

STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT

IN THE MATTER OF:

MICHAEL W. WELGE

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No. 0300517

CONSENT ORDER

TO THE RESPONDENT: Michael W. Welge CRD Number 122826

C/O Mr. Leo Asaro
Brian Cave
One Metropolitan Square
211 North Broadway, Suite 3600
St. Louis, MO 63102-2750

WHEREAS, Respondent, Michael W. Welge, (the "Respondent") on November 16, 2006, executed a certain Stipulation To Entry Consent Order (the "Stipulation"), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, the Respondent has admitted to the jurisdiction of the Secretary of State and service of the Notice of Hearing in this matter and the Respondents have consented to the entry of this Consent Order.

WHEREAS, the Secretary of State, by and through his designated representative, the Securities Director, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceeding.

WHEREAS, the Respondent has acknowledged, without admitting or denying the truth thereof, that the allegations contained in paragraph seven (7) of the Stipulation shall be adopted as the Secretary of State's Findings of Fact as follows:

1. At all times relevant, the Respondent was an Illinois registered Investment Adviser and Investment Adviser Representative pursuant to Section 8 of the Illinois Securities Law of 1953, 815 ILCS 5/1 et seq. (the "Act").

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2. Pursuant to authority granted under the Act, Examiners from the Illinois Securities Department conducted a compliance examination of the Respondent from January 17-20, 2006.
3. The results of this examination disclosed the following violations by the Respondent:
 - a. The Respondent was not initially providing a copy of his Form ADV Part II filed with the Illinois Securities Department which provides important investor protection information to prospective and current clients of the Respondent. Additionally, the Respondent was not annually offering to deliver the Form ADV Part II to his clients as required by Rule 846 of the Rules and Regulations under the Illinois Securities Act ("the Rules").
 - b. The Respondent did not have any business cards or stationery in his investment advisory business name but rather provided some clients business cards in the name of another company, Gilster-Mary Lee Corporation ("Gilster Mary Lee") and sent correspondence to clients on stationery of Gilster Mary Lee. The Respondent is a shareholder of Gilster Mary Lee and is the Executive Vice-President and Secretary/Treasurer of the firm. Gilster Mary Lee is a manufacturer of specialty foods and is not in the financial services business. As such it is not registered in any capacity with the Illinois Securities Department.
 - c. The Respondent was assessing his clients a fee based upon the increase in portfolio value of his clients' accounts after a 1 year period ("Performance Based fees"). The Performance Based fee was 5% of the increase in value of the portfolio. However, Respondent did not comply with Rule 852 (b) of the Rules, in that 25 of his clients did not meet the assets under management or net worth requirements of Rule 852. 2 clients were charged (or were to be charged) Performance Based fees but did not have an investment advisory contract. And one client was charged Performance Based fees of 5% of the increase even though the investment advisory contract did not state the percentage amount to be charged.
 - d. The Respondent also charged fees to clients that met the requirement of rule 852 but for two clients he

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charged Performance based fees of 5% of the increase in value, even though the contract did not state the percentage amount to be charged.

- e. For one client, who's custodial accounts for their two daughters colleges' expenses were invested in stock of Chester National Bank, he wrote a letter to the client on August 5, 2003, which stated as follows: "Both of the girls have not yet reached their all time high of \$13,136.16. I have a large part of their account in cash looking for a secure investment besides Chester National Bank, which I personally guarantee, will be secure." At the time of this statement and up to the present, the Respondent was the President and Chairman of the Board of Chester National Bank.
- f. For another client, who the Respondent also recommended to purchase Chester National Bank stock and held it in their investment advisory account, Michael Welge stated in a July 26, 2002 letter: "..., I can tell you your Chester National Bank stock is stable and will continue to pay increased dividends. I know that you know I have more control over that than the overall stock market."
- g. In his most recent Form ADV filed with the Secretary of State, Illinois Securities Department, the Respondent reported that over 75% of his clients were "High Net Worth Individuals." High Net Worth Individuals are defined as an individual with at least \$750,000 managed by the Investment Adviser or whose net worth the Investment Adviser reasonably believes exceeds \$1,500,000 or who are qualified purchasers under the investment company act because they own \$5,000,000 in investments or are investing \$25,000,000 in assets. 36 Accounts were examined by Department examiners, 26 were accounts of individuals who did not qualify as High Net Worth Individuals and 10 were qualified as High Net Worth Individuals. Only 38% of the clients qualified as High Net Worth Individuals.
- h. By reporting to the Illinois Securities Department that over 75% of his clients were High Net Worth individuals, gave the impression that his firm was a lower compliance risk due to the small percentage Non-High Net Worth individual clients who generally are

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less sophisticated and in need of greater investor protection.

- i. Michael Welge was the treasurer of the Chester Investment Club which invested in securities and a trustee of the Gilster Mary Lee Profit Sharing Plan. As such Michael Welge made investment recommendations and decisions for both entities. Both entities were invested in the same securities recommended by Michael Welge to his investment advisory clients. Michael Welge failed to disclose in his Form ADV and to his clients that he was recommending the same securities for which he personally, the Chester Investment Club and the Gilster Mary Lee Profit Sharing plan also bought, sold or held as assets. In the case of Gilster Mary Lee Profit Sharing, investment advisory clients were invested in 55 securities that were held by the Gilster Mary Lee Profit Sharing plan. Two of these securities, during the 2003 fiscal year, each represented 5% or more of the total holdings of the Gilster Mary Lee Profit Sharing plan.
 - j. Michael Welge held a joint savings account in his name and in the name of an Investment Advisory client at Chester National Bank. Additionally, he also had third party trading authorization for all of his clients' securities accounts that were held at Wachovia Securities. Holding a joint account with an Investment Advisory client and having trading authorization for all Investment Advisory accounts gave him custody of a clients bank account and clients' securities.
 - k. Michael Welge in his Form ADV in Item 9A in response to questions 1 and 2 which asks: "Do you have custody of any advisory clients': (1) cash or bank accounts? (2) Securities?" answered no to both questions.
4. Rule 130.844 of the Rules provides, inter alia, that each registered investment adviser which retains custody of client's cash or securities ... shall file [with the Department] a statement of financial condition (balance sheet) and interim financial statement, in such detail as will disclose the nature and amounts of assets and liabilities and net worth of the investment adviser.

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5. The Respondent failed to comply with Rule 844 and did not file any statement of Financial Condition with the Department as required by the Rule.
6. Rule 846 provides, inter alia, that unless otherwise provided in the Rule, an investment adviser, registered or required to be registered pursuant to Section 8.D of the Act, shall, in accordance with the provisions of the Rule, furnish each advisory client and prospective advisory client with a written disclosure statement (Form ADV Part II) required by 17 CFR 275.204-3.
7. Rule 852(a) provides, inter alia, no registered investment adviser or its representatives shall charge or receive compensation in connection with the giving of investment advice unless such compensation is fair and reasonable and is determined on an equitable basis adequately disclosed to each client in writing.
8. Rule 852(b) provides, inter alia, that no registered investment adviser or its representatives shall charge or receive compensation in connection with the giving of investment advice which provides for compensation to the investment adviser or its representatives on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, unless such fees are charged in conformance with the provisions set forth in 17 CFR 275.205-3.
9. Section 8.E.1(m) of the Act provides, inter alia, that subject to the provisions of subsection F of Section 11 of the Act, the registration of an investment adviser or investment adviser representative may be suspended or revoked if the Secretary of State finds that the investment adviser or investment adviser representative has conducted a continuing course of dealing of such nature as to demonstrate an inability to properly conduct the business of the dealer, limited Canadian dealer, salesperson, investment adviser or investment adviser representative.
10. Section 8.E.1(q) of the Act provides, inter alia, that subject to the provisions of subsection F of Section 11 of the Act, the registration of an investment adviser or investment adviser representative may be suspended or revoked if the Secretary of State finds that the investment adviser or investment adviser representative has failed to maintain the books and records required under this Act or

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regulations under this Act or under any requirements established by the Securities and Exchange Commission or self-regulatory organization.

11. By virtue of the foregoing, the Respondent is subject to the entry of an Order which revokes his investment adviser and investment adviser representative registrations in the State of Illinois pursuant to the authority provided under Section 8.E.1(m) or (q) of the Act.
12. Section 12.D of the Act provides, inter alia, that it shall be a violation of the Act for any person to fail to file with the Secretary of State any application, report or document required to be filed under the provisions of the Act or any rule or regulation made by the Secretary of State pursuant to the Act or to fail to comply with the terms of any order of the Secretary of State issued pursuant to Section 11.
13. Section 11.E(2) of the Act provides, inter alia, that if the Secretary of State shall find that any person has violated subsection D of Section 12 of the Act, the Secretary of State may by written order prohibit the person from offering or selling any securities in this State.
14. Section 11.E(4) of the Act provides, inter alia, that if the Secretary of State, after finding that any provision of the Act has been violated, may impose a fine as provided by rule, regulation or order not to exceed \$10,000.00 for each violation of the Act.
15. By virtue of the foregoing, Michael Welge is subject to a fine of up to \$10,000.00 per violation and an order which permanently prohibits the Respondent from offering or selling securities in the State of Illinois.

WHEREAS, the Respondent has acknowledged, without admitting or denying the truth thereof, that the allegations contained in paragraph eight (8) of the Stipulation shall be adopted as the Secretary of State's Conclusions of Law as follows:

1. That by virtue of the foregoing, the Respondent, Michael W. Welge, has violated Section 12.D of the Act.
2. That by virtue of the foregoing, Respondent, Michael W. Welge, is subject to a fine of up to \$10,000.00 per

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violation, costs of investigation and reasonable expenses and an order of Permanent Prohibition.

3. That by virtue of the foregoing, Respondent, Michael W. Welge, is subject to an order that Revokes his Investment Adviser and Investment Adviser Representative registrations in the State of Illinois.

NOW THEREFORE IT IS HEREBY ORDERED THAT:

1. The foresaid allegations contained in the Stipulation shall be and are hereby adopted as the Secretary of State's Findings of Fact and Conclusions of Law;
2. The Respondent shall, within 30 days of the entry of the Consent Order, pay a fine in the amount of \$1,000 to the Illinois Secretary of State;
3. The Respondent's registrations as an Investment Adviser and Investment Adviser Representative in the State of Illinois ARE HEREBY REVOKED.
4. The Notice of Hearing in this matter is dismissed.

ENTERED: This 20th day of November, 2006.



JESSE WHITE
Secretary of State
State of Illinois

NOTICE: Failure to comply with the terms of this Order shall be a violation of Section 12(D) of the Illinois Securities Law of 1953 [815 ILCS 5] (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 this Order, shall be guilty of a Class 4 felony.

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