

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

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ROBERT L. GIARDINA )  
\_\_\_\_\_) )

FILE: 0800023

**ORDER OF DENIAL**

TO RESPONDENT:            Robert L. Giardina  
                                  (CRD#: 2554997)  
                                  41 Witteman Place  
                                  Statenisland, New York 10301

                                  C/o Empire Asset Management Company  
                                  2 Rector Street  
                                  15<sup>th</sup> Floor  
                                  New York, New York 10006

WHEREAS, the above-captioned matter came on to be heard on May 7, 2008, pursuant to the Notice of Hearing dated March 26, 2008, filed by Petitioner Secretary of State, and the record of the matter under the Illinois Securities Law of 1953 [815 ILCS 5] (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 Office, Jim Kopecky, Esq., in the above-captioned matter have been read and examined.

WHEREAS, the following 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.     The Department served Respondent with a Notice of Hearing on or about March 26, 2008

2. The Respondent failed to answer, appear or submit a responsive pleading.
3. The Respondent did not appear at the Hearing.
4. That on January 8, 2008, Empire Asset Management Company, a registered dealer, filed a Form U-4 application for registration of the Respondent as a salesperson in the State of Illinois pursuant to Section 8 of the Act.
5. That on July 15, 1999, NASD entered ORDER ACCEPTING OFFER OF SETTLEMENT (Order) regarding DISCIPLINARY PROCEEDING NO. C 10990012 Which sanctioned the Respondent as follows:
  - a. censured;
  - b. fined fifteen thousand (\$15,000) dollars;
  - c. pay restitution to customer TT in the amount of fifteen thousand (\$15,000) dollars; and
  - d. suspended from associating with any member firm for a period of sixty (60) days.
6. That the Order found:

The Respondent, by use of the instrumentalities of interstate commerce or the mails, knowingly or recklessly employed devices in connection with his sale to customer Thomas Tossberg, M.D. ("customer TT") of stock in an entity known as Alpha Solar Co., Incorporated ("ASCO"), to defraud customer TT by making untrue statements of material fact or omitting to state material facts necessary to make the statements, in light of the circumstances in which they were made, not misleading.

More specifically, on or about October 8, 1996, the Respondent telephoned customer TT and recommended that the customer purchase ASCO stock. In order to persuade customer TT to purchase ASCO, the Respondent told the customer that a purchase ASCO stock was "imminent." The Respondent informed customer TT, in sum and substance, that IBM, Microsoft and/or SunSystems would be signing an agreement to purchase shares of ASCO and that the customer should "get in" on the deal before the stock "goes up." Based upon the Respondent's recommendation and representations, customer TT purchased 27,000 shares of ASCO on October 8, 1996. In actuality, no pending stock purchase by IBM, Microsoft or SunSystems existed at the time TT purchased his ASCO shares.

By virtue of this conduct, The Respondent violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and Conduct Rule 2120 and violated Conduct Rule 2110 by failing to observe high standards of commercial honor and just and equitable principles of trade.

Further, on or about October 11, 1996, the stock price in ASCO declined by approximately sixty (60%) percent. Customer TT then attempted to sell his holdings in ASCO on at least three occasions. Each time customer TT instructed the Respondent to sell his shares in ASCO, the Respondent persuaded the customer not to sell because of the "deal," to wit: the purchase by IBM, Microsoft and/or SunSystems of ASCO stock. However, no such pending stock purchase existed at the time customer TT attempted to sell his ASCO holdings.

By reason of the foregoing, the Respondent violated NASD Conduct Rule 2110. In addition, by letter dated August 19, 1997, sent via first class mail to the Respondent at his last known address as reflected in the Association's records (the "CRD Address"), the staff requested that the Respondent provide a written statement concerning allegations contained in the customer complaints of public customers HF and RM. The request was sent pursuant to, and in accordance with, the provisions of NASD Procedural Rule 8210. The Respondent, however, failed to respond to the staff's request. Thus, by letter dated September 9, 1997, sent via certified and first class mail to the Respondent at the CRD Address, the staff again requested that the Respondent provide a written statement concerning the allegations set forth in the aforementioned customer complaints. The request was sent pursuant to, and in accordance with, the provisions of NASD Procedural Rule 8210. The Respondent failed to provide a response by the September 19, 1997 deadline imposed by the September 9, 1997 request. The Respondent eventually provided a written response to the staff on October 20, 1997.

By virtue of this conduct, the Respondent violated Procedural Rule 8210 and Conduct Rule 2110. Moreover, by letter dated September 16, 1997, sent via certified mail and first class mail to the Respondent at the CRD Address, the staff requested that the Respondent appear for an on-the-record interview on October 3, 1997, to respond to questions concerning, among other matters, the Respondent's daily activities at Toluca. That request was also sent via certified mail and first class mail to another address the staff had obtained for the Respondent (the "Cromwell Address"). Both certified mail receipts for the request letters sent to the CRD Address and the Cromwell Address were signed and returned to the staff.

On October 2, 1997, the Respondent telephoned the staff and requested an adjournment of the on-the-record interview. That request was granted and the matter was rescheduled to October 15, 1997. Accordingly, on October 3, 1997, the staff sent a letter to the Respondent at the Cromwell Address confirming the adjournment. That letter was sent via certified mail and first class mail. The certified mail copy was returned to the staff marked "unclaimed," but the first class mail copy was not returned.

On October 14, 1997, the staff received a telephone call from Thomas Harvey, Esq. who stated that he was representing the Respondent. Harvey requested a second adjournment of the interview. That request was granted to October 21, 1997. Accordingly, on October 15, 1997, the staff sent a letter to the Respondent at the CRD Address and the Cromwell Address certified mail and first class mail. The letter advised the Respondent and his counsel that no further adjournments of the interview would be granted. The certified mail card for the Cromwell Address was returned to the staff signed "P. Giardina." The certified mail card to the CRD Address was returned marked "unclaimed." The first class mail letters to both addresses were not returned to the staff.

On October 21, 1997, the Respondent appeared for the interview without counsel. Following certain preliminary questioning from the staff, the Respondent informed the staff that he would not answer any further questions without counsel. The staff advised the Respondent of the consequences of his refusal to continue. Despite those warnings, the Respondent informed the staff that he would not continue without counsel and requested a further adjournment. The staff declined that request and the record was closed.

On or about October 23, 1997, Martin Kaplan, Esq. telephoned the staff and informed them that he was representing the Respondent and requested a date for the interview. Pursuant to a letter dated October 23, 1997, the interview was scheduled for November 11, 1997. On that date, the on-the-record interview was held.

WHEREAS, the Secretary of State adopts the following additional findings of fact which (1) were alleged in the Notice of Hearing and deemed admitted due to the Respondent's failure to answer or appear at the Hearing, and (2) proved at the Hearing.

7. The Respondent violated Procedural Rule 8210 and Conduct Rule 2110 by failing to timely respond to the staffs request for on-the-record testimony.

8. That Section 8.E(i)(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 practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory Organization.
9. That NASD is a self-regulatory organization as specified in Section 8.E(l)(j) of the Act.

WHEREAS, the proposed Conclusions of Law made by the Hearing Officer are correct and are hereby adopted as the Conclusion of Law of the Secretary of State:

1. The Department properly served the Notice of Hearing on Respondent on or about March 26, 2008.
2. The Notice of Hearing included the information required under Section 102 of the Code.
3. The Secretary of State has jurisdiction over the subject matter hereof pursuant to the Act.
4. Because of Respondent's failure to file a timely answer, special appearance or other responsive pleading in accordance with Section 13.1104:
  - a. the allegations contained in the Notice of Hearing are deemed admitted.
  - b. Respondent waived his rights to a hearing
  - c. Respondent is subject to an Order of Default.
5. Because the Respondent failed to appear at the time and place set for hearing, in accordance with Section 130.1109, he:
  - a. waived his right to present evidence, argue, object or cross examine witness or
  - b. otherwise participate at the hearing.

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6. 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 practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory organization.
4. That NASD is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.
5. That by virtue of the foregoing Proposed Findings of Fact, 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.

WHEREAS, the Hearing Office recommended that the Secretary of State **DENY** the Respondent Robert L. Giardina registration as 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. Respondent Robert L. Giardina's application for registration as a salesperson in the State of Illinois is **DENIED** pursuant to the authority provided under Section 8.E(1)(j) of the Act.
2. This matter is concluded without further proceedings.

*NOTICE: Failure to comply with the terms of this Order shall be a violation of the Section 12.D of the act. Any person or entity who fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of the Order, shall be guilty of a Class 4 Felony.*

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*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 Illinois Securities Act, [14 Ill. Admin. Code Ch I, Section 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.*

ENTERED THIS 12<sup>th</sup> day of June 2008



JESSE WHITE  
Secretary of State  
State of Illinois

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