

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF: BARRY ELKES

FILE NO. C1100456

NOTICE OF HEARING

TO THE RESPONDENT: BARRY ELKES (CRD# 5238048)
1130 Hilary Lane
Highland Park, Illinois 60035

You are hereby notified that pursuant to Section 11.F of the Illinois Securities Law of 1953 [815 ILCS 5/1] (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 23rd day of February, 2016 at the hour of 10:00 a.m. or as soon as possible thereafter, before, Canella "Connie" Henrichs, 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 prohibiting Barry Elkes (the "Respondent") from acting as an investment adviser in 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 in the maximum amount pursuant to Section 11. E(4) of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

BACKGROUND FACTS

1. Respondent Barry Elkes ("Respondent Elkes") application for registration was submitted on October 20, 2006; however, it was terminated by FINRA and the State of Illinois on October 31, 2006. His last known address is 1130 Hilary Lane, Highland Park, Illinois 60035.
2. In July 2011, Respondent provided investment advisory services to at least one resident of the State of Illinois when not in compliance with the filing requirements of Section 8 of the Act.
3. Complainant is an Illinois resident.

Notice of Hearing

2

4. On or about July 11, 2011, Complainant's son met Respondent Elkes at a car dealership in Gurnee, Illinois where complainant's son was employed.
5. During the course of their conversation, Respondent Elkes told complainant's son that he was a licensed stock broker, that he had made some trades in commodities and asked if Complainant's son or anyone he knew had \$100,000.00 to invest.
6. According to Complainant's son, Respondent Elkes stated that he could provide a large monthly return on the investment and that there would be no high risks.
7. In mid-July 2011, Respondent Elkes met Complainant at her residence where he solicited Complainant to enter into a "partnership agreement" whereby Respondent Elkes would "be responsible for trading of Futures" for the "partnership".
8. On or about July 15, 2011, Complainant tendered to Respondent Elkes, a cashier's check made payable to Respondent Elkes in the amount of \$50,000.00, to be used as capital for Respondent to trade futures pursuant to the agreement.
9. On or about July 18, 2011, Respondent Elkes deposited the funds he received from Complainant into Respondent's personal bank account.
10. On or about July 19, 2011, Respondent Elkes wired \$45,000.00 of the funds he received from Complainant into Respondent's commodity trading account at MF Global, Inc.
11. Between July 2011 and October 2011, the trading account produced losses. In addition, on August 10, 2011, August 12, 2011 and October 12, 2011, Respondent Elkes transferred \$4,000.00, \$6,000.00 and \$4,752.82, respectively, of the funds back into his personal banking account.
12. The activities described above, constitute the activities of an Investment Adviser and/or Investment Adviser Representative as defined in Sections 2.11 and 2.12b of the Act.

COUNT I

**815 ILCS 5/12.A and D violations: Respondents acted as
unregistered investment adviser and/or investment
adviser representative**

- 1-12. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 12 above, as paragraphs 1 through 12 of this Count I.

Notice of Hearing

13. That Section 8.A of the Act, states inter alia, that except as provided otherwise, every investment adviser and investment adviser representative shall be registered as such with the Secretary of State.
14. Section 12.D of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions of the Act for any person to "fail to file with the Secretary of State any application, report or document 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".
15. The Respondent Elkes failed to file with the Secretary of State applications for registration as required by the Act:
 - a) failed to file an application for registration as an Investment Adviser pursuant to Section 8.D, or to notice file pursuant to Section 8.C-5 of the Act.
16. That Section 130.839 of the Rules of the Act provides, inter alia, that:
 - a) Effective October 1, 2002, each new applicant filing as an investment adviser or federal covered investment adviser shall file with the NASD, utilizing the IARD, a complete Form U-4 for each investment adviser representative and pay the filing fee specified in Section 130.110 of this Part.
 - b) For purposes of the annual re-registration of investment adviser representatives, each investment adviser and federal covered investment adviser shall file with the NASD, utilizing the IARD, and pay the filing fee specified in Section 130.110 of this Part.
17. Respondent Elkes failed to file a complete U-4 for each Investment Adviser Representative and to pay the filing fee as specified in Section 130.110.
18. That by virtue of the foregoing, the Respondents have committed a violation of Section 12.A and 12.D of the Act.
19. That Section 11.E(3) of the Act provides, inter alia, that if the Secretary of State shall find that any person is acting or has acted as an investment adviser or investment adviser representative, without prior thereto and at the time thereof having complied with the registration or notice filing requirements of this Act, the Secretary of State may by written order prohibit or suspend the person from acting as an investment adviser or investment adviser representative, in this State.

20. That by virtue of the foregoing, the Respondent is subject to the entry of an order prohibiting or suspending it from acting as an investment adviser or investment adviser representative in the State of Illinois.

COUNT II

**815 ILCS 5/12.G violations: Respondents obtained
Complainants' money by making
untrue statement of material fact
and omission to state a material fact**

- 1-12. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 12 of Count I, as paragraphs 1 through 12 of this Count II.
13. Section 12.G of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions 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 light of the circumstances under which they were made, not misleading."
14. In soliciting investor funds, Respondents represented in the "partnership agreement" that Respondent would be responsible for trading of Futures for the partnership and Complainants fund would be trade in futures/contracts. Additionally, Respondent misrepresented to Complainant that he would contribute \$50,000.00 in capital; no partner would withdraw any of their Capital Contribution without the express written consent of the remaining Partners; and individual capital account will be maintained for each Partner and their Initial Capital Contribution. Instead, Respondent without knowledge or consent of complainant converted \$19,752.82 of Complainant's funds for Respondent's own personal use and benefit.
15. By virtue of the foregoing, Respondents violated Sections 12.G of the Act.

COUNT III

**815 ILCS 5/12.I violation: Respondent employed a
scheme to defraud in connection
with the sale of securities**

- 1-12. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 12 of Count I, as paragraphs 1 through 12 of this Count III.

Notice of Hearing

5

13. Section 12.I of the Illinois Securities Law of 1953, 815 ILCS 5/1 *et seq.*, states that it shall be a violation of the provisions 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."
14. Respondent Elkes solicited and sold "partnership agreement" to Complainant agreeing to the trading of Futures using funds invested by Complainant. Instead, Respondent without knowledge or consent of complainant converted \$19,752.82 of Complainant's funds for Respondent's own personal use and benefit.
15. By virtue of the foregoing, Respondents violated Sections 12.I of the Act.

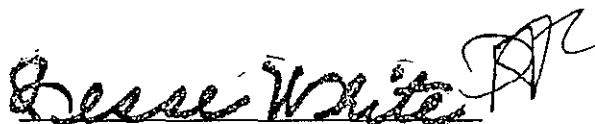
You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above within thirty (30) days of the receipt of this notice. A failure to file an answer within the prescribed time shall be construed as an admission of the allegations contained in the Notice of Hearing.

Furthermore, you may be represented 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 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 12th day of January 2016.



JESSE WHITE
Secretary of State
State of Illinois

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Notice of Hearing

6

Hearing Officer:

Canella Henrichs

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