

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

**IN THE MATTER OF: JOSEPH J. HENNESSY;
TERRANCE R. HENNESSY; MICHAEL J. MARIETTI;
AND RESOURCES PLANNING GROUP, INC.**

FILE NO. C1200293

NOTICE OF HEARING

TO THE RESPONDENT: Resources Planning Group, Inc. (CRD# 113735)
Attn: Terrance R. Hennessy, Chief Compliance Officer
150 North Wacker, Suite 2250
Chicago, Illinois 60606

Joseph J. Hennessy (CRD# 1380254)
1211 Maple
Western Springs, Illinois 60558

Terrance R. Hennessy (CRD# 1072712)
4407 Kingsdale Drive
Valparaiso, Indiana 46383

Michael J. Marietti IV (CRD# 1999823)
400 Hackberry Road
Frankfort, Illinois 60423

James A. McGurk
Law Offices of James A. McGurk, P. C.
123 North Wacker Drive, Suite 250
Chicago, Illinois 60606-1912

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 30th day of August, 2016 at the hour of 10:00 a.m. or as soon as possible thereafter, before, Canella Henrichs, or such other duly designated Hearing Officer of the Secretary of State.

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Said hearing will be held to determine whether an Order shall be entered against Resources Planning Group, Inc., Joseph J. Hennessy, Terrance R. Hennessy and Michael J. Marietti IV permanently prohibiting them from offering and selling securities and providing investment advice in the State of Illinois; an Order shall be entered against Michael J. Marietti IV suspending and revoking his registrations to offer and sell securities and provide investment advice 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 Resources Planning Group, Inc. ("RPG") was an Illinois based Federal Covered Investment Adviser (FCIA) from September 7, 2001 until June 28, 2012. The Respondent engaged in the business of providing investment advisory services to the general public. Its last known address is 150 North Wacker, Suite 2250, Chicago, Illinois 60606.
2. Respondent Terrance R. Hennessy ("T. Hennessy") was the President of Respondent RPG from June 1986 to July 31, 2013 and the Chief Compliance Officer of Respondent RPG from November 2007 through July 2009. He was registered with the State of Illinois as an investment adviser representative with Respondent RPG from January 6, 2003 to December 31, 2009 and June 28, 2012 to October 25, 2012. His last known address is 4407 Kingsdale Drive, Valparaiso, Indiana 46383.
3. Respondent Joseph J. Hennessy ("J. Hennessy") served as Vice President of Respondent RPG from June 1986 through June 2012. He was registered with the State of Illinois as an investment adviser representative with Respondent RPG from January 6, 2003 to December 31, 2009. His last known address is 1211 Maple, Western Springs, Illinois 60558.
4. Respondent Michael J. Marietti IV ("Marietti") served as Chief Compliance Officer of Respondent RPG from July 2009 through July 31, 2013. His last known address is 400 Hackberry Road, Frankfort, Illinois 60423.
5. Midwest Opportunity Fund, LLC (MOF) was a Delaware limited liability company and private equity fund whose controlling principals and managing members included Respondents J. Hennessy and T. Hennessy.

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6. Respondent RPG used a custodian for its advisory client accounts to allocate the securities to client accounts based on directives of Respondents and RPG clients.
7. Between February 2007 and December 2012, Respondent J. Hennessy solicited funds from Respondent RPG clients to invest in MOF.
8. Between February 2007 and December 2012, Respondent RPG advised some of its clients to invest in MOF.
9. Respondent J. Hennessy raised funds from investors who invested in MOF units and MOF promissory notes, a number of which were Respondent RPG advisory clients.
10. Respondent RPG directed the funds that were deposited to MOF from RPG clients through its custodian.
11. Respondents J. Hennessy and RPG raised at least \$4.92 million selling MOF units and promissory notes to investors.
12. Respondents J. Hennessy and RPG failed to disclose to MOF investors that some of the funds raised would be used to repay previous MOF investors.
13. Respondents RPG, J. Hennessy, T. Hennessy and M. Marietti owed a fiduciary responsibility to their RPG clients.
14. Respondents J. Hennessy and RPG misrepresented to its RPG advisory clients that the MOF promissory notes would yield a 10-15% return per year.
15. Respondents J. Hennessy and RPG failed to disclose to its RPG advisory that their investments would be used to repay existing investors.
16. Respondents J. Hennessy and RPG knew or should have known that MOF was not generating sufficient income to repay MOF promissory notes and investors.
17. Respondents J. Hennessy and RPG failed to disclose to its RPG advisory clients that MOF was not generating sufficient income to repay MOF promissory notes and investors.
18. Respondents J. Hennessy and RPG failed to disclose to its RPG advisory clients who were MOF promissory note investors that Respondent J. Hennessy had personally guaranteed other MOF promissory notes in which he failed or could afford to repay.

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19. In or around February 2007, Respondent RPG client MD agreed to invest \$350,000.00 in MOF. However, Respondent J. Hennessy raised the investment to \$750,000.00 without the consent or permission of MD and misappropriated approximately \$350,000.00 from Respondent RPG client MD.
20. On or about April 1, 2009, Investor BF, an advisory client of Respondent RPG began complaining directly to Respondent J. Hennessy regarding *failed promises and failure to repay MOF loan*.
21. On or about April 30, 2009, Respondent J. Hennessy sold to Investor DL, an RPG advisory client, an MOF promissory note in the amount of \$105,000.00.
22. On or about May 1, 2009, Investor BF demanded repayment of entire principle and interest of 2007 MOF promissory note.
23. On or about May 1, 2009, Respondents J. Hennessy and RPG used funds invested by Investor DL to repay Investor BF.

COUNT I
FRAUD

- 1-23. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 23 above, as paragraphs 1 through 23 of this Count I.
24. Section 12.F 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 “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.”
25. The facts alleged in paragraphs 1 through 31 above alleges fact that show conduct by Respondent J. Hennessy violated Section 12.F of the Act. In particular, Respondent J. Hennessy used funds raised from investors in MOF to repay earlier investors. Additionally, Respondent RPG’s recommendations to its clients to buy MOF promissory notes and subscriptions after receiving numerous complaints from investors of *previous defaulted MOF promissory notes were recommendations that constituted acts, practices, and a course of business in connection with the sale or purchases of securities that were fraudulent, deceptive and manipulative.*

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26. Respondent J. Hennessy's misappropriation of Respondent RPG client MD funds constituted engaging in a transaction in connection with the sale or purchases of securities that which works or tends to work a fraud or deceit upon the purchaser thereof.

COUNT II

OMISSION TO STATE A MATERIAL FACT

- 1-23. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 23 of Count I, as paragraphs 1 through 23 of this Count II.
24. 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."
25. The facts alleged in paragraphs 1 through 32 above alleges fact that show conduct by Respondent J. Hennessy violated Section 12.G of the Act. In particular, Respondents J. Hennessy and RPG failed to disclose to investors that Respondent J. Hennessy had personally guaranteed other MOF promissory notes in which he failed or could afford to repay.
26. Respondents J. Hennessy and RPG omissions and failure to disclose to investors that their funds would be used to repay previous MOF investors on outstanding and/or defaulted promissory notes constituted acts of obtaining money through the sale of securities by means of omissions of material fact.

COUNT III

**FRAUD IN CONNECTION
WITH THE SALE OF SECURITIES**

- 1-23. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 23 of Count I, as paragraphs 1 through 23 of this Count III.
24. 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."
25. Respondent J. Hennessy's misappropriation of Respondent RPG client MD funds constituted engaging in a transaction in connection with the sale

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or purchases of securities that which works or tends to work a fraud or deceit upon the purchaser thereof. Additionally, Respondent RPG continued to recommend to its clients to buy MOF promissory notes and subscriptions after receiving numerous complaints from investors of previous defaulted MOF promissory notes.

26. By virtue of the foregoing, Respondents J. Hennessy and RPG violated Sections 12.I of the Act.

COUNT IV
FRAUD IN CONNECTION
WITH THE SALE OF SECURITIES

- 1-23. The Illinois Secretary of State re-alleges and incorporates paragraph 1 through 23 of Count I as paragraphs 1 through 23 of this Count IV.
24. Section 12.J of the Act provides, *inter alia*, that it shall be a violation of the provisions of the Act for any person to “when acting as an investment adviser, investment adviser representative, or federal covered investment adviser, by any means or instrumentality, directly or indirectly: (1) To employ any device, scheme or artifice to defraud any client or prospective client; (2) To engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or (3) To engage in any act, practice or course of business which is fraudulent, deceptive, or manipulative.
25. Respondent RPG continued to recommend to its clients to buy MOF promissory notes and subscriptions and failed to intervene after receiving numerous complaints from investors of previous defaulted MOF promissory notes.
26. By virtue of the foregoing, Respondents J. Hennessey and RPG violated Sections 12.J of the Act.

COUNT V
FAILURE TO SUPERVISE

- 1-23. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 23 of Count I, as paragraphs 1 through 23 of this Count V.
24. Investment Advisory firms have a duty and obligation to supervise the activities of their representatives to ensure that the applicable laws and

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rules are being followed in their management of customer funds and accounts.

25. Investment Advisory firms are also required to pay particular attention to representatives with a history of misconduct, or even alleged misconduct by customers who complain to the firm or representative regarding the representative's management of the customer's account.
26. The Chief Compliance Officer (CCO) has the responsibility to monitor and ensure compliance with applicable securities laws, rules and regulations by the firm and its employees, independent contractors and registered representatives. The CCO is also responsible for administering and enforcing written supervisory procedures and assessing operational risk.
27. Between April 2009 and April 2011, on multiple occasions, several clients of Respondent RPG complained regarding the defaulted loans of MOF directly to Respondents J. Hennessy, T. Hennessy and M. Marietti.
28. On or about May 1, 2009, Investor EBD, an advisory client of Respondent RPG sent an email to Respondent J. Hennessy and a carbon copy to Respondent T. Hennessy demanding repayment of a defaulted MOF promissory note.
29. On or about October 8, 2009, Investor EBD sent another email to Respondent J. Hennessy and Respondent RPG advisory representative Brian Mitchell complaining about the defaulted MOF promissory note and demanding repayment.
30. On or around November 27, 2009, in an email, Investor BF complained directly to Respondent Marietti regarding the defaulted MOF promissory note.
31. On or about December 1, 2009, Respondent Marietti received an email from Investor BF regarding the defaulted MOF promissory note and demanding a signed revised note, a payment of the previous note and a letter of credit as collateral on the \$904,956.60 note.
32. On or about December 6, 2009, Respondent Marietti received another email from Investor BF demanding the same and stating if not received by December 9, 2009, he would file a law suit.
33. Despite previously defaulting on numerous MOF promissory notes, Respondent J. Hennessy continued to solicit and sell MOF promissory notes to Respondent RPG advisory clients through December 2012.

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34. Despite previously defaulting on numerous MOF promissory notes, Respondent RPG continued to allow Respondent J. Hennessy to solicit and sell MOF promissory notes to Respondent RPG advisory clients through December 2012.
35. Despite being made aware of numerous defaulted MOF promissory notes, Respondents RPG, Marietti and T. Hennessy did not prevent, intervene or stop Respondent J. Hennessy from soliciting and continuing to sell MOF promissory notes to Respondent RPG advisory clients.
36. During the aforementioned period, Respondents T. Hennessy and M. Marietti served as Chief Compliance Officer of Respondent RPG and were or should have been aware of the multiple complaints from Respondent RPG advisory clients regarding defaulted MOF promissory notes.
37. Although not direct supervisor of Respondent J. Hennessy, Respondents T. Hennessy and M. Marietti knew or should have known of possible misconduct and the authority to intervene to prevent it and failed to do so.
38. As President of Respondent RPG from June 1986 to July 31, 2013 and the Chief Compliance Officer from June 2007 through July 2009, Respondent T. Hennessy failed to supervise the advisory activities of J. Hennessy.
39. As Chief Compliance Officer of Respondent RPG from July 2009 through July 31, 2013, Respondent J. Marietti failed to supervise the advisory activities of J. Hennessy.
40. Section 8.E(1)(f) of the Act states, in pertinent part, that, subject to the provisions of subsection F of Section 11 of this Act, the registration of a dealer, salesperson, investment advisor or investment advisor representative may be denied, suspended or revoked if the Secretary of State finds that the dealer, salesperson, investment advisor, investment advisor representative, or any principal officer, director, partner, or any person who performs a similar function of the dealer, or investment advisor: in the case of an investment advisor, has failed reasonably to supervise the advisory activities of any of its investment advisor representatives or employees and the failure has permitted or facilitated a violation of Section 12 of this Act.
41. Section 12.A of the Act states *inter alia* that it shall be a violation of this Act for any person to offer or sell any security except in accordance with the provisions of this Act.
42. By virtue of the foregoing, Respondents T. Hennessy and M. Marietti violated Section 12.A of the Act.

COUNT VI:
UNREGISTERED INVESTMENT ADVISOR

- 1-23. The Illinois Secretary of State re-alleges and incorporates paragraphs 1 through 23 of Count I, as paragraphs 1 through 23 of this Count VI.
24. During the period of January 1, 2010 through July 31, 2013, Respondent RPG provided investment advisory services to residents of the State of Illinois when not in compliance with the filing requirements of Section 8 of the Act.
25. 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.
26. Respondent RPG failed to file a complete U-4 for each Investment Adviser Representative and to pay the filing fee as specified in Section 130.110.
27. Between January 1, 2010 and July 31, 2013, Respondent RPG collected management fees from clients of unregistered Investment Adviser.
28. Section 12.D of the Act provides, inter alia, 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 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.
29. Respondent failed to file a complete U-4 for each Investment Adviser Representative and to pay the filing fee as specified in Section 130.110.
30. Between January 2010 and the August 2012, Respondent RPG collected management fees from clients of unregistered Investment Adviser Representatives.
31. By virtue of the foregoing, the Respondent has committed a violation of Section 12.D of the Act.

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32. Section 8.E.1 (g) provides, *inter alia*, that the registration of an investment adviser, investment adviser representative, dealer, or salesperson may be suspended or revoked if the Secretary of State finds that the investment adviser, investment adviser representative, dealer, or salesperson has been violated any provision of the Act.
33. Section 11.E(2) of the Act provides, *inter alia*, that if the Secretary of State shall find that any person has violated subsection J of Section 12 of the Act, the Secretary of State may by written order prohibit the person from offering or selling any securities in this State.
34. 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 a federal covered investment adviser, 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 a federal covered investment adviser in this State.
35. Section 11.E(4) of the Act provides, *inter alia*, that if the Secretary of State, after finding that any provision of the Act has been violated, may impose an order of censure or a fine as provided by rule, regulation or order not to exceed \$10,000.00 for each violation of the Act.
36. By virtue of the foregoing, the Respondents are subject to (i) a fine of up to \$10,000.00 per violation, (ii) an order of censure an order which permanently prohibits the Respondents from offering or selling securities and from acting as an investment adviser, federal covered investment adviser, or investment adviser representative, and (iii) an order that suspends or revokes their investment adviser, investment adviser representative, dealer, or salesperson registrations in the State of Illinois.

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.

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Delivery of Notice to the designated representative of any Respondent constitutes service upon such Respondent.

Dated: This 27th day of June 2016.


JESSE WHITE
Secretary of State
State of Illinois

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