

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: PAUL ANDREW NIESS

)
) No. 0400211
)

NOTICE OF HEARING

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

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, a public hearing will be held at 300 West Jefferson Street, Suite 300A, Springfield, Illinois 62702 on the 17th day of October, 2007, at the hour of 10:00 a.m., or as soon thereafter as counsel may be heard, before Jon K. Ellis or such other duly designated Hearing Officer of the Secretary of State.

Said hearing will be held to determine whether an Order should be entered which revokes the salesperson registration of Paul Andrew Niess (the "Respondent") in the State of Illinois and/or granting such other relief as may be authorized under the Act including but not limited to imposition of a monetary fine in the maximum amount of \$10,000 pursuant to Section 11.E.4 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 at all times relevant, the Respondent Paul Andrew Niess was registered as an Illinois registered salesperson and investment adviser representative through 1717 Capital Management Company pursuant to Section 8 of the Illinois Securities Law 815 ILCS 5/1 et seq. (the "Act"); Respondent's salesperson and investment adviser representative registrations were terminated in Illinois on November 21, 2005;
2. That on or about September 10, 2004, Paul Andrew Niess 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;

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3. That at all times relevant, Paul Andrew Niess 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., and that the kiosks would be serviced and maintained by Network Services Depot, Inc. and/or K & G Marketing, Inc.;
4. That as part of this aforesaid investment, SW gave Paul Andrew Niess an additional \$19,000 for what Paul Andrew Niess 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.;
5. That after receiving approximately \$22,500 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;
6. That on or about March 31, 2004, Paul Andrew Niess offered and sold to his clients BJ and AJ, Illinois residents, an internet access terminal sales agreement (hereinafter, "kiosk agreement") with Network Services Depot, Inc. and/or K & G Marketing, Inc., whereby BJ and AJ purchased 50 internet access kiosks and/or terminals (hereinafter, "kiosks") in return for an investment of \$350,000; that said kiosk agreement was purchased pursuant to advice from Paul Andrew Niess 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 Paul Andrew Niess;
7. That at all times relevant, Paul Andrew Niess 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., and that Network Services Depot, Inc. and/or K & G Marketing, Inc. would provide the maintenance and service of said kiosks;
8. That at all times relevant, Paul Andrew Niess never advised SW, BJ or AJ of any risk involved or associated with the aforementioned investment;

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9. That after receiving approximately \$60,000 from both K & G Marketing, Inc. and Paul Andrew Niess, which purportedly represented returns from said kiosks, AJ and BJ never received any further return on their investment after the last check received by BJ and AJ on March 11, 2006;
10. That SW, AJ and BJ 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;
11. That on or about March 31, 2004, Paul Andrew Niess obtained a personal loan from BJ and AJ in the sum of approximately \$28,000 within the course of his role as their securities salesperson and investment adviser representative;
12. That on or about March 9, 2007, Paul Andrew Niess gave a sworn statement to the Illinois Securities Department regarding this matter pursuant to subpoena;
13. That during this sworn statement, Respondent Paul Andrew Niess 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 Respondent's participation in the offering and selling of any kiosk agreement, including the aforesaid kiosk agreements purchased by SW, AJ and BJ;
14. That on or about September 10, 2004, Paul Andrew Niess received a wire transfer into his bank account in the amount of \$9,000 from Charles Castro;
15. That on or about September 23, 2004, Paul Andrew Niess received a wire transfer into his bank account in the amount of \$9,000 from Greg Mooney and K & G Marketing;
16. That on or about December 28, 2004, Paul Andrew Niess received a wire transfer into his bank account in the amount of \$7,000 from Greg Mooney and K & G Marketing;
17. That on or about February 14, 2005, Paul Andrew Niess received a wire transfer into his bank account in the amount of \$18,000 from Greg Mooney and K & G Marketing;
18. That each of the above referenced kiosk agreements is an investment contract and therefore a security as that term is

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defined pursuant to Section 2.1. of the Illinois Securities Law of 1953 [815 ILCS 5/1 et seq.] (the "Act");

19. That Section 5 of the Act provides, inter alia, that all securities except those exempt under Section 3 of the Act 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;
20. That 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 securities except in accordance with the provisions of the Act;
21. That 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 provision of the Act;
22. That 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;
23. That 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;
24. That 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;
25. That 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

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adviser representative has violated any of the provisions of this Act;

26. That 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;
27. That 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;
28. That 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;
29. That the loan arrangement between AJ/BJ and Paul Andrew Niess did not fall within the conditions outlined in NASD Rule 2370 nor did AJ or BJ fall within the exemptions outlined within NASAA Model Rule 102(a)(4)-1;
30. That at all times relevant hereto, Respondent Paul Andrew Niess 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 fact that such loan was prohibited by his company's written policies and procedures as well as the rules of the NASD and NASAA;
31. That at all times relevant hereto, Respondent Paul Andrew Niess 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 Respondent received numerous wire transfers of money into his personal bank account from Castro, Mooney and K & G Marketing;

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32. That at all times relevant hereto, Respondent Paul Andrew Niess 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 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 receive no further monthly payments after March, 2006, and never received a list of locations for said kiosks; Furthermore, Paul Andrew Niess failed to advise SW of any risk associated with said investment;
33. That at all times relevant hereto, Respondent Paul Andrew Niess 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 AJ and BJ that this investment would yield a guaranteed return of 10% per month, that there was no risk involved in said investment, and that AJ and BJ 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, Paul Andrew Niess failed to advise BJ or AJ of any risks associated with said investment;
34. That at all times relevant hereto, Respondent Paul Andrew Niess 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;
35. That by virtue of the foregoing, Respondent Paul Andrew Niess has violated Sections 12.A, 12.D and 12.G of the Act;
36. That Section 11.E(2) of the Act provides, inter alia, that if the Secretary of State shall find that any person has violated subsection 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;
37. That 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

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of this Act, the Secretary of State may by written order prohibit the person from offering or selling any securities in this State;


38. That 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;
39. By virtue of the foregoing, Respondent Paul Anderson Niess 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 Respondents 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;

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 or a Special Appearance pursuant to Section 130.1107 of the Rules, or other responsive pleading within thirty days of the receipt of this notice. Your failure to do so within the prescribed time shall be deemed 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 so appear shall constitute default.

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

Dated this *9th* day of *August*, 2007.



Jesse White
Secretary of State
State of Illinois

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Attorney for the Secretary of State:

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