

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

IN THE MATTER OF:

File Number: 0300728

**JAMES E. WHEELER II,
(CRD # 1953865).**

ORDER OF REVOCATION

TO THE RESPONDENT: James E. Wheeler II
(CRD #: 1953865)
9911 Stoneglenn Trail
Lonetree, CO 80124

c/o 1st Discount Brokerage, Inc.
1355 S. Colorado Blvd., Suite C120
Denver, CO 80222

WHEREAS, the above-captioned matter (the "File") came to be heard on May 26, 2004, pursuant to the Notice of Hearing dated January 23, 2004, filed by Petitioner Secretary of State, and the record of the matter under Illinois Securities Law of 1953 (815 ILCS 5 *et. seq.*) (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

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with the United States Postal Service (the "U.S.P.S."), either by certified or registered mail, return receipt requested, or by the personal service of the Notice of Hearing to the last known address of the Respondent.

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 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, on January 23, 2004, the Department deposited the Notice with the U.S.P.S. by certified mail, return receipt requested, to Respondent's last known business address. Thus, the Department gave Respondent the Notice on January 23, 2004. The date of January 23, 2004 is a date occurring more than ten (10) days before the then scheduled hearing date of March 10, and also occurring more than forty-five (45) days before the same hearing date. Therefore, the service of the Notice Respondent of the First date set for hearing on the File was proper and in accordance with the Act and the Rules and Regulations.

Respondent was properly notified of his opportunity to be heard on the File via the Department's timely provision thereto of the Notice and of the Orders of Continuance. Because the Department gave Respondent proper notice of the scheduled hearing dates, the Department has personal jurisdiction over Respondent.

2. Respondent failed to appear, whether personally or through counsel, at the hearing.
3. 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.
4. At the hearing, the Department presented the Hearing Officer with their motion for Respondent to be deemed to have admitted to the allegations of the Notice, which motion was based upon Section 130.1104(b) of the Rules and Regulations, and with their motion for a finding of default against Respondent, which motion is based upon Section 130.1109 of the Rules and Regulations. After hearing thereon, the Hearing Officer ruled in favor of the Department on both motions.
5. As of the date hereof, however, the Hearing Officer is unaware of the existence of any other outstanding petitions, motions, or objections as to the File or the proceeding.

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6. On May 28, 2003, NASD's Market Regulation Department entered the Order or Letter of AWC submitted by Respondent in File No. C3A03033 (the "Complaint"), which Order imposed the following sanctions:
 - a. A fine in the amount of \$8,600.00 to be paid by James Wheeler & Company, of which the amount of \$3,600.00 represents the disgorgement of financial benefit;
 - b. A suspension of Respondent from association with any member of NASD in any capacity for a period of ten (10) business days;
 - c. A requirement that James E. Wheeler & Company demonstrate to NASD staff, within ninety (90) days of the Order or Letter of AWC becoming final, that:
 - i. It has established procedures requiring that (a) prior to recommending the purchase of mutual fund "B" shares, a registered representative or principal must prepare a written disclosure, on a form provided by the firm, comparing the cost of purchasing "B" shares with the cost of purchasing "A" shares of the same mutual fund, over at least seven (7) years and including the effect of internal expenses; and (b) concurrent with the recommendation, the registered representative or principal must provide this written disclosure to the customer to whom the recommendation is being made, together with a written disclosure of the available sales charge breakpoints on the purchase of "A" shares; and
 - ii It has required the attendance of its representatives and principals at a training program presented by an independent consultant not unacceptable to the staff that addresses the economic considerations applicable to the recommendation of "B" shares and the availability of sales charge breakpoints.
7. The aforementioned Letter of AWC states:
 - a. [Respondent] entered the securities industry in July 1999 as a registered representative of a member of NASD. [Respondent] became associated with James E. Wheeler & Company in May 1995 as the firm's President and Compliance Officer, and is registered with the firm as a general securities principal at the present time. He was named as a respondent in two (2) matters with respect to the firm.
 - b. On or about October 4, 1999, James E. Wheeler & Company, acting through [Respondent], recommended to customer ZB and/or his legal representative that the ZB account purchase twenty-four

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(24) mutual funds from fifteen (15) mutual fund families. Of the recommended transactions, twenty (20) involved the purchase of mutual fund "B" shares. The ZB account made the purchase as recommended.

- c. The recommendations were made without a reasonable basis for believing them to be suitable for the ZB account. By recommending the purchase of "B" shares in 24 funds from 15 fund families, the firm and [Respondent] prevented ZB from obtaining the benefit of sales charge breakpoints to which [ZB] would have been entitled if the account had purchased "A" shares in fewer funds and fund families.
- d. Further, the recommendation to purchase "B" shares was unsuitable because the internal expenses of the "B" shares over the period that ZB expected to hold the shares exceeded the amount of the sales charges that would have been paid on the purchase of "A" shares, thus costing ZB more to purchase and hold "B" shares than "A" shares.
- e. The foregoing constituted a violation of NASD Conduct Rules 2110 and 2310 by James E. Wheeler & Company and [Respondent].

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. On May 28, 2003, Respondent had entered against him the Order that, because of Respondent's having failed to fully inform a customer of the breakpoint discounts available thereto if the customer purchased certain shares ("A" shares) as opposed to other, "B", shares (that the customer did, in fact, purchase) in one mutual fund family, and because Respondent also failed to provide to the customer the necessary disclosure as to the expenses associated with the purchase of the same "A" shares in comparison with the same "B" shares, fines him in the amount of \$8,600.00 to be paid by James E. Wheeler & Company, of which the amount of \$3,600.00 represents the disgorgement of financial benefit, and suspects him from

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association with any NASD member in any capacity for a period of ten (10) business days. Respondent's actions were, thus, in contravention of, or violate, Conduct Rules 2110 and 2310 of NASD, a self-regulatory organization registered under the Federal 1934 Act.

The sanctions against Respondent per the Letter of AWC or the Order clearly arose from fraudulent or deceptive acts or practices in violation of rules duly promulgated by a self-regulatory organization, the NASD, registered under the Federal 1934 Act.

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

WHEREAS, the Hearing Officer recommends 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 Recommendations made by the Hearing Officer.

NOW THEREFORE, IT SHALL BE AND IS HEREBY ORDERED THAT:

1. Respondent James E. Wheeler II'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. This matter is concluded without further proceedings.

DATED: This 6th day of July 2004.



JESSE WHITE
Secretary of State
State of Illinois

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.

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