

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: JAMES E. UPSHAW, SR., and  
UPSHAW and ASSOCIATES, LLC, Its/his partners, officers  
and directors, agents, employees, affiliates, successors, and  
assigns.

FILE NO. 0400222

TEMPORARY ORDER OF PROHIBITION

**TO RESPONDENTS:** James E. Upshaw, Sr.  
1127 Mannheim Rd. #313  
Westchester, Illinois 60154

Upshaw and Associates, LLC  
1127 Mannheim Rd. #313  
Westchester, Illinois 60154

On information and belief, I, Jesse White, Secretary of State for the State of Illinois, through my designated representative, who has been fully advised in the premises by the staff of the Securities Department, Office of the Secretary of State, herein find:

1. That James E. Upshaw, Sr. (or "J. Upshaw", or collectively with Upshaw LLC, "Respondents") at all times referred to herein was the member/manager/organizer of Upshaw LLC, with address at 1127 Mannheim Rd., Suite 313, Westchester, Illinois 60154.
2. That Upshaw and Associates, LLC (or "Upshaw LLC", or collectively with J. Upshaw, "Respondents") was at all times referred to herein, an Illinois Limited Liability Company with address at 1127 Mannheim Rd. Suite 313, Westchester, Illinois 60154.

UNREGISTERED INVESTMENT ADVISORS

3. That Respondents Upshaw LLC and J. Upshaw are in the business of providing investment and financial management, for compensation, to the general public within the State of Illinois.

4. That between August of 2000 and August of 2002 Respondents conducted, or held themselves out as conducting, investment advisory services to others for compensation. In this Respondents claimed that they were “award winning financial consultants”, and promised that, “Every client receives the same knowledge and experience used by Upshaw and Associates as they served McDonalds Corporation, Transamerica Commercial Finance Corporation, Walter E. Heller & Company, U.S. Department of Education, Budget Car Rental, et al”.
5. That the activities described in paragraphs 3 and 4 above constitute the business of giving, or holding themselves out as giving, investment advice to others, and being an “investment adviser”, as that term is defined in Sec 2.11 of the Illinois Securities Law of 1953 [815 ILCS 5] (the “Act”).
6. That Section 8 of the Act provides, inter alia, that all investment advisers, except those exempt, shall be registered with the Secretary of State prior to acting as such in the State of Illinois.
7. That Respondents failed to file with the Secretary of State an application for registration as investment advisors as required by the Act and that as a result the Respondents were not registered pursuant to Section 8 prior to acting as investment advisors in the State of Illinois.
8. That Section 12.C of the Act provides, inter alia, that it shall be a violation for any person to act as an investment advisor except in accordance with the provisions of the Act.
9. That 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.
10. That by virtue of the foregoing, Respondents have violated Sections 12.C and 12.D of the Act.

#### SALE OF UNREGISTERED SECURITIES

11. That between August of 2000 and August of 2002, Respondents offered and sold interest bearing promissory notes issued by Upshaw LLC in aggregate amount of at least \$139,000, to one or more residents of the State of Illinois
12. That Section 5 of the Act provides inter alia that all securities except those exempt under Section 3 or those offered or sold in transactions exempt under Section 4 shall be registered either by coordination or by qualification prior to their offer or sale in the State of Illinois.

Temporary Order of Prohibition

-3-

13. That Respondents failed to file with the Secretary of State an application for registration of the securities described above as required by the Act and that as a result the security was not registered pursuant to Section 5 of the Act prior to being offered and sold in the State of Illinois.
14. That Section 12.A of the Act provides it shall be a violation of the provisions of this Act for any person to offer or sell any security except in accordance with the provisions of this Act.
15. That by virtue of the foregoing paragraphs 11 through 13, Respondents have violated Sections 12.A and 12.D of the Act.
16. That the aforementioned findings are based upon credible evidence.
17. That Section 11.F (2) of the Act provides, inter alia, that the Secretary of State may temporarily **PROHIBIT** the offer or sale of securities and **PROHIBIT** the business of rendering investment advice by any person, without notice and prior hearing, if the Secretary of State shall deem it necessary to prevent an imminent violation of the Act or to prevent losses to investors that will occur as a result of prior violations of the Act.
18. That the entry of this Temporary Order prohibiting Respondents Upshaw and Associates, LLC, and James E. Upshaw, Sr., from offering or selling securities AND from engaging in the business of rendering investment advice in the State of Illinois is in the public interest and for the protection of the investing public and is consistent with the purposes intended by the provisions of the Act.

NOW THEREFORE IT IS HEREBY ORDERED THAT: pursuant to the authority granted by Section 11.F of the Act, Respondents James E. Upshaw, Sr., and Upshaw and Associates LLC., its/his officers and directors, agents, employees, affiliates, successors and assigns are **PROHIBITED** from offering or selling securities AND **PROHIBITED** from engaging in the business of rendering investment advice in or from this State until the further Order of the Secretary of State.

NOTICE is hereby given that Respondents may request a hearing on this matter by transmitting such request in writing to the Director, Illinois Securities Department, 17 North State Street, Suite 1266, Chicago, Illinois 60602. Such request must be made within thirty (30) calendar days of the date of entry of the Temporary Order of Prohibition. Upon receipt of a request for hearing, a hearing will be scheduled as soon as reasonably practicable. A request for hearing will not stop the effectiveness of this Temporary Order and will extend the effectiveness of this Temporary Order for sixty days from the date the hearing request is received by the Department.

Temporary Order of Prohibition

-4-

FAILURE BY ANY RESPONDENT TO REQUEST A HEARING WITHIN THIRTY (30) CALENDAR DAYS AFTER ENTRY OF THIS TEMPORARY ORDER OF PROHIBITION SHALL CONSTITUTE AN ADMISSION OF ANY FACTS ALLEGED HEREIN AND SHALL CONSTITUTE SUFFICIENT BASIS TO MAKE THIS TEMPORARY ORDER OF PROHIBITION FINAL.

Dated: This 20<sup>th</sup> day of July, 2004.



---

JESSE WHITE  
Secretary of State  
State of Illinois

James J. Tierney  
Illinois Securities Department  
17 North State Street, Suite 1266  
Chicago, Illinois 60602  
312-793-4943