



## Order of Revocation

-2-

The filing of an application for registration under Section 8 of the Act, or the offer, sale, or delivery of securities in the State of Illinois, whether effected by mail or otherwise, by any person shall be equivalent to and shall constitute an appointment of the Secretary of State by the person and the issuer of the securities to be the true and lawful attorney for the person upon whom, may be served all lawful process in any action or proceeding against the person, arising out of the offer or sale of the securities. [815 ILCS 5/10(B)(1)]. Section 130.1001 of Subpart J of the Rules and Regulations provides, in part, that any notice to be served upon the Secretary of State under the Act shall be made by delivering personally to the Securities Director, or any employee of the Department designated by the Securities Director to accept such service on behalf of the secretary of state, or by sending by registered mail or certified mail return receipt requested, a copy of the notice to the Department. Service of any notice hereunder shall be made with the Springfield or Chicago office of the Department during regular business hours. Notice of the service of process upon the Secretary of State and a copy of the process shall, within 10 days after service is made or effected, be sent by registered or certified mail, return receipt requested, by the Department to the respondent at the last known address of the Respondent. [815 ILCS 5/10(B)(2)]. The Secretary of State shall keep a record of all such processes that shall show the date of service.

2. On September 23, 2004, the Department served Respondent with the Notice of Hearing for File No. 04000480 with a hearing date set for November 10, 2004. As noted in Exhibit 1, on September 23, 2004, a Notice of Hearing was given to Respondent's last known address by the Department's deposit of the same with the United States Postal Service via certified mail, return receipt requested. Said return receipt was delivered to and signed by Respondent on October 1, 2004 and returned to the Department on October 4, 2004. Therefore, as the Notice Date of September 23, 2004 was a date more than 45 days prior to the hearing date of November 10, 2004, Respondent was properly served with notice of the scheduled hearing date.
3. 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.

Exhibit 1 demonstrates that on September 23, 2004, the Department fulfilled their statutory obligations of providing at least 10 day's notice of the November 10, 2004 hearing date to Respondent by certified mail,

## Order of Revocation

-3-

return receipt requested. Testifying at the hearing was Neil Eisbart of the Department, who identified the Respondent as being registered in Illinois as noted on the CRD (see Exhibit 2). Hence the notice of the hearing date of November 10, 2004 was properly given Respondent. Therefore, as the Department gave proper notice of the hearing to Respondent, the Department has personal jurisdiction over Respondent.

4. The Hearing on this file occurred on November 10, 2004 at 10:00 A.M. The Department, through their enforcement officer Daniel A. Tunick, Esq., the Hearing Officer and Neil Eisbart, witness for the Department, were present. The Respondent was not present at the hearing and had not filed an Answer.
5. 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.
6. No outstanding petitions, motions or objections exist as to this file.
7. At all material and relevant times until April 10, 2003, Respondent was registered with the Secretary of State as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
8. On May 28, 2004, without admitting or denying the NASD's alleged findings per their Letter of Acceptance, Waiver and Consent (see Exhibit 3), Respondent consented to the entry thereof, the AWC stating, in part:
  - a. On or about April 30, 2002, LH, a member of the public, gave the Respondent a check made payable to the Member with instructions that the funds be deposited in a money market account. He misused LH's funds by failing to follow her instructions in that he: deposited the \$60,000 check in a checking account in the name of "Michael R. Gerbec DBA Michael Gerbec Agency," used the funds for some purpose other than the benefit of LH; and then, after LH demanded the funds be returned, returned total of \$58,883.42 to LH over a period from September 26, 2002 to February 28, 2003, in violation of NASD Conduct Rule 2110 and 2330; and
  - b. On June 17, and July 15, 2003, NASD staff sent requests for information by certified mail, return receipt requested, and first class mail to the Respondent at his address of record, and even though he provided some responses to the requests for information, he failed to fully respond to the requested information in that he failed to provide: requested information regarding an alleged joint savings account; an explanation

## Order of Revocation

-4-

regarding what he did with LH's \$60,000; and documentation to show how LH's funds were used, in violation of NASD Rules 2110 and 8210.

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 has had membership in or association with any self-regulatory organization registered under the Federal 1934 Act of the Federal 1974 Act suspended, revoked, refused, expelled, cancelled, barred, limited in any capacity, or otherwise adversely affected in a similar manner arising from any fraudulent or deceptive act or a practice in violation of any rule, regulation or standard duly promulgated by the self-regulating organization.
3. Until April 10, 2003, Respondent had been a registered salesperson of securities in the State of Illinois. On May 28, 2004, Respondent had entered against him, after due notice and opportunity for hearing from the NASD, the AWC, which states that, based on Respondent's misuse of investment funds and failure to respond adequately to NASD requests for information regarding that misuse, Respondent's actions were in violation of NASD Conduct Rules 2110, 2330 and 8210. Accordingly, Respondent's actions clearly arose from fraudulent or deceptive acts or practices in violation of statutes, rules or regulations administered or promulgated by the NASD, a self-regulatory organization registered under the Federal 1934 Act or Federal 1974 Act. Hence, Respondent's registration as a salesperson is subject to revocation under and by virtue of Section 8.E(1)(j) of the Act.

Further, because Respondent withdrew his registration, or his application for registration, as a salesperson of securities in the State of Illinois on April 10, 2003, a date less than two (2) years before the date on which the Department instituted revocation proceedings against Respondent, which date was September 23, 2004, the Secretary of State may enter a revocation or suspension order as of the last date on which Respondent's registration was effective, April 10, 2003, pursuant to Section 8.E(3) of the 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 revocation pursuant to Sections 8.E(1)(j) and 8.E(3) of the Act.

Order of Revocation


-5-

WHEREAS, the Hearing Officer recommended 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 Recommendation made by the Hearing Officer.

NOW THEREFORE, IT SHALL BE AND IS HEREBY ORDERED:

1. Michael R. Gerbac's registration as a salesperson in the State of Illinois is revoked as of April 10, 2003 pursuant to the authority provided under Sections 8.E(1)(j) and 8.E(3) of the Act.
2. This matter is concluded without further proceedings.

ENTERED: This 13<sup>th</sup> day of May 2005.

  
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.