

**STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT**

**IN THE MATTER OF: FRANCES E. SMITH**

**FILE NO. 0400408**

**NOTICE OF HEARING**

**TO THE RESPONDENT:**

Frances E. Smith  
(CRD #1069249)  
11632 South Kolin  
Alsip, Illinois 60803

c/o Waddell & Reed Financial Services  
Jennifer G. Lapentis, Esq.  
6300 Lamar Avenue  
Shawnee Mission, Kansas 66202

c/o Carl E. Poli, Esq  
801 Skokie Boulevard – Suite 100  
Northbrook, Illinois 60062

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 20th day of April, 2005, at the hour of 10:00 a.m., or as soon as possible thereafter, before James G. Athas, 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 revoking or suspending Frances E. Smith's (the "Respondent") 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, censure and the imposition of a monetary fine in the maximum amount pursuant to Section 11.E(4) of the Act, payable within ten (10) business days of the Order.

The grounds for such proposed action are as follows:

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1. That at all relevant times, the Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
2. That at all relevant times Respondent was employed by Waddell & Reed, Inc., 6300 Lamar Avenue, Shawnee Mission, Kansas 66202 ("Waddell") as a securities salesperson.
3. That Waddell, through its salespersons, offers and sells securities in the State of Illinois and to residents of the State of Illinois.
4. That Respondent, as a sales representative of Waddell, offers and sells securities within and from the State of Illinois, and offers and sells securities to residents of the State of Illinois.

**FRAUDULENT BUSINESS PRACTICE**

5. That Section 8 E(1)(b), states, *inter alia*, that "...the registration of a ...salesperson, investment advisor, or investment advisor representative may be denied, suspended or revoked if the Secretary of State finds that the ... salesperson, investment advisor, or investment advisor representative...has engaged in any unethical practice in connection with any security, the offer or sale of securities or in any fraudulent business practice".
6. That on January 2, 2002 Respondent signed the name of Illinois resident Penelope Nicholls ("Nicholls") to a form requesting a withdrawal of \$10,000 from Nicholls' annuity, PO59823, (the "Annuity") with United Investors Life, 2001 Third Avenue South, Birmingham, Alabama 35202 ("United").
7. That on January 2, 2002 Respondent signed her own name, "Frances Smith", to the United form referred to in paragraph 6 above as a "witness" to the signature, "Penelope Nicholls", which Respondent had forged.
8. That Respondent's activities referred to in paragraphs 6 and 7 above were conducted without the knowledge or consent of Nicholls, or the knowledge of United, and resulted in the partial liquidation on January 7, 2002 of Nicholls' Annuity with United, and the issuance of a check from United to Nicholls in the amount of \$10,000.

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9. That Respondent's activities referred to in paragraphs 6 and 7 above constituted an unethical practice in connection with a security, the offer or sale of securities, or in a fraudulent business practice.
10. That Respondent's activities referred to in paragraphs 6 and 7 above resulted in the duplicate partial liquidation on January 7, 2002 of Nicholls' Annuity with United. The \$10,000 partial liquidation had already been accomplished on December 3, 2001 based on Respondent's submission of a withdrawal form which had been properly signed by Nicholls on November 29, 2001.

**FAILURE TO FILE**

11. That as a registered salesperson of securities in the State of Illinois Respondent was required to comply with all relevant provision of the Act, including Section 12 D, which states, *inter alia*, "It shall be a violation of the provisions of this Act 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 or any rule or regulation made by the Secretary of State pursuant to this Act or to fail to comply with the terms of any order of the Secretary of State issued pursuant to Section 11 hereof."
12. That Nicholls filed a written complaint dated January 18, 2002 with United which was forwarded to Waddell complaining that the second transaction was made in error, "as I was unaware of this action taken by my personal representative Frances E. Smith. The consent form was not signed by me."
13. That Section 8.C(8) of the Act states, *inter alia*, "Any change which renders no longer accurate any information contained in any application for registration or re-registration as a salesperson shall be reported to the Secretary of State within 10 business days after the occurrence of such change."
14. That such informational change is reported to the Secretary of State by means of filing NASD Form U-4 with the NASD Central Registration Depository ("CRD") within 10 days of the change.
15. That the pertinent question requiring a report pursuant to the change which rendered no longer accurate certain information contained in Respondent's application for registration is as follows:

"Within the past twenty four (24) months, have you been the subject of an investment-related, consumer-initiated, written complaint, not

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otherwise reported under question 14I(1) or (2) above which:  
(b) alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities?"

16. That Respondent's signing of Nicholl's name to the United withdrawal request form, and then signing Respondent's own name as witness without Nicholl's knowledge or consent constituted forgery within the generic meaning of the term, *i.e.* "in law, making of a false writing with intent to defraud. Writing to be forgery, must either have legal significance or be commonly relied upon in business transactions." (Encyclopedia Britannica).
17. That Respondent's signing of Nicholl's name was made with the evident intent of deceiving United, and causing United to effect a \$10,000 partial liquidation of Nicholls' Annuity in United's mistaken belief that they had a withdrawal form properly executed, "Penelope Nicholls", and properly witnessed, "Frances Smith".
18. That Respondent was required to file an amendment to the Form U-4 disclosing the complaint by Nicholls referred to in paragraph 12 above which alleged the forgery of Nicholls' signature.
19. That Respondent failed and refused to file said amendment disclosing Nicholls' complaint alleging the forgery referred to in paragraph 12 above.
20. That by virtue of the foregoing Respondent has violated Section 12.D of the Act.
21. That Section 8.E(1)(g) states, *inter alia*, "...the registration of a...salesperson...may be denied, suspended, or revoked if the Secretary of State finds that the...salesperson...has violated any of the provisions of this Act"
22. That pursuant to the provisions of Section 8.E(1)(b) and Section 8.E(1)(g) of the Act the Secretary of State may suspend or revoke Respondent's registration as a securities salesperson.

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.

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Furthermore, you may be requested 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.

A copy of the Rules, promulgated under the Act and pertaining to Hearings held by the Office of the Secretary of State, Securities Department, is included with this Notice.

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

DATED: This 1st day of March 2005

A handwritten signature in black ink that reads "Jesse White" followed by a stylized monogram "JW".

JESSE WHITE  
Secretary of State  
State of Illinois

Attorney for the Secretary of State:

James J. Tierney  
Office of the Secretary of State  
Illinois Securities Department  
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Hearing Officer:

James G. Athas, Esq.  
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