

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: ARTHUR S. MILLER,  
and ASSET PROTECTION ASSOCIATES, and  
its managers, officers, affiliates, subsidiaries, representatives,  
successors, and assigns.

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) FILE NO. 0700268  
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NOTICE OF HEARING

TO RESPONDENTS:

Arthur S. Miller  
480 Elm Place, Unit 107  
Highland Park, Illinois 60035

Asset Protection Associates  
2612 Oak Street  
Highland Park, Illinois 60035

TO LEGAL COUNSEL:

Arnstein & Lehr  
Mary Cannon Veed  
129 South Riverside Plaza, Suite 1200  
Chicago, Illinois 60606

You are hereby notified that pursuant to Section 11 E of the Illinois Securities law of 1953 [815 ILCS 5] (the "Act") and 14 Ill Adm Code 130, Subpart K, a public hearing will be held at 69 W Washington Street, Suite 1220, Chicago, Illinois 60602, on the 19th day of January, 2011, at the hour of 10 00 a m , or as soon as possible thereafter, before. Soula J Spyropoulos, Esq or such duly designated Hearing Officer of the Secretary of State

Said hearing will be held to determine whether a permanent order of Prohibition should be entered against Respondents Miller and Asset Protection Associates its managers, officers, affiliates, subsidiaries, representatives, successors, and assigns. Imposition of fines not to exceed \$10,000 against the Respondent for each violation of the Act described below; entry of orders of public censure, and charging costs of the investigation and all reasonable expenses, including attorney's fees and witness fees, in accordance with Section 11 E(4) of the Act.

### NATURE OF THE CASE

Respondent Arthur S. Miller through Asset Protection Associates organized numerous "free dinner" investment seminars that were marketed to senior citizen investors or those near retirement and typically included a complimentary dinner at a nice restaurant to bolster attendance. Although the advertisements touted the seminars as "educational," the ultimate goal was the sale of a complex product. An Illinois Investor attended one of Respondent Miller's "free dinner" seminars and followed up with an individual meeting at his office. At Respondent Miller's request, the Illinois Investor provided Miller with a detailed list of all of her assets and investments, including but not limited to mutual funds and stocks. Respondent Miller specifically advised the Illinois Investor to liquidate all of the mutual funds and stocks that he purported to be at risk except the shares in Walgreens. By advising Investor A to liquidate the securities listed above, Respondent Miller anticipated that he would benefit directly or indirectly from the sale of these securities.

Respondent Miller is not licensed to offer and/or sell securities in the state of Illinois nor is he allowed to give financial advice for a direct or indirect commission. In fact, on September 15, 1995, the Illinois Department of Securities revoked Respondent Arthur S. Miller's registration as a salesperson in the state of Illinois. Arthur S. Miller fraudulently signed several insurance policy forms without the knowledge, authorization, or consent of a customer in violation of Article III, Section 1 of the NASD's Rules of Fair Practice. Respondent Miller never disclosed to the Illinois Investor the existence of the regulatory actions taken against Miller by the Illinois Department of Securities, the National Association of Securities Dealers, and the Illinois Department of Insurance. A senior investor's financial interests are threatened or harmed when "free dinner" seminars are presented by individuals using questionable designations and have regulatory violations, and when they are nothing more than sales seminars pushing a complicated and complex product on an unsuspecting investor.

The grounds for such proposed action are as follows

### INTRODUCTION

- 1 Respondent Arthur S Miller ("Miller") is a natural person and a registered Insurance Agent in the state of Illinois with a last known address of 480 Elm Place, Unit 107, Highland Park, Illinois 60035
2. Respondent Miller also does business as Asset Protection Associates, ("Asset Protection") which is an unregistered entity controlled by Miller and maintains a mailing address at 2612 Oak Street, Highland Park Illinois 60035
- 3 On March 8, 1995, the National Association of Securities Dealers, Inc. ("NASD"), District Business Conduct Committee ("DBCC") for District No 8 accepted Respondent Miller's Letter of Acceptance, Waiver and Consent, dated December 6, 1994, and Decision and Order of Acceptance of Offer of Settlement issued in Complaint No C8A95002 The NASD ordered Respondent Miller to be censured and barred from association with any member of the NASD in any capacity and fined \$10,000 00, with fine collection effects suspended unless and until the Respondent seeks to again become associated with a member of any capacity. Respondent Miller consented to the finding of the DBCC that Miller fraudulently signed several insurance policy forms without the knowledge, authorization, or consent of a customer in violation of Article III, Section 1 of the NASD's Rules of Fair Practice.
- 4 On September 19, 1995, the Illinois Department of Securities ("IDS") revoked the registration of Respondent Miller as a salesperson in the state of Illinois, pursuant to the authority provided under Section 8 E(3) of the Act
- 5 On March 14, 1996, the Illinois Department of Insurance ("IDI") took a regulatory action against Respondent Miller in connection with the NASD AND IDS Respondent Miller entered into a Consent Order and was ordered to pay a fine of \$1,000 00.
- 6 In November of 2009, the IDI took another regulatory action against Respondent Miller for selling an annuity when his insurance license had expired The Respondent and the IDI agreed to a Stipulation to Consent Order and a fine of \$5 000 00

7. As a result of the regulatory actions described above, Respondent Miller is not registered to offer or sell securities, or provide investment advisory services, in the State of Illinois, nor is Asset Protection incorporated in Illinois or registered as a foreign entity doing business in or from Illinois.
8. Respondent Miller, through Asset Protection, used targeted mailings to invite retirees or those planning to retire soon to attend an exclusive dinner event promising to discuss all of the following topics:
  - a. 2010 Roth Conversion Opportunities – Is it right for You?
  - b. Gaining it Back – Which investments may be the best to offset your losses? Do you need to stay in the market to recover? The answer is no!
  - c. Financial Professionals – Is your financial professional a fiduciary? Why is this important?
  - d. Investment Risk – Where is the smartest place to invest money for growth today?
  - e. Mutual Funds – How can you potentially outperform, what do you do?
  - f. Secure Investments – How can you potentially outperform CDs and Bank accounts without market risk?
  - g. Income Planning – How can you avoid outliving your money?
9. Listed above are specific examples of statements and claims contained in Respondent Miller and Respondent Asset Protection's seminar mailings and flyers
10. In May of 2010, Investor A received one of Respondent Miller's mailings to attend a dinner seminar at the designated location
11. Investor A is a resident of Illinois, who, at the time of the seminar was age 57.
12. At the seminar, Investor A filled out a consultation request card so that she could meet with the Respondent to discuss in detail retirement planning goals
13. Respondent Miller drafted and sent a letter to Investor A requesting that she bring personal financial data to the scheduled consultation. Specifically, Miller requested 2009 tax returns and the most current statements for Investor A's bank accounts, IRA's, 401K's, stocks, mutual funds, annuities, insurance policies, trust, will, and power of attorney documents.

- 14 Investor A disclosed that she had 1,000 shares of Walgreen stock from past employment. In addition, she informed Miller that she had the following mutual funds: Vanguard S & P 500 Index Fund at \$460,000.00, I-Shares Emerging Markets EFT at \$80,000.00, MSCI ACWI ex US Index Fund at \$100,000.00, and I-Shares Barclays Aggregate Bond Fund at \$230,000.00. At the conclusion of this consultation, Miller stated that Investor A needed to preserve at least 58-60% of assets from risk.
- 15 At the second meeting, Respondent Miller prepared a Scheduled Income Portfolio ("Portfolio") for Investor A which outlined the following items:
- a. The Portfolio indicated that 83.6% of Investor A's assets were at risk and 16.4% were safe.
  - b. Respondent Miller advised Investor A that she needed to preserve at least 58-60% of her assets from risk,
  - c. Miller stated that all of the mutual funds listed above and the stocks in Walgreens were part of the 83.6% at risk; and
  - d. Respondent Miller advised Investor A to liquidate all of the mutual funds and stocks that he purported to be at risk except the shares in Walgreens.
16. Respondent Miller advised Investor A to liquidate a majority of the securities listed above without further inquiry into the cost basis which is used to determine tax implications.

### COUNT 1

#### FRAUD

#### FAILURE TO DISCLOSE REGULATORY ACTIONS

- 17 Counts 1-16 are re-alleged and incorporated by reference.
- 18 At all relevant times, Respondent Miller never disclosed to Investor A the existence of the following regulatory actions:
- a. On March 18, 1995, NASD Order that censured and barred Miller from association with any member of the NASD in any capacity and fined \$10,000.00.

- b On September 15, 1995, IDS's revoked Miller's registration as a salesperson in the state of Illinois
  - c. On March 14, 1996, IDI's Stipulation to Consent Order which included a \$1,000 00 fine
  - d On November 2 2009, IDI's Stipulation to Consent Order which included a \$5,000 00 fine
19. As a result, the above-mentioned omissions of fact address the honesty, integrity, and competency of the Respondent Miller who is only an insurance licensed agent acting as an unregistered investment adviser
- 20 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 conjunction with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof
- 21 By virtue of the foregoing, Respondent violated Section 12.F of the Act
- 22 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 the light of the circumstances under which they were made, not misleading
- 23 By virtue of the foregoing, Respondent violated Section 12.G of the Act.

## COUNT II

### FAILURE TO REGISTER AS AN INVESTMENT ADVISER REPRESENTATIVE

- 24 Counts 1-23 are re-alleged and incorporated by reference.
- 25 The activities of Respondent Miller, described above, constitute the activity of an investment adviser representative.
- 26 Section 8 of the Act provides, *inter alia*, that all investment advisers and investment adviser representatives, except as otherwise provided, shall be registered with the Secretary of State

- 27 At all relevant times, Respondent Miller failed to file an application for registration as an investment adviser representative with the Illinois Secretary of State.
- 28 Section 12 C of the Act provides, *inter alia*, that it shall be a violation for any person to act as an investment adviser or investment adviser representative, unless registered as such
- 29 Section 12 D of the Act provides, *inter alia*, that it shall be 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 the Act or any rule or regulation made by the Secretary of State pursuant to the Act.
- 30 By virtue of the foregoing, Respondent Miller violated Sections 8, 12 C and 12.D of the Act
- 31 Section 11 F(2) of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.* ("the Act") provides, *inter alia*, that the Secretary of State may temporarily prohibit or suspend for a maximum period of 90 days, by an order effective immediately, the offer or sale of securities by any person, if the Secretary of State shall in his or her opinion, based on credible evidence, deem it necessary to prevent an imminent violation of this Act or to prevent losses to investors which the Secretary of State reasonably believes will occur as a result of a prior violation of this Act

### COUNT III

#### FAILURE TO RESPOND TO AN ILLINOIS SECURITIES DEPARTMENT

##### SUBPOENA DUCES TECUM

- 32 On July 7, 2010, the Department issued a Subpoena Duces Tecum in the matter of File No 07-00268 and the Illinois Department of Securities ("Department") Investigator Frank Perry personally served the Subpoena to Respondents Miller and Asset Protection
33. Attached to the Subpoena was a "Schedule A" listing the documents or information to be produced
- 34 The due date for the Subpoena Duces Tecum was July 20, 2010
- 35 As of Tuesday, July 20, 2010, the Department received only a portion of the requested documents and/or information responsive to the Subpoena Specifically the Respondent failed to provide a list of all clients/customers of Asset Protection Associates and/or Arthur S Miller

including names, addresses, telephone numbers, date(s) of investment(s), amount(s) invested, and fees and/or commissions earned off of each client/customer

- 36 The Subpoenas were issued pursuant to Section 11.D(1) of the Illinois Securities law of 1953 (815 ILCS 5/1 et seq ) (the "Act")
- 37 Section 11 D of the Act states, inter alia, that the Secretary of State or a person designated by him or her may require by subpoena the production of any books and records, papers, or other documents which the Secretary of State or a person designated by him or her deems relevant or material to the inquiry
- 38 The Respondents Miller and Asset Protection failed to produce all of the documents requested by the due date, or any day thereafter, that were subpoenaed by the Department pursuant to the authority granted under Section 11 D(1) of the Act
39. By virtue of the foregoing, Respondents failure to respond to the Subpoena by the due date impeded designees of the Secretary of State from conducting an investigation under Section 11.D(1) 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. The answer and all other pleadings and motions must be filed with the Illinois Securities Department by addressing them to

Maria Pavone  
 Enforcement Attorney  
 Illinois Department of Securities  
 69 West Washington, Suite 1220  
 Chicago, Illinois 60602

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 and waives your right to a hearing. Furthermore, you may be represented by legal counsel, may present evidence, may cross-examine witnesses and otherwise participate. A failure to appear shall constitute default. Unless the Respondent has upon due notice moved for and



obtained a continuance. The Rules promulgated under the Act and pertaining to Hearings held by the office of the Secretary of State, Securities Department may be viewed online at <http://www.cyberdriveillinois.com/departments/lawrules.html>. Delivery of Notice to the designated representative of any Respondent constitutes service upon such Respondent.

Dated This 17th day of November 2010

Handwritten signature of Jesse White in black ink, with a horizontal line drawn across the signature.

JESSE WHITE  
Secretary of State  
State of Illinois

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