

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

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**IN THE MATTER OF: THOMAS O. DUFFY** )  
 )  
 **his partners, officers and directors,** ) No. 1300390  
 **managers, agents, employees, members** )  
 **affiliates, successors and assigns.** )

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**TO RESPONDENT: THOMAS O. DUFFY**  
**438 SOUTH QUINCY**  
**HINSDALE, ILLINOIS 60521**

**ORDER OF PROHIBITION AND FINE**

On June 24, 2015, 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 should be entered prohibiting Respondent **Thomas O. Duffy** and his partners, members, officers, and directors, agents, employees, affiliates, successors and assigns from offering or selling securities in or from the State of Illinois and/or granting such other relief as may be authorized under the Act, including but not limited to, the imposition of a monetary fine.

**I. Notice of Hearing**

On December 22, 2014, the Illinois Securities Department issued a Notice of Hearing ("Notice of Hearing") in this matter. The Department properly served the Notice of Hearing on Respondent Duffy. The Notice of Hearing included a statement of the time, place and nature of the hearing, along with the other information required under Section 1102 of the Code. The hearing date was scheduled for February 25, 2015. The hearing was later continued to April 23, 2015, and again to June 24, 2015.

**II. The Hearing**

The Hearing took place on June 24, 2015, at approximately 10:00 a.m. A certified Court Reporter, Sharon M. Valli, reported the proceedings. Accordingly, a full record of the proceedings is on file and this Report and Recommendation contains only, and is intended only to be, a summary.

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Enforcement Attorney James J. Tierney appeared at the hearing on behalf of the Department. Nobody appeared on behalf of the Respondent. In addition, the Respondent failed to submit an answer or other response to the Notice of Hearing.

After the Hearing Officer called the hearing to order, Enforcement Attorney Tierney brought a motion pursuant to Section 1104 of the Code requesting that the Hearing Officer recommend that the allegations contained in the Notice of Hearing be deemed admitted and that the Hearing Officer recommend that Respondent Duffy be held in default for failing to file a timely answer, special appearance, or other responsive pleading. At the same time, the Department also made a motion pursuant to Section 1109 of the Code requesting that the Hearing Officer recommend a finding of default and entry of an appropriate order against Respondent Duffy for his failure to appear at the time and place scheduled for the hearing.

In support of its motions, the Department offered Secretary of State Exhibits 1 and 2. The Hearing Officer admitted Exhibits 1 and 2 into evidence and found that the exhibits established service of the Notice of Hearing upon Respondent Duffy. The Exhibits are part of the record maintained by the Department. Exhibit 1 is the Notice of Hearing in this matter, issued on December 22, 2014. Exhibit 2 contains a document demonstrating the Department's attempt to serve Respondent Duffy through certified mail.

Concluding that the Department served the Respondent, and that Respondent failed to appear at the hearing and failed to respond to the Notice of Hearing, the Hearing Officer granted the Department's motions under Sections 1104 and 1109 of the Code.

The Department then proceeded to prove-up the allegations in the Notice of Hearing. The Department called the following witnesses: Complaining witness Mark G. Hanley and Department Investigator Donald Stephenson. The witnesses were each sworn in to testify. No summary of their testimony is provided as full transcripts are available for a reviewing court. The Hearing Officer found the witnesses credible, and the Hearing Officer did not base any finding of fact on the incredibility of a witness.

The Department admitted the following exhibits:

Exhibit 3: A Letter from Thomas O. Duffy dated January 20, 2015 to James Tierney stating that Duffy would file an answer that would state that he acted alone and without EA Capital and he is willing to repay.

Exhibit 3(a) : An appearance by Thomas E. Sullivan on behalf of Duffy.

Exhibit 3(b) : A series of emails between James Kopecky, Sullivan, and Tierney indicating that Sullivan would withdraw as counsel.

Exhibit 4: Emails between Hanley and Duffy regarding the investment and wire transfer information.

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- Exhibit 5: Signature pages for each of the four investors in FA Investment Fund, LLC.
- Exhibit 6: The Operating Agreement for FA Investment Fund, LLC.
- Exhibit 7: A Secretary of State Certification of no registration for Thomas O. Duffy dated February 23, 2015.
- Exhibit 8: Bank account statements for Thomas O. Duffy and Jean M. Sagmeister-Duffy at Republic Bank in 2011. The statement shows incoming wires for \$5,000 and \$15,000 on November 4, 2011.

The Department closed the evidence, and Mr. Tierney gave a brief closing statement in which he summarized the violations of the Illinois Securities Laws committed by Respondent Duffy. The Department requested that a recommendation be made that a permanent order of prohibition be entered against Respondent Duffy from offering or selling securities in or from the State of Illinois and sought a fine of \$40,000 against Duffy, \$10,000 for each of the four investors in FA Investment Fund, Ltd.

### III. Proposed Findings of Fact

Based on the evidence presented, the Hearing Officer finds that:

1. Thomas O. Duffy ("Duffy") has a last known address of 438 South Quincy, Hinsdale, Illinois 60521.
2. In November 2011 Duffy solicited at least four (4) Illinois residents ("Investors") to each pay \$5,000 to Respondent who agreed to place the combined \$20,000 into an entity Respondent called "Advanced Equities, Inc." for further purchase of equity interests in an automotive concept company entitled FA Investment Fund, LLC.
3. On or about November 4, 2001 Investors each paid Respondent Duffy \$5,000 for a total of \$20,000 which Investors believed would be invested on their behalf into FA Investment Fund, LLC.
4. The investors' \$20,000 was wired into Respondent Duffy's personal bank account at Du Page National Bank, West Chicago, Illinois.
5. Respondent was not registered as a "dealer" with the Secretary of State at the time of their activities set forth above.
6. Respondent failed to file an application with the Secretary of State for registration as a dealer as required by the Act, and as a result the Respondent was not registered as a dealer as prior to his activities as a dealer in the State of Illinois.

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7. Respondent told the Investors that the \$20,000 the Investors paid to Respondent would be used by Respondent for the benefit of Investors, specifically for further purchase on behalf of Investors of equity interests in FA Investment Fund, LLC.
8. The Investors complied with Duffy's direction that the \$20,000 investment be wired into Duffy's personal bank account, the funds arriving there on or about November 4, 2011.
9. Instead of using the Investors' funds as promised - to effect the purchase of equity interests in FA Investment Fund, LLC. - Respondent Duffy converted and spent the invested funds for his own personal and business expenses.
10. Respondent Duffy failed and refused to notify the Investors that the principal would be converted to his own benefit rather than used as promised - to purchase the equities.

**IV. Proposed Conclusions of Law**

Based on the evidence presented and an application of the law to the findings of fact, the Hearing Officer concludes:

1. The Department properly served the Notice of Hearing on Respondent Duffy.
2. The Notice of Hearing included the information required under Section 1102 of the Code.
3. The Secretary of State has jurisdiction over the subject matter pursuant to the Act.
4. Because of Respondent's failure to file a timely answer, make a special appearance or other responsive pleading in accordance with Section 1104:
  - (a) the allegations contained in the Notice of Hearing are deemed admitted;
  - (b) Respondent Duffy waived his right to a hearing;
  - (c) Respondent Duffy is subject to an Order of Default.
5. Because Respondent Duffy failed to appear at the time and place set for hearing, ~~in accordance with Section 1109, he:~~
  - (a) waived his right to present evidence, argue, object or cross-examine witnesses; or

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(b) otherwise participate at the hearing.

6. Respondent's activities described above involve the offer to purchase participation in a profit sharing agreement, or an investment contract, 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").
7. Respondent's activities described above are the activities of a "dealer" (or "dealers") of securities as that term is defined in Sections 2.7 of the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act").
8. Section 8.A of the Act provides, *inter alia*, that "except as otherwise provided in this subsection A, every dealer...shall be registered as such with the Secretary of State."
9. Section 8.B of the Act provides, *inter alia*, that "an application for registration as a dealer...shall be filed the Secretary of State."
10. 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.
11. 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 hereof.
12. By virtue of the foregoing, Respondent Thomas O. Duffy violated Sections 12.A and 12.D of the Act.
13. Section 12.F of the Act provides, *inter alia*, that it shall be a violation of the Act for any person, "to engage in any transaction, practice or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof."
14. 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.
15. Section 12.I of the Act provides, *inter alia*, that it shall be a violation of the Act for any person, "to employ any device, scheme or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly."
16. By virtue of the foregoing, Respondent Thomas O. Duffy violated Sections 12.F, 12.G and 12.I of the Act.

**V. Recommendations as To Disposition**

The Hearing Officer recommends that:

1. An Order of Default be entered against Respondent Duffy and that the facts alleged in the Notice of Hearing be deemed admitted.
2. An Order be entered against Respondent Duffy in the form of a permanent order of prohibition against Duffy from offering or selling securities in or from the State of Illinois.
3. An Order be entered against Respondent Duffy imposing a fine of \$10,000.00.

**NOW THEREFORE IT IS HEREBY ORDERED THAT:**

1. An Order of Default is entered against Respondent **Thomas O. Duffy** and that the facts alleged in the Notice of Hearing are deemed admitted.
2. An Order is entered against Respondent Thomas O. Duffy and his partners, members, officers, and directors, agents, employees, affiliates, successors and assigns in the form of a **PERMANENT ORDER OF PROHIBITION** against each of them from offering or selling securities in or from the State of Illinois.
3. An Order is entered against Respondent **Thomas O. Duffy** imposing a fine of \$10,000.00.

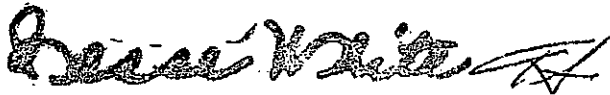
**NOTICE: Failure to comply with the terms of this Order shall be a violation of Section 12.D of the Act. Any person or entity that fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of this Order, shall be guilty of a Class 4 felony for each offense.**

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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 5<sup>th</sup> day of August 2015.



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