

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

))
KEVIN CHARLES McGIRR))
(CRD 4967834) and))
McGIRR FINANCIAL SERVICES))
(CRD 131931)))
_____))

Case No. 1000052

TO THE RESPONDENTS:

KEVIN CHARLES McGIRR
210 EAST PEARSON STREET
#4-A
CHICAGO, ILLINOIS 60611-7337

McGIRR FINANCIAL SERVICES
210 EAST PEARSON STREET
#4-A
CHICAGO, ILLINOIS 60611-7337

NOTICE OF HEARING

You are hereby notified that, pursuant to Section 11.F of the Illinois Securities Law of 1953 (815 ILCS 5/1, *et seq.*) (the "Act") and 14 Ill. Adm. Code 130, Subpart K (the "Rules"), a public hearing is scheduled to be held at 69 W. Washington Street, Suite 1220, Chicago, Illinois 60602, August 4, 2011, at 10:00 a.m., or as soon thereafter as counsel may be heard, before Soula Spyropoulos, Esq., or another duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order shall be entered Finding Respondent Kevin Charles McGirr and McGirr Financial Solutions in violation of the Act and granting such other relief as may be authorized under the Act including but not limited to the imposition of a monetary fine in the maximum amount of \$10,000.00 per violation pursuant to Section 11.F of the Act, for each and every violation, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

BACKGROUND INFORMATION

1. Investor was a resident of Illinois that passed on October 10, 2007 at 84 years of age. At the time of passing Investor was survived by her niece and nephew to her first sister, and James Wabich, the son of Investor's second sister.
2. Investor, prior to being introduced to Respondent Kevin McGirr, held various investment assets including two Sun Life annuities, certificates of deposit, and mutual funds and securities held in a 401(k) account, and had a net worth in excess of one million dollars. Investor also held a life insurance policy issued by Jackson National Life Insurance Company.
3. Investor, during her dealings with the Respondent, as more fully described below, was in her eighties and in ill-health.
4. Respondent Kevin Charles McGirr ("McGIRR") is a resident of Illinois with a last known address of 210 East Pearson Street, Unit 4-A in Chicago, Illinois. This is also the business address for Respondent McGirr Financial Services, LLC. ("MFS").
5. MFS is wholly controlled, operated, and managed by MCGIRR.
6. MCGIRR is an investment advisor representative for MFS; Both MCGIRR and MFS have been registered with the Illinois Secretary of State since June of 2005. MCGIRR is also registered as an insurance producer with the State of Illinois.
7. However, during the activities complained of, described more fully below, neither MCGIRR nor MFS were registered with the Illinois Secretary of State to provide investment advice or to offer or sell securities in the State of Illinois.
8. James Wabich ("Wabich") was, during the activities complained about, a licensed attorney registered with the Illinois Supreme Court, with a last known address of 4714 North Delphia Avenue in Chicago, Illinois.¹
9. In late 2003 or early 2004 WABICH introduced Investor to MCGIRR for the alleged purpose of providing tax advice.

¹ Wabich has since "retired" his attorney licensure, soon after Investor's will was challenged in probate, a will Wabich had drafted and named himself the primary beneficiary thereof.

10. MCGIRR did prepare Investor's taxes for 2004 through 2007, charging one hundred and fifty dollars (\$150.00) for each year's preparation.
11. In April of 2004, only a few months after meeting Investor, MCGIRR submitted a change of beneficiary form to Jackson National Life Insurance Company naming himself as the beneficiary to Investor's life insurance policy.²
12. During 2004 Wabich, then a licensed attorney, drafted a new will for Investor, naming himself the executor of the will as well as the beneficiary of all but \$350.00 of Investor's estate.
13. Wabich colluded with MCGIRR on drafting the new will, which replaced Investor's existing will that had divested her estate equally among her nephews and nieces.

MCGIRR provided investment advice and effected unsuitable securities transactions without being licensed to provide investment advice or offer and sell securities

14. On May 18, 2004 MCGIRR, when Investor was eighty years old, sold his first, of three, annuities to Investor.
15. MCGIRR effected a transaction in which Investor's Certificates of Deposit and Savings Account were liquidated, subjecting the Certificates to over \$2,000.00 in losses due to early liquidation, and placed the proceeds of almost \$300,000.00 into an Allianz Equity Indexed Annuity.
16. This transaction provided MCGIRR a 7% commission, or over \$20,000.00.
17. MCGIRR claimed that an "immediate 10%" bonus would be credited to the annuity.³
18. MCGIRR named Wabich as the beneficiary of this annuity.
19. In late July of 2004 MCGIRR sold his second annuity to Investor, another Allianz Equity Indexed annuity, for over \$50,000.00 and for which MCGIRR took over \$5,000.00 in commissions.
20. This second annuity was financed with the proceeds from Investor's retirement accounts, which had held various securities such as mutual funds.
21. On August 25, 2004, only a few weeks from placing Investor in the first and second annuities, MCGIRR recommended to have Investor's two Sun Life Variable Annuities, with a total approximate value of \$150,000.00, rolled over into an Allianz Master Dex 10 Equity Indexed Annuity.

² In 2006 McGirr would amend the policy again to name Wabich co-beneficiary.

22. MCGIRR obtained an additional \$15,174.86 from the Investor by effectuating the sale of the third annuity.
23. MCGIRR named WABICH as the beneficiary of this contract.
24. Investor, having had her savings and retirement accounts already placed into illiquid and expensive annuities by MCGIRR, was not in a position to have her two existing annuities rolled over into yet another indexed annuity product.
25. Investor's Sun Life Variable annuities were subject to surrender fees due to MCGIRR's recommendation to exchange them into the third annuity.
26. Furthermore, Investor would not be able to withdraw monthly income from the third annuity until 2014, when Investor would be 91 years of age, and the surrender value of the annuity at that time would only be approximately \$2,000.00 greater than the initial premium paid into the annuity- far less than the 12% "immediate bonus" MCGIRR touted the product would provide.⁴
27. MCGIRR and MFS were not registered to provide investment advisory services until June of 2005, after the above-described conduct.
28. Immediately after the passing of Investor in October of 2007, MCGIRR, and Wabich, claimed the proceeds of the various insurance policies he had named himself and Wabich as beneficiaries of.
29. MCGIRR and Wabich also presented the will they wrote for Investor and in which Wabich named himself the sole beneficiary of all but \$350.00 of Investor's estate, into probate where it is being challenged by Investor's surviving heirs.

VIOLATIONS

MCGIRR provided investment advisory services without being properly registered

30. MCGIRR's recommendation to transfer Investors 401(K) holdings into the second annuity constitutes the activities of an investment advisor as defined under Section 2.11 of the Illinois Securities Law of 1953 (the "Act").
31. MCGIRR's recommendation to exchange Investor's two existing variable annuities into the third Allianz Equity Indexed Annuity constitutes the activities of an investment advisor as defined under Section 2.11 of the Illinois Securities Law of 1953 (the "Act").

⁴ The Allianz Annuities McGIRR placed Investor's savings into had been the subject of multiple class-actions and State Regulatory Actions, including California and Minnesota, due to a robust history of fraudulent conduct by the agents pushing this product onto investors for which it is unsuitable, and, in large part due to the fraudulent claim that there would be an "immediate bonus" credited to an investor's account.

32. Section 12.A of the Act states in pertinent part 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.
33. Section 12. C of the Act states in pertinent part that it is a violation of the Act for any person to act as an investment advisor or investment advisor representative, unless registered as such, where such registration is required, under the provisions of the Act.
34. Section 8. A. of the Act requires Investment Advisors to register with the Illinois Secretary of State.
35. At the time MCGIRR recommended the liquidation of Investor's 401(K) account to purchase the second Allianz annuity, McGIRR was not registered to provide investment advice.
36. At the time MCGIRR recommended the exchange of the variable annuities into the third Allianz annuity MCGIRR was not registered to provide investment advice.
37. Furthermore, Section 12. D. of the Act states in pertinent part that it is a violation 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 this Act.
38. MCGIRR violated Sections 12 A., C. and D. of the Act for acting as an investment advisor without being registered as such.

Fraud

39. Section 12.A of the Act states in pertinent part 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.
40. Section 12. F. of the Act states in pertinent part that it is 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.
41. Section 130.853 of the Rules and Regulations Under the Illinois Securities Law of 1953 states in pertinent part that effecting or causing to be effected by or for any client's account, any transactions of purchase or sale which are excessive in size or frequency or unsuitable in view of the financial resources and character of the account, shall constitute an act, practice, or course of business that is fraudulent, deceptive or manipulative.
42. MCGIRR's recommendation that Investor liquidate her retirement savings and place them into the second Allianz indexed annuity was without a reasonable basis in light of Investor's age and investment objectives, and therefore, constitutes a violation of Sections 12. A. and F.

43. MCGIRR's recommendation that Investor exchange her two existing variable annuities for the third Allianz indexed annuity was without a reasonable basis in light of Investor's age and investment objectives, and therefore, constitutes a violation of Sections 12. A. and F.

Unethical Conduct and Fraudulent Business Practices

44. Section 8. E. (1)(b) of the Act provides in pertinent part that, subject to the provisions of sub-section F of the Act, the registration of an investment advisor or investment advisor representative may be denied, suspended or revoked if that advisor has engaged in any unethical practice in connection with any security, the offer and sale of securities or in any fraudulent business practice.
45. Section 130.285 of the Rules and Regulations under the Illinois Securities Law of 1953 provides that the failure of any investment advisor to comply with the registration requirements of Section 8 of the Act and Section 130.840, constitutes a fraudulent business practice as defined in Sections 8 and 11 of the Act.
46. MCGIRR had failed to comply with the registration requirements of Section 8 of the Act when he effected the transactions described above, and therefore, his and MFS' registrations as an investment advisor representative and investment advisor, respectively, are subject to revocation.
47. MCGIRR's naming himself the beneficiary of Investor's life insurance policy while acting as Investor's tax and investment advisor constitutes a conflict of interest and, therefore, is unethical conduct subjecting his and MFS' registrations in Illinois to revocation.
48. Section 8. E. (1)(g) of the Act provides in pertinent part that, subject to the provisions of sub-section F of the Act, the registration of an investment advisor or investment advisor representative may be denied, suspended or revoked if that advisor has violated any of the provisions of the Act.
49. Section 11. F(1) of the Act provides that, after notice and an opportunity for an administrative hearing, the Secretary of State may revoke the registration of an investment advisor or investment advisor representative and prohibit a person from acting as an investment advisor or investment advisor representative.
50. Section 11 E.(2) provides that the Secretary of State may prohibit any person from offering and selling securities in the State of Illinois if there is a finding that the person violated subsection C, D, E, F, G, H, I, J or K of Section 12 of the Act.
51. Section 11 E.(4) provides that in addition to any other sanction or remedy contained in Section 11 E. of the Act, the Secretary of State, after finding that any provision of the Act has been violated, may impose a fine not to exceed \$10,000.00 per violation and may

charge as costs of investigation all reasonable expenses including attorney's fees and witness fees.

WHEREFORE the Illinois Securities Department requests the Hearing Officer to make a recommendation that:

1. MCGIRR and MFS violated Sections 12. A and C of the Act for acting as an investment advisor and investment advisor representative without being registered as such.
2. MCGIRR and MFS violated Sections 12. A and D. of the Act for failing to register as an investment advisor and investment advisor representative with the Illinois Secretary of State.
3. MCGIRR violated Sections 12. A and F of the Act for recommending and effectuating the liquidation of Investor's 401(K) account to fund the second annuity without any reasonable basis to make such a recommendation.
4. MCGIRR violated Sections 12. A and F of the Act for recommending and effectuating the exchanging of Investor's first Sun Life annuity to the third Allianz annuity without any reasonable basis to make such a recommendation.
5. MCGIRR violated Sections 12. A and F of the Act for recommending and effectuating the exchanging of Investor's second Sun Life annuity to the third Allianz annuity without any reasonable basis to make such a recommendation.
6. MCGIRR and MFS' registrations as an investment advisor and investment advisor representative be revoked pursuant to Sections 8. E. (1)(b), (g) of the ACT.
7. MCGIRR and MFS be permanently prohibited from acting as an investment advisor, investment advisor representative, broker, and salesperson of securities pursuant to 11. F(1) and (2) of the Act.
8. MCGIRR and MFS each be fined not less than \$10,000.00 for each violation of the Act, for a total of \$100,000.00, pursuant to Section 11.E(4) of the Act.


You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above within thirty (30) days of the receipt of this Notice. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of hearing.

Furthermore, you may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate. A failure to so appear shall constitute default, unless any Respondent has upon due notice moved for and obtained a continuance.

Delivery of Notice to the designated representative of any Respondent constitutes service upon such Respondent.

DATED: 14th day of June, 2011.

15th



JESSE WHITE
Secretary of State
State of Illinois

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