

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

IN THE MATTER OF: ROGER L. OVERBY	}	FILE NO. 0600099
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**CONSENT ORDER OF WITHDRAWAL OF APPLICATION**

TO THE RESPONDENT:    Roger L. Overby  
                                  (CRD #: 1919255)  
                                  3304 Latania Drive  
                                  Tampa, Florida 33618  
  
                                  C/o Gunnallen Financial, Inc.  
                                  5002 W. Waters  
                                  Tampa, Florida 33634  
  
                                  C/o Jeffrey M. Gershon Attorney At Law  
                                  Shaheen, Novoselsky, Staat,  
                                  Filipowski & Eccleston,  
                                  P.C. 20 North Wacker Drive Suite 2900  
                                  Chicago, Illinois 60606

WHEREAS, Respondent on the day 24<sup>th</sup> of July 2006 executed a certain Stipulation to Enter Consent Order of Withdrawal of Application (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Corrected Notice of Hearing of the Secretary of State, Securities Department, dated May 19, 2006 in this proceeding (the "Corrected Notice") and Respondent has consented to the entry of this Consent Order of Withdrawal of Application "Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the following allegations contained in the Corrected Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact: use same facts here as in Stipulation.

WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting or denying the averments, that the following shall be adopted as the Secretary of State's Conclusion's of Law:

1. That on February 17, 2006, Gunnallen Financial, Inc., a registered dealer, filed a Form U-4 application for registration of the Respondent as a salesperson in the State of Illinois.
2. That on April 14, 2006, a Summary Order of Denial (the "Order") was issued by the Secretary of State denying this application. Pursuant to the terms of the Order, on May 12<sup>th</sup>, 2006 the Respondent requested a hearing.
3. That on May 14, 2003 an Exchange Hearing Panel of the New York Stock Exchange Inc. (NYSE) accepted a Stipulation of Facts and Consent to Penalty entered into between the Exchange's Division of Enforcement and the Respondent (Decision) in File No 03-91 which imposed the following sanctions:
  - a. censure ; and
  - b. barred for a period of nine months from membership, allied membership, approved person status, and from employment or association in any capacity with any Exchange member or member organization.
4. That the Decision found:
  - a. From 1996 through 2000, the Respondent engaged in outside business activities, and received compensation in connection with these activities, without the knowledge or approval of his two member firm employers during that time period. He also solicited customers of his member firm employers, and other individuals, to invest in outside businesses without disclosing to some customers his involvement in and connection with the outside businesses. He made misstatements and failed to disclose facts to his member firm employers concerning his outside business activities.

**Relationship with/ Compensation from outside Business**

- b. Exchange Rule 346(b) provides, in pertinent part, that: "[w]ithout making a written request and receiving prior written consent of his ... member organization employer, no ... employee of a ...member organization shall at any time be engaged in any other business; or be employed or compensated by any other person...."

- c. In the summer of 1996, while employed at Merrill Lynch, the Respondent engaged in business activities with a private medical technology corporation (the "Corporation"), without Merrill Lynch's knowledge or approval.
- d. In September 1996 and again in January 1999, without the knowledge or approval of his member firm employers, the Respondent entered into consulting agreements with the Corporation, pursuant to which he performed services for the Corporation and received as compensation a total of \$290,000 and stock options, which he exercised.
- e. In the summer of 1997, while employed at Prudential but without Prudential's knowledge or approval, the Respondent assisted the Corporation in entering an agreement with an OTC listed company. In July 1999, following that company's purchase of a controlling interest in the Corporation pursuant to this agreement, he became a shareholder representative for Corporation shareholders without Prudential's knowledge or approval.
- f. In 1998, without Prudential's knowledge or approval, the Respondent loaned an affiliated company of the Corporation \$100,000 in exchange for a small ownership interest. Thereafter, he became a member of the Board of Directors of that affiliate.

**Solicitation of Firm Customers**

**Misstatements/ Failures to Disclose Involvement with Outside Business**

- g. In 1996 and 1997, while employed at Merrill Lynch, the Respondent solicited Merrill Lynch customers to invest in the Corporation outside their accounts at Merrill Lynch. Several of these customers made investments in the Corporation, which did not appear in their Merrill Lynch account statements. He also solicited various individuals who were not Merrill Lynch customers to invest in the Corporation. He solicited these investments without the knowledge or approval of Merrill Lynch.
- h. The Respondent failed to disclose to some of the Corporation investors information about his relationship with the Corporation, including information concerning his first consulting agreement and the monetary compensation and stock options he received from the Corporation.

- i. In February 1997, the Respondent signed a Merrill Lynch Compliance Disclosure Form, which asked if he had any outside employment, business interests or investments. He answered "no" to this question, which was not true.
- j. In June 1997, the Respondent completed an application for employment at Prudential, which asked about involvement with outside businesses. He failed to disclose such involvement.
- k. In May 1999, the Respondent filled out a form at Prudential requesting approval to solicit Prudential customers to purchase stock of the company purchasing a controlling interest in the Corporation. He stated to Prudential on that form that he did not have any affiliation with that company, which was not true.
- l. After May 1999, the Respondent solicited and obtained investments in the company purchasing a controlling interest in the Corporation from various Prudential customers. He failed to disclose to some of these investors information about his relationship with that company, including his participation in, and compensation for, takeover negotiations between that company and the Corporation.
- m. In December 1999, when the company declared bankruptcy, its investors realized significant losses.
- n. By virtue of the foregoing, the respondent:
  - (i) violated exchange rule 346(h) by engaging in outside business activities without employer consent;
  - (ii) solicited customers to invest in outside business without disclosing his involvement in such business; and
  - (iii) failed to disclose involvement in outside business to employer.

5. That Section 8.E(1)( j) of the Act provides, inter alia, that the registration of a salesperson may be denied if the Secretary of State finds that such salesperson has 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.
6. That the NYSE is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation, Respondent has acknowledged without admitting or denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law

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

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he shall cause to have his application for registration as a salesperson in the State of Illinois withdrawn within three (3) days from the entry of this Consent Order and will not re-apply for registration for a period of two (2) years from the entry of this Consent Order.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he shall be levied costs incurred during the investigation of this matter in the amount of One Thousand Dollars (\$1,000.00). Said amount has been paid by certified or cashier's check, made payable to the Office of the Secretary of State, Illinois Audit and Enforcement Fund.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that he has submitted with the Stipulation a certified or cashier's check in the amount of One Thousand dollars (\$1,000.00) to cover costs incurred during the investigation of this matter. Said check has been made payable to the Office of the Secretary of State, Illinois Audit and Enforcement Fund.

Consent Order Of Withdrawal Of Application

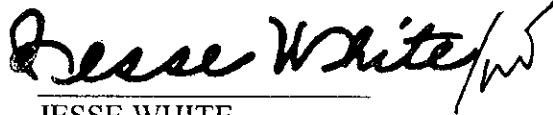
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WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. The Respondent shall cause to have his application for registration as a salesperson in the State of Illinois withdrawn within three (3) days from the entry of this Consent Order and will not re-apply for registration for a period of two (2) years from the entry of this Consent Order.
2. The Respondent is levied costs of investigation in this matter in the amount of One Thousand dollars (\$1,000.00), payable to the Office of the Secretary of State, Illinois Audit and Enforcement Fund, and on July 24, 2006 has submitted One Thousand dollars (\$1,000.00) in payment thereof.
3. The formal hearing scheduled on this matter is hereby dismissed without further proceedings.
4. The Summary Order of Denial entered April 14, 2006 is VACATED.

ENTERED This 27<sup>th</sup> day of July 2006.



JESSE WHITE  
Secretary of State  
State of Illinois