

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: THOMAS F. UTLEY

)
) File No. 0900461
)

ORDER OF PROHIBITION

TO THE RESPONDENT: Thomas F. Utley
301 East 1st Street
Deer Creek, Illinois 61733

WHEREAS, the record of the above captioned matter 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 Facts and Conclusions of Law and Recommendation of the Hearing officer, Jon K. Ellis, in the above-captioned matter have been read and examined;

WHEREAS, the following proposed Findings of Fact are correct and are adopted by the Secretary of State as follows:

1. The Exhibits have been offered and received from the Department and a proper record of all proceedings has been made and preserved as required by law.
2. The Hearing Officer has ruled on all motions and objections timely made and submitted.
3. The Hearing Officer and the Secretary of State Securities Department have jurisdiction over the parties herein and subject matter dealt with herein, due and proper notice having been previously given as required by statute in this Matter.
4. As no Answer was timely filed, the Respondent is therefore deemed to be in default.
5. The Respondent is an individual with a last known address of 301 East 1st Street, Deer Creek, Illinois 61733
6. On or about June 22, 2009 and July 1, 2009, the Respondent offered and sold to MC, an Illinois resident,

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two fixed index annuities for a total amount of \$1,238,103.00.

7. MC was 73 years old at the time of the aforesaid transactions.
8. The aforesaid fixed index annuities were purchased from the proceeds of the sale of multiple existing variable annuities owned by MC.
9. The aforesaid variable annuities had two years or less remaining on their surrender periods and MC incurred significant surrender charges as a result of their sale.
10. Each of the aforesaid fixed indexed annuities had 12 year surrender periods.
11. The Respondent advised and recommended that MC sell the aforesaid variable annuities in order to purchase the aforesaid fixed indexed annuities and MC sold said variable annuities to purchase said fixed indexed annuities pursuant to said recommendation and advice of the Respondent.
12. Section 2.1 of the Illinois Securities Law of 1953 [815 ILCS 5/1 et seq.] (the "Act") defines the term "Security" as any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, investment fund share, face-amount certificate, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral lease, right or royalty, any put, call, straddle, option, or privilege on any security, certificate of deposit or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "Security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not mean a mineral investment contract or a mineral deferred delivery contract; provided, however,

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the Department shall have authority to regulate these contracts as hereinafter provided.

13. Each of the aforesaid variable annuities is a "Security" as that term is defined pursuant to Section 2.1 of the Act.
14. By recommending and advising MC to sell her variable annuities in order to purchase the aforesaid fixed indexed annuities, the Respondent was acting as an investment adviser as that term is defined pursuant to Section 2.11 of the Act.
15. On or about December 17, 2010, pursuant to Section 11.C of the Act, the Department sent an inquiry letter to the Respondent requiring that a written response be forwarded to the Department within 10 days of receipt.
16. The records of the Department indicate the Respondent received the aforesaid inquiry letter on December 22, 2010.
17. The Department did not receive a response to the aforesaid inquiry letter within the aforesaid required time period and as of July 20, 2011, no such response had been received by the Department.
18. On or about February 4, 2011, the Department sent a follow up letter and a copy of the aforesaid inquiry letter to the Respondent, advising the Respondent that the Department had not received a timely response to the aforesaid inquiry letter and required said response within 5 days of receipt.
19. The records of the Department indicate the Respondent received the aforesaid follow up letter and copy of the original inquiry letter on February 18, 2011.
20. The Department did not receive a reply to the aforesaid follow up letter or inquiry letter with the required time period nor has the Department received a response of any kind as of July 20, 2011.
21. On or about March 22, 2011, the Department attempted to contact the Respondent by phone in this regard and that the Department's representative left a voice mail message identifying himself and the Department and requesting the

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Respondent to return the phone call to discuss the aforesaid inquiry letters.

22. As of July 20, 2011, the Department has not received any response or return phone call from the Respondent regarding the Department's aforesaid voice mail message.
23. Section 11.C of the Act provides, inter alia, that whenever it shall appear to the Secretary of State, either by complaint or otherwise, that the Act, or any rule or regulation prescribed under authority thereof, has been or is about to be violated, he or she may, in his or her discretion require the person to file with the Secretary of State a statement in writing as to all the facts and circumstances concerning the subject matter which the Secretary of State believes to be in the public interest to investigate and conduct an investigation as necessary or advisable for the protection of the interests of the public.
24. Section 12.C of the Act provides, inter alia, that it shall be a violation of the Act for any person to act as an investment adviser or investment adviser representative unless registered as such, where such registration is required.
25. 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 document or application required to be filed under the provisions of the Act.
26. Section 12.J of the Act provides, inter alia, that it shall be a violation of the Act for any person when acting as an investment adviser, directly or indirectly, to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client.
27. 14 Ill.Admin.Code Section 130.853 provides, inter alia, that effecting or causing to be effected any transactions of purchase or sale which are unsuitable shall constitute an act, practice or course of business on the part of the investment adviser that is fraudulent, deceptive or manipulative.

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28. At all times relevant hereto, the Respondent failed to file a response to the aforesaid inquiry letters with the Department pursuant to the Department's lawful investigation of this matter and as required by the Act.
29. At all times relevant hereto, the Respondent failed to file an application for registration as an investment adviser in the State of Illinois.
30. At all times relevant hereto, the Respondent acted as an investment adviser while not being registered as such.
31. The Respondent effected or caused to be effected transactions of purchase or sale which were unsuitable for MC, a 73 year old individual, in that he advised and recommended that MC sell her existing variable annuities which had two years or less remaining on their surrender periods, thereby incurring substantial surrender costs, and use the proceeds from said sale to purchase fixed indexed annuities which had surrender periods of 12 years.
32. Section 11.E(1) of the Act provides, inter alia, that if the Secretary of State shall find that the offer or sale of any securities by any person is fraudulent or would work or tend to work a fraud or deceit, the Secretary of State may by written order prohibit or suspend the offer or sale of securities by that person.
33. Section 11.E(2) of the Act provides, inter alia, that if the Secretary of State shall find that any person has violated subsections C, D and/or J or Section 12 of the act, the Secretary of State may by written order prohibit the person from offering or selling any securities in this State.
34. Section 11.E(4) of the Act provides, inter alia, that if the Secretary of State, after finding that any provision of the Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000.00 for each violation of the Act, as well as an order of public censure and the costs of investigation and reasonable expenses.
35. By virtue of the foregoing, the Respondent has violated Section 12.C, 12D and 12.J of the Act and is subject to a fine not to exceed \$10,000.00 for each violation of the

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Act, costs of investigation, reasonable expense, an order of censure, and an order which permanently prohibits the Respondent from offering or selling securities in the State of Illinois.

36. The entry of a final written order of permanent prohibition and a fine not to exceed \$10,000.00 per violation of the Act are proper in this Matter, given the conduct of the Respondent as described in Secretary of State Exhibit Nos. 1-11.

WHEREAS, the following proposed Conclusions of Law are correct and are adopted by the Secretary of State as follows:

1. The actions, representations, and/or omissions of the Respondent made in connection with the failure to register with the Secretary of State as an investment adviser as required by the Act are violations of Section 12.C of the Act. The actions, representations, and/or omissions of the Respondent made in connection with the failure to file required documents or applications with the Secretary of State as required by the Act are violations of Section 12.D of the Act. The actions, representations, and/or omissions of the Respondent when acting as an investment adviser, directly or indirectly, to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client are violations of Section 12.J of the Act. The actions, representations, and/or omissions of the Respondent effecting or causing to be effected transactions of purchase or sale which are unsuitable constitute an act, practice or course of business on the part of the investment adviser that is fraudulent, deceptive or manipulative and are violations of 14 Ill.Admin.Code Section 130.853
2. Because of the Findings of this Order and Exhibits admitted as Secretary of State Exhibit Nos. 1-11, the Respondent is subject to the entry of a final written Order that permanently prohibits the Respondent pursuant to Sections 11.E(1) and 11.E(2) of the Act from offering or selling securities in the state of Illinois, imposes a fine pursuant to Section 11.E(4) of the Act not to exceed \$10,000.00 for each violation of the Act, and grants such other relief as may be authorized under the Act.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

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1. The Respondent Thomas F. Utley is permanently prohibited from offering or selling securities in the State of Illinois.
2. The Respondent Thomas F. Utley shall pay a fine of \$10,000.00 for multiple violations of the Act.

ENTERED: This 29th day of July, 2011



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:

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