

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

_____))
IN THE MATTER OF: ROBERT COUCH, and))
COUCH FINANCIAL SERVICES, INC., and OIL2, INC., and))
their partners, officers and directors, agents, employees, affiliates,))
successors, and assigns.))
_____)

0900166

ORDER OF PROHIBITION

**TO RESPONDENTS: Robert Couch, and
 Couch Financial Services, Inc, and
 Oil2, Inc.
 5339 Alpha Road
 Suite 400
 Dallas, Texas 75240**

WHEREAS, the above-captioned matter came on to be heard on March 5, 2014 pursuant to Notice of Hearing dated March 19, 2013 and served on Respondents through the Secretary of State Index Department after certified mail efforts were unsuccessful, 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, James Kopecky, Esq., in the above-captioned matter have been read and examined.

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

HEARING OFFICER'S REPORT AND RECOMMENDATION

On March 5, 2014, 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, the Hearing Officer held a public hearing at 69 West Washington Street, Suite 1220, Chicago, Illinois 60602, to determine whether a permanent Order shall be entered prohibiting Respondents **Robert Couch, Couch Financial Services, Inc. and Oil2, Inc.**, and their partners, officers and directors, agents and employees, affiliates, successors and assigns from offering or selling securities in or from the State of Illinois

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and/or granting such other relief as may be authorized under the Act, including but not limited to, the imposition of a monetary fine.

Jensen Litigation Services provided a certified court reporter that recorded and transcribed the hearing. The testimony of the witnesses is, therefore, preserved, and their testimony and the exhibits admitted at the hearing shall be made a part of the record. This Report and Recommendation may contain summaries of or references to testimony or exhibits, however, it is not intended to be a substitute for the complete testimony and exhibits in the record.

I. Appearances

Attorney James Tierney appeared on behalf of the Illinois Securities Department ("Department"). Attorney Mitchell Little of the law firm Scheef & Stone, LLP, based in Frisco, TX, appeared on behalf of Respondents. Respondent Robert Couch also appeared.

II. Pre-Hearing Proceedings

The parties agreed to the date for the hearing and confirmed service of the Notice of the Hearing.

The Department issued a Notice of Hearing in March 2013. The Respondents answered the Notice of Hearing. Respondents also submitted a Motion to Dismiss the Notice. The parties briefed the motion, and the Hearing Officer denied the motion. Respondents' Answer and the briefs and order on the Motion to Dismiss should be made a part of the record. The parties also participated in a prehearing conference to address witness and evidence issues.

In addition, both the Department and the Respondents submitted additional briefs and information on April 3, 2014, and March 6, 2014, respectively. The Hearing Officer considered the information submitted and those briefs and documents shall be made a part of the record.

III. Stipulations

The Respondents stipulated that neither registered individually in the State of Illinois, nor did Respondents register securities in the State of Illinois.

IV. Exhibits

The Hearing Officer admitted the following Exhibits into evidence at the hearing:

Proffered by the Department:

Exhibit 3. Secretary of State Certifications of records search

Exhibit 4. CD of podcast

Exhibit 5. Transcript of podcast

Proffered by Respondents:

Exhibit 1. Respondents' Requests to Admit

Exhibit 2. Oil2 Form D filing with the SEC

Exhibit 3. Letter from SEC Terminating Investigation

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- Exhibit 6. Department's Response to Respondents' Requests to Admit
- Exhibit 7. Screen shot showing date of upload of podcast
- Exhibit 8. Section 2.2 of the Illinois Securities Act
- Exhibit 9. Books received blotter from CFS

The Respondents also proffered their Exhibit 4, Department's Request to Produce, and the Hearing Officer denied its admission.

V. Witnesses

The following witnesses provided testimony at the hearing:

1. **Michael Allen.** Staff Accountant, Office of Compliance Inspections of the United States Securities and Exchange Commission;
2. **Robert Grogan.** Investigator, Illinois Department of Securities;
3. **Robert Couch.** Respondent;
4. **Professor Todd Henderson.** Respondent's Expert Witness;
5. **Judi Snyder.** Host, Wealth Off Wall Street radio show.

VI. Summary of Evidence and Issues

Respondent Robert Couch is an individual residing in Texas. He owned or controlled Respondent Couch Financial Services, Inc. ("CFS"), formerly a registered broker-dealer, and Oil2 Holdings, Inc. (incorrectly named Oil2, Inc.) a Texas oil and gas company. Couch admits that he participated in sales of securities to Illinois investors through CFS in the past through referrals. Respondents further admitted and agreed that Oil2 offered securities. The dispute, therefore, centers on whether the securities were exempt from registration in Illinois.

Mr. Couch participated in a radio show titled Wealth Off Wall Street in Florida in May, 2009. Judi Snyder and her husband hosted the show. During the radio show, Mr. Couch described his experience in the oil and gas industry, and specifically offerings of fractional interests in oil wells as investment opportunities. He testified that he was not there to sell securities, and that he was not offering anything on or through the show. He had never met the Snyders before but he travelled from Texas to Florida to appear on the show to network and to help the Snyders. He testified that it would have been impossible to offer securities at the time because the market had crashed and his broker-dealer, CFS, was not going to survive. The broker-dealer ultimately went out of business in 2010. Moreover, Respondents accepted investors into his two-party partnerships through Oil2 through December 2009, well after the radio show. The investors included two investors from Illinois, although those investors were existing security holders.

Michael Allen from the United States Securities and Exchange Commission testified that he found a podcast of the radio show featuring Mr. Couch when doing a google search on the

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internet from his office in Fort Worth, Texas, in June, 2010. His office made a CD of, and transcribed, the podcast. Mr. Grogan from the Department of Securities reviewed the CD and transcript and determined that it was available in all 50 states. He determined, and Respondents did not dispute, that Oil2 accepted investors from Illinois. He also determined that Mr. Couch never stated that the securities referred to during the radio show/podcast were not available in Illinois. He testified that the radio show and podcast constitute general solicitation.

Professor Henderson from the University of Chicago Law School testified as an expert witness on behalf of Respondents. He testified to the securities law regulatory scheme. He also testified that he did not believe anything was being offered during the radio show and subsequent podcast because of the state of Oil2 and CFS. There was no security to offer. However, on cross examination he agreed that it would not be unreasonable for an investor listening to the show to believe that the presenters were making an offer to sell securities. He further testified that, hypothetically, if a seller goes on a radio show to offer a security and someone calls to purchase that security or another, the radio show would constitute a general solicitation.

Finally, Ms. Judi Snyder, the radio show host testified. She testified that she did not ask Mr. Couch's permission to post the radio show/podcast to iTunes on the internet. She testified that the radio's internet station makes the show available everywhere to anyone who has access to the internet.

Ultimately, the question of whether the Respondents violated the registration provisions of the Illinois Securities Act comes to answering the question of whether the radio show/podcast constitutes a general solicitation such that the exemption from registration is not available to Respondents. It is the Respondents' burden to prove entitlement to an exemption from registration. Respondents failed to do so. The Hearing Officer believes the radio show and podcast constitute a general solicitation and find that the Respondents violated the registration provisions of the Illinois Securities Act. The Hearing Officer further believes that the only credible reason for Respondent Couch's travel to Florida to appear on the show was to solicit potential investors. Finally, the Hearing Officer believes that Respondent knew, or recklessly failed to know, that the radio show would be made available to persons outside of Florida and would be posted to iTunes.

VII. Findings of Fact

The Hearing Officer makes the following Findings of Fact:

1. That Respondent Robert Couch (hereinafter at times "Couch" or together with Couch Financial Services, Inc. and Oil2, Inc. "Respondents") is an individual with a last known address of 5339 Alpha Road, Suite 400, Dallas, Texas 75240.
2. That Respondent Couch Financial Services, Inc. (hereinafter at times "CFS" or together with Couch and Oil2, Inc. "Respondents") is a Texas corporation doing business in Illinois.

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3. That Respondent Oil2, Inc. (hereinafter at times "Oil2" or together with Couch and CFS "Respondents") is a Texas corporation doing business in Illinois.
4. That Respondent Couch is the President and Chief Executive Officer of CFS and of Oil2.
5. That in May 2009 Respondent Couch participated with host Jeff Snyder in a radio program ("Broadcast") entitled *Wealth Off Wall Street* in which Couch indicated (among other predictions and assertions) to listeners that they should invest in "oil and gas", that he is an oil and gas producer, and that he and his companies CFS and Oil2 will accept investments of \$20,000.
6. That Couch affirmed the radio host's statement that "when the economy is down and not really doing well, we are making 14 percent in oil and gas. When the price goes up and the demand goes up, we are making 36 percent."
7. That Couch stated during the Broadcast that investors will become part owners of oil and gas producing real estate, with recordable deed.
8. That the real estate is owned, in part, by CFS and Oil2.
9. That Couch also asked listeners to the Broadcast to call in and make an appointment to attend an oil and gas investment seminar that Couch was leading.
10. That the Broadcast was an offer to sell oil and gas investments through a general solicitation in that it was available to Illinois listeners, and throughout the United States through the internet and through "smart" phones and through the radio station's internet station.
11. That Illinois residents in fact purchased oil and gas investments from Respondents.
12. That the Broadcast did not include a statement or disclaimer that the securities are not being offered to the residents of Illinois.

VIII. Conclusions of Law

Based on an application of the law to the Findings of Fact, the Hearing Officer concludes:

1. That Respondents' activities described above involve the offer and sale of investment contracts as those terms are defined in Sections 2.1, 2.5 and 2.5a of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act").
2. That Section 5 of the Act provides, *inter alia*, that "all securities except those set forth under Section 2a of this Act...or those exempt...shall be registered...prior to their offer or sale in this State.

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3. That Respondents' Broadcast constitutes a general solicitation and did not include a statement or disclaimer providing that the securities were not being offered in or to Illinois and, therefore, does not qualify for an exception pursuant to Section 130.211 of the Regulations under the Illinois Securities Act.
4. That Respondents failed to file an application with the Secretary of State to register the investment contracts as required by the Act, and as a result the investment contracts were not registered as such prior to their or sale in the State of Illinois.
5. That Section 12.A of the Act provides, *inter alia*, that it shall be a violation of the Act to offer or sell any security except in accordance with the provisions of the Act.
6. That Section 12.D of the Act provides, *inter alia*, that it shall be a violation of the Act 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 the Act or to fail to comply with the terms of any order of the Secretary of State issued pursuant to Section 11 thereof.
7. By virtue of the foregoing, Respondents violated Sections 12.A. and 12.D of the Act.

IX. Recommendation

The Hearing Officer makes the following recommendation:

An order be entered prohibiting Respondents **Robert Couch, Couch Financial Services, Inc. and Oil2, Inc.**, each of them, and their partners, officers and directors, agents and employees, affiliates, successors and assigns from offering or selling securities in or from the State of Illinois.

NOW THEREFORE IT IS HEREBY ORDERED THAT:

Respondents **Robert Couch, Couch Financial Services, Inc. and Oil2, Inc.**, each of them, and their partners, officers and directors, members, managers, agents, employees, successors and assigns, are hereby **PROHIBITED** from selling or offering for sale securities in the State of Illinois;

NOTICE: Failure to comply with the terms of this Order shall be a violation of Section 12.D of the Act. Any person or entity that fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of this Order, shall be guilty of a Class 4 felony for each offense.

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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.

ENTERED this 19th day of August 2014.



JESSE WHITE
Secretary of State
State of Illinois

James J. Tierney
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