

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: GILBERT ALAN CARDILLO)
_____)

FILE NO. C0700115

NOTICE OF HEARING

TO THE RESPONDENT: GILBERT ALAN CARDILLO
(CRD#: 1110960)
450 Riverside Drive
Riverside, NY 11901

C/O Curt W. Knapp, CCO/Vice President
INVESTACORP ADVISORY SERVICES, INC.
15450 New Barn Road
Miami Lakes, FL 33014

You are hereby notified that pursuant to Section 11.F 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 West Washington Street, Suite 1220, Chicago, Illinois 60602, on the 29th day of May, 2008 at the hour of 10:00 a.m. or as soon as possible thereafter, before James L. Kopecky, Esq., or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order shall be entered denying Gilbert Alan Cardillo's (the "Respondent") (CRD#: 1110960) registration as a salesperson in the State of Illinois and/or 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 pursuant to Section 8.E(1)(j) of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

1. That on February 21, 2007, Investacorp, Inc., a registered dealer, filed a Form U-4 application for registration of the Respondent as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
2. That on September 22, 2004, NASD entered a decision from a hearing regarding Complaint No. C10030087, which sanctioned the Respondent as follows:

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- a. Suspension in all capacities with any member firm in any capacity for ten (10) calendar days;
 - b. A fine of \$6,600;
 - c. Ordered to offer to pay customer AP, upon AP's surrender of his Fidelity Annuity Certificate, the difference, if any between (a) the amount AP receives upon surrender of the Certificate, and (b) \$80,000 plus interest calculate pursuant to 26 U.S.C. §6621(a)(2), from February 15, 2001 to February 11, 2005; and
 - d. Costs of \$3,503.53.
3. That the order found (in pertinent part):
- a. On February 12, 2001, AP and his wife met with Respondent Cardillo to discuss AP's investment options with regard to the \$80,000 that remained from the sales proceeds of his home. AP explained that he was retired, had recently sold his home, and interested in investing the \$80,000 in such a way that would give him monthly income. From his conversation with AP, Respondent Cardillo learned that AP collected Social Security and had fixed annuities previously purchased from another firm, but from which he did not draw an income. Respondent Cardillo estimated AP's net worth between \$100,000 and \$500,000, but he did not inquire into the source of AP's income, the extent of his assets, or his plans for the future. Respondent Cardillo did not determine that AP and his wife were living with a relative to save expenses, or that they planned to move to North Carolina. Respondent Cardillo erroneously believed that the house AP sold was not his primary residence.
 - b. During the meeting on February 12, 2001, Respondent Cardillo recommended that AP purchase a Fidelity Advisor Generations variable annuity ("Fidelity Annuity") in the amount of \$80,000. The Fidelity Annuity is a variable annuity with seven-year declining contingent deferred sales charge, ranging from seven percent the first year to two percent the seventh year. As a variable annuity, it allows an investor's funds to grow tax-deferred until the funds are withdrawn. Gains that are withdrawn are taxed as ordinary income. The purchaser may withdraw yearly up to ten percent of the amount invested without penalty.
 - c. The Fidelity Annuity's annual mortality and expense ("M&E") charges are 0.95 percent. Respondent Cardillo recommended that

AP purchase an enhanced death benefit at an additional cost of 0.05 percent per year, which brought AP's total M&E charges to 1.00 percent per year. Respondent Cardillo received approximately \$1,600 in commissions from AP's investment in the Fidelity Annuity.

- d. Respondent Cardillo recommended that AP invest in five separate sub-accounts, each of which included equity securities, and three of which exclusively contained equities. Each sub-account also charged internal management fees, which amounted to 0.948 percent per year. As a result, the total cost to AP for the Fidelity Annuity was 1.948 percent per year.
- e. Respondent Cardillo also assumed that AP's investment horizon was six to ten years, and conceded that the Fidelity Annuity would not be a suitable investment for a person with a shorter investment horizon. However, he did not inquire into AP's future plans for possible use of the \$80,000 that remained from his sale proceeds. AP had planned to move to North Carolina and help his son establish a pizzeria business there. Moreover, once AP and his wife moved to North Carolina from his stepdaughter's house in Patchogue, their expenses and need for additional income was uncertain. AP's wife had been working part-time as a hairdresser in New York, earning about \$400 per month; she intended not to work in North Carolina because of back injuries.
- f. Respondent Cardillo failed to make reasonable inquiries into AP's financial status, tax status, investment objectives or need for a monthly income. He failed to consider AP's lack of investment sophistication. AP's Social Security income in 2000 was less than \$14,000. According to AP's federal tax return, he and his wife had a total adjusted gross income of \$12,556. Respondent Cardillo made an unwarranted assumption that AP was earning money on-the-side, and he failed to determine that the proceeds from the sale of AP's house that were not being invested were intended to buy another house, and therefore, could not be considered to be liquid. He did not know that AP and his wife were not living in their own home, and was unaware of AP's plans to move to North Carolina or how that move would affect his need for monthly income.
- g. Without an accurate assessment of AP's total assets, income, expenses, and plans for the future, Respondent Cardillo came to the conclusion that AP's investment horizon was six to ten years, and that AP did not need access to the money for the foreseeable future. His conclusions did not have a reasonable basis. Respondent Cardillo had no reason to believe that (1) AP's income

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way any greater than what he was told, (2) his expenses would remain constant after moving out of his step-daughter's house, (3) his wife would continue to work after they moved to North Carolina, or (4) he planned to back his son's business venture in North Carolina. Without that knowledge, he could not reasonably conclude that an investment with risk of loss of principal would be suitable for AP. Even if customer seeks to engage in a highly speculative or an otherwise aggressive investment, a broker is under a duty to refrain from making recommendations that are incompatible with the customer's financial profile.

- h. Because Respondent Cardillo (1) lacked reasonable grounds for believing that his recommendation of variable annuity was suitable for AP; and (2) failed to obtain relevant information concerning the suitability of his recommendation before executing the transaction, particularly concerning AP's need for liquidity and retirement income, and his lack of investment sophistication and inability to monitor the sub-accounts, he violated Conduct Rules 2310 and 2110 when he recommended that AP purchase the Fidelity Annuity.
4. That Section 8.E(1)(j) of the Act provides, inter alia, that the registration of a salesperson may be denied if the Secretary of State finds that such salesperson has been suspended by any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act suspended, revoked, refused expelled, cancelled, barred, limited in and capacity, or otherwise adversely affected in a similar manner arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization.
5. That NASD is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.
6. That by virtue of the foregoing, the Respondent's application for registration as a salesperson in the State of Illinois is subject to denial pursuant to Section 8.E(1)(j) 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

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constitute default, unless any 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/securities/lawrules.html>.

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

Dated: This 1st day of April 2008


JESSE WHITE
Secretary of State
State of Illinois

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