents had sold to W.D.
- (17.) H.R. has repeatedly demanded the return of the principal and interest owed to him on Note #1.
- (18.) To date, Respondents have failed and refused to pay the principal and interest owed to H.R. on Note #1.
- (19.) Respondents' activities involve the sale of a promissory note and, therefore, a security.

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. The Secretary of State has jurisdiction over the subject matter hereof pursuant to the Act.
2. A note, certificate of interest, investment contract, or participation in any profit-sharing agreement, investment contract, or, in general, any interest or instrument commonly known as a "security" is a security under the Act. [815 ILCS5/2.1]

"Sale or sell" includes every contract of sale or disposition of a security or interest in a security for value. Any security given with or as a bonus on account of any purchase of securities or property shall be conclusively presumed to constitute a part of the subject of such purchase and shall be deemed to have been sold. [815 ILCS 5/2.5]

"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 printed and electronic media, a security or interest in a security for value. [815 ILCS 5/2.5a]

All securities except those exempt under Section 3 of the Act or those offered and sold in transactions exempt under Section 4 of the Act shall be registered either by coordination or by qualification before their offer or sale in the State of Illinois. (815 ILC 5)

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.

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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.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.

3. Per the Notice, H.R.'s testimony, and the Department's Exhibit "A[.]" on or about November 24, 2004, Respondents offered to sell or solicited H.R. an offer to purchase a promissory note; and H.R., together with his wife, Nydia Rodriguez ("N.R."), were sold the note, Note #1 (as referenced in the Notice), for the amount of \$50,000.00. The agreement or contract of sale or disposition of the note or security was memorialized in the document entitled "Memorandum of Understanding[.]" executed by Respondents, H.R., and N.R. as of the same, November 24th, date. (See the Department's Exhibit A.)

H.R.'s testimony reveals that Respondents knew when the Memorandum of Understanding was executed that the purpose of the investment in Note #1 for H.R. and N.R. was to earn the stated return for the benefit of their two (2) wheelchair-bound children. Just before the Memorandum was executed, Respondents Guzman and Rivera told H.R. that, upon investing with Respondents, H.R. and N.R. would receive a guaranteed return of 30%; that H.R. and N.R. would be able to be refunded their principal on demand after eight (8) months; and that the investment funds would be used for real estate projects. Nonetheless, the Memorandum states that the investment funds would be used to "fund a project" by Respondent Exceptional Investment, however, it does not describe the type or location of any project, and, rather, states "N/A" in response to, or after, "the investment will be to fund a project...located at[.]" Further, at the hearing, H.R. stated that the funds were not used for material related to any real estate project.

The testimony of the Department witness Richard Diaz sheds light on how Respondents disposed of the funds. Not only were the funds in the amount of \$50,000.00 not used for their intended purpose, to fund real estate projects, but part of the funds, the amount of \$10,000.00, was also used by Respondents as and for their partial payment to a prior creditor of theirs (W.D.) on a previously executed investment contract, the creditors thereunder being W.D. and his wife, and Christine Danilowski ("C.D."). (See the Department's Group Exhibit "C[.]") Further, when H.R. issued the checks, he was told by Respondent Guzman that the payees Stella Juarez and W.D. were the administrative assistant and accountant for Respondent Exceptional Investment, respectively, when, in reality, these individuals were, at all material and relevant times, the wife of Respondent Guzman and a creditor of Respondent Exceptional Investment and/or Respondents, respectively.

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4. A note is a security. Note #1, therefore, is a security. Note #1 was offered and sold. Hence, an offer and a sale of a security, as defined under the Act, did occur.

First, as Respondents failed or refused to use the funds in the amount of \$50,000.00 that H.R. and N.R. used to purchase Note #1 for any real estate project, as Respondents used \$10,000.00 out of the same \$50,000.00 to pay off a prior creditor, and as Respondents failed or refused to tell the truth about who payees Stella Juarez and W.D. in fact were, that they had nothing to do with Respondent Exceptional Investment or the investment in Note #1, Respondents engaged in a transaction, practice, or course of business in connection with the sale or purchase of a security, Note #1, that works or tends to work a fraud or deceit upon the purchasers (H.R. and N.R.) thereof. Hence, Respondents have violated Section 12.F of the Act.

Second, Respondents obtained money (the amount of \$50,000.00) through their sale of Note #1, a security, to H.R. and N.R. by means of untrue statements of material facts, as Respondents told H.R. that the money would be used for real estate projects, but it was not, and was, in fact, used, in part, to pay off a prior creditor of Respondents'; and as Respondents lied about who the payees on the checks used to purchase Note #1 were, in that the payees had nothing to do with the operations of Respondent Exceptional Investment but were, instead, the spouse of Respondent Guzman and a creditor of Respondents. Hence, Respondents have violated Section 12.G of the Act, as well.

Third, with their lies as to the purpose and disposition of the funds that H.R. and N.R. used to purchase Note #1, Respondents employed direct and indirect devices, schemes, or artifices to defraud in connection with their sale and complainants H.R. and N.R.'s purchase Note #1. Hence, Respondents have also violated Section 12.I of the Act.

5. Under and by virtue of the foregoing, an Order may be entered wherein Respondents shall be prohibited from selling or offering for sale securities within the State of Illinois.

WHEREAS, the Hearing Officer recommends that:

1. The Hearing Officer herewith finds that Respondents have admitted to the allegations of the Department as per the Notice, and that Respondents' failure to appear at the hearing constitutes a waiver of any and all rights Respondents have with respect to disproving the Department's case.

Accordingly, the Hearing Officer recommends that the Secretary of State enter an appropriate order wherein, in addition to any other sanctions, Respondents will be held in default.

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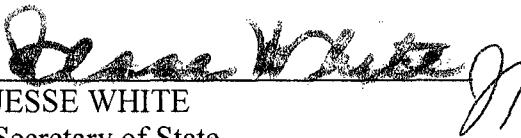
The Hearing Officer further recommends that the order of the Secretary of State will contain provisions prohibiting Respondents from selling or offering for sale securities in the State of Illinois. [815 ILCS 5/12.F, 12.G, and 12.I).

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

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Respondents **Exceptional Investment, Inc., Peter Guzman, and Jimmy Rivera** are in default.
2. Respondents **Exceptional Investment, Inc., Peter Guzman, and Jimmy Rivera** are hereby **PROHIBITED** from offering or selling any securities in or from the State of Illinois.

Dated this 7th day of February, 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
69 West Washington Street, Suite 1220
Chicago, Illinois 60602
Telephone: (312) 793-3384