

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

IN THE MATTER OF: ROGER L. OVERBY

FILE NO. 0600099

CORRECTED NOTICE OF HEARING

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

You are hereby notified that pursuant to Section 111 of the Illinois Securities Law of 1953 [815 ELCS 5] (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 5th day of July, 2006, at the hour of 10:00 a.m., or as soon as possible thereafter, before George Berbas, Esq. 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 which would deny Roger L. Overby's (the "Respondent"), registration as a salesperson 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 1 LE of the Act, payable within ten (10) business days of the entry of the Order.

The grounds for such proposed action are as follows:

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.

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- 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.

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

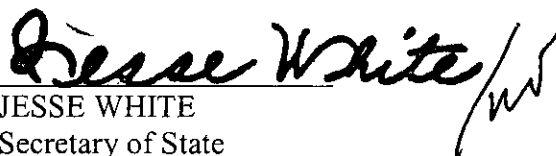
You are further notified that you are required pursuant to Section 130.1104 of the Rules and Regulations (14 Ill. Adm. Code 130) (the "Rules"), to file an answer to the allegations outlined above within thirty (30) days of the receipt of this notice. A failure to file an answer within the prescribed 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 by 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 19<sup>th</sup> day of May 2006.

  
JESSE WHITE  
Secretary of State  
State of Illinois

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Attorney for the Secretary of State:  
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Illinois Securities Department  
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Chicago, Illinois 60602  
312-793-3384

Hearing Officer:  
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