

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: JOHN J. DERRICO

FILE NO. 0300655

ORDER OF REVOCATION

TO THE RESPONDENT: John J. Derrico
(CRD #: 2204033)
1 Alex Drive
Farmingdale, New Jersey 07727

C/o E Street Access
480 Route Nine
North Englishtown, New Jersey 07726

WHEREAS, the above-captioned matter came on to be heard on January 14, 2004, pursuant to the Notice of Hearing dated October 3, 2003, FILED BY Petitioner Secretary of State, and the record of the matter under the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act") 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 Fact, Conclusions of Law and Recommendations of the Hearing Officer, Soula J. Spyropoulos, Esq. in the above-captioned matter have been read and examined.

WHEREAS, the proposed Findings of Fact of the Hearing Officer are correct and are hereby adopted as the Findings of Fact of the Secretary of State:

1. Section 130.1102 of Subpart K of the Rules and Regulations of the Illinois Securities Law of 1953 (the "Rules and Regulations") states that each respondent shall be given a Notice of Hearing at least 45 days before the first date set for any hearing under the Act. Proper notice is given by depositing a Notice of Hearing with the United States Postal Service (the "U.S.P.S."), either by certified or

Order of Revocation

2

registered mail, return receipt requested, or by the personal service of the Notice of Hearing to the last known address of the respondent.

As per Exhibit 1, on October 3, 2003, the Department deposited the Notice with the U.S.P.S. by certified mail, return receipt requested, to both Respondent's last known personal residence and last known place of business. The Notice was, thus, given on October 3, 2003. The Notice marks as the first date set for hearing the date of November 19, 2003, a date over 45 days after Respondent was given the Notice. Therefore, the service of the Notice upon Respondent by the Department was proper.

2. Section 11.F(1) of the Act provides that the Secretary of State shall not undertake any action or impose a fine against a registered salesperson or dealer of securities within the State of Illinois for a violation of the Act without first providing the salesperson an opportunity for hearing upon not less than 10 days' notice given by personal service or registered mail or certified mail, return receipt requested, to the person concerned.

As per Exhibit 1, Respondent was properly notified of his opportunity to be heard on the File via the Department's timely provision thereto of the Notice. As discussed in Paragraph 1 above, the Department first served the Notice upon Respondent on October 3, 2003, a date well over 10 days before the Respondent's first scheduled opportunity to be heard on November 19, 2003. (Notably, on October 8, 2003, at Respondent's last known place of business, and on October 16, 2003, at Respondent's last known personal residence, acknowledged return receipts of the certified mailings as to the service of the Notice by the Department were executed, showing that Respondent had received well over the requisite 10 days' notice of the scheduled, November 19th, hearing date.)

Further, on November 17, 2003, the Department deposited the Notice and the Order of Continuance entered on November 17, 2003, which Order continues hearing on the File from November 19, 2003 to December 17, 2003, with the U.S.P.S. by certified mail, return receipt requested, to Respondent's last known personal and business addresses. Notice of the Order was, thus, given on November 17, 2003, more than ten (10) days before the then scheduled hearing date of December 17, 2003. Also, on December 19, 2003, the Department deposited the notice and the Order of Continuance entered on December 12, 2003, which Order continues hearing on the File from December 17, 2003 to January 14, 2004, with the U.S.P.S. by certified mail, return receipt requested, to Respondent's last known personal address. Notice of this Order was, thus, given on December 19, 2003, again well over ten (10) days before the scheduled hearing date of January 14, 2004, on which date the hearing on the File was, in fact, held.

Order of Revocation

3

Therefore, because the Department gave proper notice of the scheduled hearing dates on the File to Respondent, the Department has personal jurisdiction over Respondent.

3. Respondent failed to appear, whether personally or through counsel, at the hearing.
4. The Department offered exhibits, identified above, each of which was received and admitted into evidence, a proper record of all proceedings having been made and preserved as required.
5. No outstanding petitions, motions, or objections exist as to this proceeding.
6. At all material and relevant times Respondent was registered with the Secretary of State as a salesperson pursuant to Section 8 of the Act.
7. On May 13, 2003, without admitting or denying the findings alleged by NASD as per the Complaint, Respondent consented to NASD's entry of the Letter of AWC executed thereby. The Letter of AWC sanctions Respondent with a fine in the amount of \$12,500.00, and with suspension from associating with any NASD member in any principal capacity for thirty (30) business days. The Letter of AWC finds that:
 - a. ESA has been a member of NASD since on or about February 9, 2000. ESA conducts a general securities business. ESA employs approximately five (5) registered persons. ESA has no formal NASD disciplinary history.
 - b. Respondent became registered with NASD as a Series 7 general securities representative on or about January 21, 1992. Subsequently he obtained Series 4, 24, 27, 55, and 63 licenses. From on or about February 9, 2000 through the present, he has been associated with ESA. While associated with ESA, he has served as ESA's President, Chief Executive Officer, FINOP, ROP, CROP and SROP. Before his association with ESA, Respondent was associated with NASD member firms Russo Securities, Inc. (04/06/98) and Murphy, Marseilles, Smith & Nammack, Inc. (09/24/70 to 06/13/97). Respondent has no formal disciplinary history.
 - c. At various times during 2000 through 2002, ESA, acting through Respondent, permitted two (2) statutorily disqualified persons as defined under the Securities and Exchange Act of 1934 and Article 111 of the NASD By Laws, to be associated with and conduct activities on behalf of the firm. As a result of such conduct, ESA and Respondent

Order of Revocation

4

violated NASD Conduct Rules 1021, 1031, 2110, and Article 111 Sections 3 and 4 of the NASD By Laws.

- d. At various times during 2000 through 2001, ESA, acting through Respondent, permitted one individual to act as a general securities representative, equity trader, and general securities principal while failing to have registered in such capacities. As a result of such conduct, ESA and Respondent violated NASD Membership and Registration Rules 1021, 1031, and 1032, and NASD Conduct Rule 2110.
- e. At various times during 2000 through 2002, ESA, acting through Respondent, permitted three (3) individuals to perform duties as registered persons while their registration status with the NASD was inactive due to their failure to timely complete the regulatory element of the Association's continuing education rule, as set forth in the NASD's Membership and Registration Rule 1120. As a result of such conduct, ESA and Respondent violated the NASD Membership and Registration Rule 1120 and NASD Conduct Rule 2110.
- f. On December 31, 2002, ESA, acting through Respondent, conducted a securities business while failing to maintain net capital in the amount of \$100,000.00 as required by SEC Rule 15c3-1. The net capital deficiency was primarily caused by the failure to accrue various legal expenses. As a result of this conduct, ESA violated SEC Rule 15c3-1 and NASD Conduct Rule 2110, and Respondent violated NASD Conduct Rule 2110.

By reason of the foregoing, Respondent and ESA Securities, Inc. violated NASD Conduct Rules 1021, 1031, and 2110; and Article 111 Sections 3 and 4 of NASD By Laws

WHEREAS, the proposed Conclusions of Law made by the Hearing Officer are correct and are hereby adopted as the Conclusions of Law of the Secretary of State:

1. The Secretary of State has jurisdiction over the subject matter hereof pursuant to the Act.
2. Section 8.E(1)(j) of the Act provides, *inter alia*, that the registration of salespeople registered within the State of Illinois may be revoked if the Secretary of State finds that such have been suspended by any self-regulatory organization registered under the Federal 1934 Act or the Federal 1974 Act 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.
3. Respondent is a registered salesperson of securities in the State of Illinois who has had entered against him an order, the Letter of AWC, that, because of

Order of Revocation

5

Respondent's having permitted two statutorily disqualified persons to be associated with and conduct activities on behalf of ESA Securities, Inc., having permitted one individual to act as a general securities representative, equity trader, and general securities principal while failing to have registered in such capacities, having permitted three individuals to perform duties as registered persons while their registration status with the NASD was inactive, and having conducted a securities business while failing to maintain net capital in the requisite minimum amount (\$100,000.00), not only fines him in the amount of \$12,500.00, but also suspends him from associating with any NASD member in any principal capacity for thirty (30) business days.

Respondent's actions were, thus, in contravention of NASD Conduct Rules 1021, 1031, and 2110; and Article 111 Sections 3 and 4 of the NASD By Laws.

Therefore, the fining and suspension of Respondent in the order clearly arose from fraudulent or deceptive acts or practices in violation or contravention of rules, regulations, and standards duly promulgated by a self-regulatory organization, the NASD, an organization registered under the Federal 1934 Act.

4. Under and by virtue of the foregoing, Respondent's registration as a salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E(1)(j) of the Act.

WHEREAS, the Hearing Officer recommended that the Secretary of State should revoke the Respondent's registration as a salesperson in the State of Illinois, and the Secretary of State adopts in its entirety the Recommendation made by the Hearing Officer.

NOW THEREFORE, IT SHALL BE AND IS HEREBY ORDERED:

1. That John J. Derrico's registration as a salesperson in the State of Illinois is revoked pursuant to the authority provided under Section 8.E(1)(j) of the Act.
2. That this matter is concluded without further proceedings.

ENTERED: This 11th day of March, 2004.



JESSE WHITE
Secretary of State
State of Illinois

Order of Revocation

6

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 Act (14 Ill. Admin. Code, Ch. 1 Sec. 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.