

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: PAUL ANDREW NIESS

) No. 0400211
)

ORDER OF REVOCATION AND PROHIBITION

TO THE RESPONDENT: Paul Andrew Niess (CRD# 2157145)
1345 Bay Meadows Drive
Bartlett, Illinois 60103

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 pleadings and 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 filed, the Respondent is therefore deemed to be in default;

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5. That at all times relevant, the Respondent was registered as an Illinois registered salesperson and investment adviser representative through 1717 Capital Management Company pursuant to Section 8 of the Act and that the Respondent's salesperson and investment adviser representative registrations were terminated in Illinois on November 21, 2005.
6. On or about September 10, 2004, the Respondent offered and sold to SW, an Illinois resident, an internet access terminal sales agreement (hereinafter "kiosk agreement") with Network Services Depot, Inc. and/or K & G Marketing, Inc., whereby SW purchased 20 internet access kiosks and/or terminals (hereinafter "kiosks") in return for an investment of \$190,000.00.
7. At all times relevant, the Respondent represented to SW that as part of this investment, SW would receive a return of 10% to 12% per month over a five year period, and further represented that SW would receive a list of locations for said kiosks from Network Services Depot, Inc. and/or K & G Marketing, Inc.
8. As part of this aforesaid investment, SW gave the Respondent an additional \$19,000.00 for what the Respondent represented was an insurance policy which purportedly would pay the aforesaid monthly payments if not paid by Network Services Depot, Inc. and/or K & G Marketing, Inc.
9. After receiving approximately \$22,500.00 which purportedly represented returns from said kiosks, SW never received any further return on her investment after the last check received by SW in March, 2006.
10. On or about March 31, 2004, the Respondent offered and sold to his clients BJ and AJ, Illinois residents, a kiosk agreement with Network Services Depot, Inc. and/or K & G Marketing, Inc., whereby BJ and AJ purchased 50 kiosks in return for an investment of \$350,00.00; that said kiosk agreement was purchased pursuant to advice from the Respondent within his capacity as a securities salesperson and investment adviser representative, and that said kiosk agreement and all related paperwork were completed with the assistance of the Respondent.

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11. At all times relevant, the Respondent represented to BJ and AJ that said investment would provide a guaranteed return of 10% or more per month, that there was no risk involved in this investment, that BJ and AJ would have the option of selling the kiosks back in 5 years, that BJ and AJ would be provided a list of locations for said kiosks from Network Services Depot, Inc. and/or K & G Marketing, Inc. would provide the maintenance and service of said kiosks.
12. At all times relevant, the Respondent never advised SW, BJ or AJ of any risk involved or associated with the aforementioned investment.
13. After receiving approximately \$60,000.00 from both K & G Marketing, Inc. and the Respondent, which purportedly represented returns from said kiosks, BJ and AJ never received any further return on their investment after the last check received by BJ and AJ on March 11, 2006.
14. SW, BJ and AJ never received a list of locations for said kiosks nor were they ever advised in any manner as to the specific locations of said kiosks.
15. On or about March 31, 2004, the Respondent obtained a personal loan from BJ and AJ in the sum of approximately \$28,000.00 within the course of his role as their securities salesperson and investment adviser representative.
16. On or about March 9, 2007, the respondent gave a sworn statement to the Illinois Securities Department regarding this matter pursuant to subpoena.
17. During this sworn statement, the Respondent stated that he received no financial compensation from K & G Marketing, Inc., Network Services, Inc., or their respective presidents Greg Mooney and Charles Castro, in regards to the Respondent's participation in the offering and selling of any kiosk agreement, including the aforesaid kiosk agreements purchased by SW, BJ and AJ.
18. On or about September 10, 2004, the Respondent received a wire transfer into his bank account in the amount of \$9,000.00 from Charles Castro.

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19. On or about September 23, 2004, the Respondent received a wire transfer into his bank account in the amount of \$9,000.00 from Greg Mooney and K & G Marketing.
20. On or about December 28, 2004, the respondent received a wire transfer into his bank account in the amount of \$7,000.00 from Greg Mooney and K & G Marketing.
21. On or about February 14, 2005, the Respondent received a wire transfer into his bank account in the amount of \$18,000.00 from Greg Mooney and K & G Marketing.
22. Each of the above kiosk agreements is an investment contract and therefore a security as that term is defined pursuant to Section 2.1. of the Act.
23. Section 5 of the Act provides that all securities except those set forth under Section 2a, or those exempt under Section 3, or those offered and sold in transactions exempt under Section 4 of the Act shall be registered with the Secretary of State prior to their offer or sale in the State of Illinois.
24. That Section 2.1 of the Act (815 ILCS 5/2.1) 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, the Department

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shall have authority to regulate these contracts as hereinafter provided.

25. That Section 2.5 of the Act (815 ILCS 5/2.5) defines the term "Sale or Sell" to include the full meaning of that term as applied by or accepted in the courts of this State, and shall include every contract of sale or disposition of a security or interest in a security of value.
26. That Section 2.5a of the Act (815 ILCS 5/2a) defines the term "Offer" to include every offer to sell or otherwise dispose of, solicitation of an offer to purchase, a security or interest in a security for value; provided that the term "Offer" shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with an issuer, or a the circulation or publication of an identifying statement or circular or preliminary prospectus, as defined by rules or regulations of the Secretary of State.
27. Section 12.A of the Act provides, inter alia, that it shall be a violation of the Act for any person to offer or sell any securities except in accordance with the provisions of the Act.
28. 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 required to be filed under any provision of the Act.
29. Section 12.E of the Act provides, inter alia, that it shall be a violation of the Act to make, or cause to be made in any application, report or document filed under this Act or any rule or regulation made by the Secretary of State pursuant to this Act, any statement which was false or misleading with respect to any material fact.
30. 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.

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31. Section 8.E.1(b) of the Act states, inter alia, that subject to the provisions of subsection F of Section 11 of the Act, the registration of a salesperson or investment adviser representative may be suspended or revoked if the Secretary of State finds that the salesperson or investor adviser representative has engaged in any unethical practice in the offer or sale of securities.
32. Section 8.E.1.(g) of the Act states, inter alia, that subject to the provisions of subsection F of Section 11 of the Act, the registration of a salesperson or investment adviser representative may be suspended or revoked if the Secretary of State finds that the salesperson or investor adviser representative has violated any of the provisions of the Act.
33. NASD Rule 2370 provides, inter alia, that no person associated with a member in any registered capacity may borrow money from or lend money to any customer of such person unless the member has written procedures allowing the borrowing and lending of money between such registered persons and customers of the member and the lending or borrowing arrangements fall within certain conditions so stated within the aforesaid Rule.
34. NASAA Model Rule 102(a)(4)-1 provides, inter alia, that it is an unethical business practice to borrow money from a client unless the client falls within stated exemptions.
35. At all times relevant, 1717 Capital Management Company maintained written company policies and procedures prohibiting its salespersons and investment adviser representatives from lending or borrowing money from customers.
36. The loan arrangement between BJ/AJ and the Respondent did not fall within the conditions outlined in NASD Rule 2370 nor did BJ or AJ fall within the exemptions outlined within NASAA Model Rule 102(a)(4)-1.
37. At all times relevant hereto, the Respondent engaged in an unethical practice in the offer or sale of securities in that the Respondent solicited and obtained a private loan from a client while within his capacity as an investment adviser and securities salesperson despite the

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fact that such loan was prohibited by his company's written policies and procedures as well as the rules of the NASD and NASAA.

38. At all times relevant hereto, the Respondent engaged in an unethical practice in the offer or sale of securities in that the Respondent, in a sworn statement to the Department subject to subpoena, advised the Department that he never received any financial compensation from Network Services, Inc., K & G Marketing, and/or their respective presidents Charles Castro and Greg Mooney, in the connection with the offer and sale of said kiosk agreements, where in fact the Respondent received numerous wire transfers of money into his personal bank account from Castro, Mooney and K & G Marketing.
39. At all times relevant hereto, the Respondent obtained money or property through the offer or sale of securities by means of any untrue statement of a material fact or any omission to state a material fact in that the Respondent represented to SW that SW would receive a 10% to 12% monthly return from her kiosk investment, that said monthly payments were insured for a 5 year period, and that SW would receive a list of locations for said kiosks, where in fact, SW received no further monthly payments after March, 2006, and never received a list of locations for said kiosks; furthermore, the Respondent failed to advise SW of any risk associated with said investment.
40. At all times relevant hereto, the Respondent obtained money or property through the offer or sale of securities by means of any untrue statement of material fact or any omission to state a material fact in that Respondent represented to BJ and AJ that this investment would yield a guaranteed return of 10% per month, that there was no risk involved in said investment, and that BJ and AJ would receive a list of locations for said kiosks, where in fact BJ and AJ received no further monthly payments after March, 2006, and never received a list of kiosk locations; furthermore, the Respondent failed to advise BJ and AJ of any risks associated with said investment.
41. At all times relevant hereto, the Respondent failed to file an application for registration of the above-referenced securities with the Secretary of State prior to their offer or sale in the State of Illinois.

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42. By virtue of the foregoing, the Respondent has violated Sections 12.A, D, E and G of the Act.
43. Section 11.E(2) of the Act provides, inter alia, that if the Secretary of State shall find that any person has violated subsections D, E or G of 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, provided that any person who is the subject or an order of permanent prohibition may petition the Secretary of State for a hearing to present evidence of rehabilitation or change of circumstances justifying the amendment or termination of the order of permanent prohibition.
44. Section 11.E(3) of the Act provides, inter alia, that if the Secretary of State shall find that any person is engaging or has engaged in the business of selling or offering for sale securities as a dealer or salesperson without prior thereto and at the time thereof having complied with the registration or notice filing requirements of this Act, the Secretary of State may by written order prohibit the person from offering or selling any securities in this State.
45. 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 the costs of investigation and reasonable expenses, and may issue an order of public censure against the violator.
46. By virtue of the foregoing, the Respondent is subject to a fine of up to \$10,000.00 per violation, costs of investigation, reasonable expenses, an order of censure, an order which permanently prohibits the Respondent from offering or selling securities in the State of Illinois as well as an order which suspends or revokes his salesperson and investment adviser representative registrations in the State of Illinois.
47. The entry of a final written Order of Revocation, Public Censure, Permanent Prohibition and Fine is proper in this Matter given the conduct of the Respondent as described

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in the pleadings and Secretary of State Exhibits No. 1-20.

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 offer or sell any security in accordance with the provisions of the Act are violations of Section 12.A of the Act. The actions, representations, and/or omissions of the Respondent made in connection with the failure to file required documents with the Secretary of State are violations of Section 12.D of the Act. The actions, representations and/or omissions of the Respondent made in connection with his sworn statements that were false or misleading are violations of Section 12.E of the Act. The actions, representations, and/or omissions of the Respondent which were untrue or misleading of material facts and were made to obtain money from Illinois purchasers are violations of Section 12.G of the Act.
2. Because of the Findings of this Order, the pleadings, and Exhibits admitted as Secretary of State Exhibits Nos. 1-20, the Respondent is subject to the entry of a final written Order that permanently prohibits the Respondents pursuant to Sections 11.E(2) and 11.E(3) 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, publicly censures the Respondent in this Matter, revokes the registration of the Respondent as an investment adviser representative and/or a salesperson of securities in the State of Illinois pursuant to Section 8.E(1) of the Act, and grants such other relief as may be authorized under the Act.

WHEREAS, the proposed Recommendations of the Hearing Officer are correct and are accepted by the Secretary of State.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Respondent, Paul Andrew Niess, shall be permanently prohibited from offering and selling securities in the State of Illinois;

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2. The Respondent, Paul Andrew Niess, shall pay a fine of \$25,000.00 for multiple violations of the Act;
3. The Respondent, Paul Andrew Niess, shall be publicly censured; and
4. The Respondent's registration as a salesperson of securities and as an investment adviser's representative in the State of Illinois shall be Revoked as of November 21, 2005.

ENTERED: This 19th day of May, 2008



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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