

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

---

IN THE MATTER OF: RICHARD LEE VAN DYKE )  
DBA DICK VAN DYKE REGISTERED ) File No. 1100244  
INVESTMENT ADVISER )

---

Final Order

TO THE RESPONDENTS: Richard Lee Van Dyke  
DBA Dick Van Dyke Registered Investment  
Adviser  
c/o Michael D. Morehead  
Hinshaw & Culbertson  
400 S. Ninth St., Suite 200  
Springfield, IL 62701

WHEREAS, the record of the above-captioned matter 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 Facts and Conclusions of Law and Recommendations of the Hearing officer, John K. Ellis, in the above-captioned matter have been read and examined; and

WHEREAS, the proposed Findings of Fact are correct and are adopted by the Secretary of State as follows:

1. The Pleadings, Exhibits and Testimony have been offered and received from the Department and the Respondents, and a proper record of all proceedings has been made and preserved as required by law.
2. The Hearing Officer has ruled on all motions and objections timely made and submitted.

Final Order

-2-

3. The Hearing Officer and the Secretary of State Securities Department have jurisdiction over the parties herein and the subject matter dealt with herein, due and proper notice having been previously given as required by statute in this Matter.
4. The Respondents were registered as an Investment Adviser and Investment Adviser Representative in Illinois from July 25, 2006 through December 31, 2007 and August 7, 2008 through December 31, 2011. The Respondent, Richard Lee Van Dyke, is also licensed to sell insurance in the state of Illinois.
5. Beginning in 2006, the Respondents advertised financial and retirement planning seminars, Social Security workshops and educational workshops designed for individuals and couples 55 or older.
6. In addition to newspaper advertisements and retirement planning seminars, the Respondents also from 2006 to March 2013 maintained a web site.
7. The Respondents' advertisements stated Dick Van Dyke is a "...nationally recognized retirement educator" and has a designation of "Certified Senior Adviser."
8. Through these seminars, the website and other advertisements, the Respondents obtained investment advisory clients and in later meetings provided investment advice, financial planning and recommendations to purchase financial products including Indexed Annuities.
9. Sales of some of these financial products, including Indexed Annuities, were effected through Dick Van Dyke Financial, Ltd., a wholly owned corporation of the Respondent, Richard Lee Van Dyke.
10. On or about August 2011, the Department initiated and conducted compliance audits of the Respondents pursuant to Section 11 of the Act.
11. During its audit and investigation, the Department reviewed documents that disclosed from February 2009 through October 2010, the Respondents effected 33 Indexed Annuity purchase transactions involving the liquidation of 30 previously-owned Indexed Annuity contracts by 21 of the Respondents' clients, resulting in surrendered annuity contract commissions of

Final Order

-3-

\$183,161.58 and \$177,417.42 in new annuity contract commissions to the Respondents. Twenty-nine of the 30 previously-owned Indexed Annuity contracts had been recommended for purchase by the Respondents. Five of 29 of the surrendered annuity contracts had eight years remaining until they could be surrendered without penalty, 20 contracts had seven years remaining until they could be surrendered without penalty and four contracts had six years remaining until they could be surrendered without penalty. Surrender penalty charges ranged from \$2,078.39 to \$21,291.66. Six surrendered contracts had bonus recapture fees that ranged from \$2,232.01 to \$8,940.48. Twenty-nine of the surrendered contracts had positive market value adjustments. The contract values for the 30 surrendered Indexed Annuities totaled \$2,327,904.95. However, the final amount credited to the 21 clients only totaled \$2,246,897.59. Eleven of the 30 surrendered annuities resulted in eight clients having taxable income reported.

12. All of the 33 new Indexed Annuity purchase transactions reviewed by the Department involved persons from 61 to 82 years of age.
13. All but one of the 33 new Indexed Annuities featured higher fees and the start of new surrender penalty periods. Eight of the new Indexed Annuity contracts had 12 year surrender penalty periods, 21 had 10 year surrender penalty periods and four had six year surrender penalty periods. Twenty-four of the new Indexed Annuities had 10% bonuses, eight had 5% bonuses, and one had an 8% bonus. However, four of the new Indexed Annuity contracts required the owners to wait 15 years before having access to the full bonus value upon surrender, seven had to wait to 12 years, 14 had to wait for 10 years and four had to wait for six years. The four Indexed Annuity contracts that did not have bonus recapture periods provided that the owner may receive less than the premiums paid if the annuity contracts were surrendered within the surrender penalty periods.
14. All of the 33 transactions were solicited and made at the recommendation of the Respondents or as part of investment advice or financial planning provided by the Respondents.

Final Order

-4-

15. Section 2.1 of the Act defines the term "Security" as any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, investment fund share, face-amount certificate, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas or other mineral lease, right or royalty, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "Security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not mean a mineral investment contract or a mineral deferred delivery contract; provided, however, the Department shall have authority to regulate these contracts as hereinafter provided.
16. Section 2.5 of the Act defines the term "Sale or Sell" to include the full meaning of that term as applied by or accepted in the courts of this State, and shall include every contract of sale or disposition of a security or interest in a security for value.
17. Section 2.5a of the Act defines the term "Offer" to include every offer to sell or otherwise dispose of, or solicitation of an offer to purchase, a security or interest in a security for value; provided that the term "Offer" shall not include preliminary negotiations or agreements between an issuer and any underwriter or among underwriters who are or are to be in privity of contract with an issuer, or the circulation or publication of an identifying statement or circular or preliminary prospectus, as defined by rules or regulations of the Secretary of State.
18. The Indexed Annuities that are the subject of this Matter are securities subject to the Act. Although an Indexed Annuity is exempt from registration with the Department, the offer or sale of an Indexed Annuity is still subject to the other provisions of the Act.

Final Order

-5-

19. Section 12.A of the Act provides, inter alia, that it shall be a violation of the Act for any person to offer or sell any security except in accordance with the provisions of the Act.
20. Section 12.F of the Act provides, inter alia, that it shall be a violation of the Act for any person to engage in any transaction, practice or course of business in connection with the sale or purchase of securities which works or tends to work a fraud or deceit upon the purchaser or seller thereof.
21. Section 12.G of the Act provides, inter alia, that it shall be a violation of the Act for any person to obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
22. Section 12.I of the Act provides, inter alia, that it shall be a violation of the Act for any person to employ any device, scheme or artifice to defraud in connection with the sale or purchase of any security, directly or indirectly.
23. Section 12.J of the Act provides, inter alia, that it shall be a violation of the Act for any person, when acting as an investment adviser, investment adviser representative, or federal covered investment adviser, by any means or instrumentality, directly or indirectly: (1) to employ any device, scheme or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; or (3) to engage in any act, practice, or course of business which is fraudulent, deceptive or manipulative. The Secretary of State shall for the purposes of this paragraph (3), by rules and regulations, define and prescribe means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative.
24. Section 130.853 of the Rules and Regulations promulgated under the Act (14 Ill. Admin. Code Section 130.853) provides that "[e]ffecting or causing to be

Final Order

-6-

effected by or for any client's account, any transactions of purchase or sale which are excessive in size or frequency or unsuitable in view of the financial resources and character of the account, shall constitute an act, practice or course of business on the part of the registered investment adviser or its representative effecting such transactions or causing the transactions to be effected that is fraudulent, deceptive or manipulative."

25. Under a suitability standard, a registered investment adviser and investment adviser representative only needs to recommend a product that meets the client's needs. Under a fiduciary standard, a registered investment adviser and investment adviser representative needs to consider alternative products, and disclose all conflicts and the fact that some products pay higher commissions than others.
26. As a registered investment adviser and investment adviser representative, the Respondents are held to a fiduciary standard and must act in the best interests of their clients.
27. The Indexed Annuity transactions involved in this Matter were both unsuitable and not in the best interests of the clients due to the age of the clients, the surrender penalties incurred due to the early liquidation of the existing Indexed Annuity contracts, the frequency of the commissions paid and no derivation of additional tax benefits.
28. The Department's burden of proof is the preponderance of the evidence.
29. The Illinois Supreme Court in People v. Clark, 2014 IL 115776 (March 20, 2014) and in People v. Melongo, 2014 IL 114852 (March 20, 2014), ruled as unconstitutional Article 14 ("the Eavesdropping Statute") of the Criminal Code of 2012.
30. At all times relevant hereto, the Respondents offered and sold at least 33 Indexed Annuity security transactions in violation of the Act.
31. At all times relevant hereto, the Respondents engaged in a transaction, practice or course of business in connection with the sale of at least 33 Indexed Annuity contracts which worked or tended to work a fraud or

Final Order

-7-

deceit upon the purchasers thereof by representing to and misleading their clients who liquidated an existing annuity contract to purchase a new annuity contract that the surrender penalty charges to be incurred would be recovered by a positive market value adjustment, that the new annuity contract provided favorable bonuses and interest thereon, and that the new annuity was a better investment over their current annuity and in the client's best interests.

32. At all times relevant hereto, the Respondents obtained money through the sale of at least 33 Indexed Annuity contracts by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, by representing to and misleading their clients who liquidated an existing annuity contract to purchase a new annuity contract that the surrender penalty charges to be incurred would be recovered by a positive market value adjustment, that the new annuity contract provided favorable bonuses and interest thereon, and that the new annuity was a better investment over their current annuity and in the client's best interests, that the new annuity would not be a replacement annuity, that funds to purchase the new annuity did not come from an existing annuity, and that there were not any settlement fees, surrender charges or penalties of any kind.
33. At all times relevant hereto, the Respondents employed devices, schemes or artifices to defraud in connection with the sale of securities directly or indirectly, by representing to and misleading their clients who liquidated an existing annuity contract to purchase a new annuity contract that the surrender penalty charges to be incurred would be recovered by a positive market value adjustment, that the new annuity contract provided favorable bonuses and interest thereon, and that the new annuity was a better investment over their current annuity and in the client's best interests, that the new annuity would not be a replacement annuity, that funds to purchase the new annuity did not come from an existing annuity, and that there were not any settlement fees, surrender charges or penalties of any kind.
34. At all times relevant hereto, the Respondents when acting as investment adviser and an investment adviser

Final Order

-8-

representative, by any means or instrumentality, directly or indirectly, employed devices, schemes or artifices to defraud clients or prospective clients, engaged in transactions, practices, or course of business which operates as fraud or deceit upon client or prospective clients, or engaged in acts, practices or courses of business which is fraudulent, deceptive or manipulative, by representing to and misleading their clients who liquidated an existing annuity contract to purchase a new annuity contract that the surrender penalty charges to be incurred would be recovered by a positive market value adjustment, that the new annuity contract provided favorable bonuses and interest thereon, and that the new annuity was a better investment over their current annuity and in the client's best interests, that the new annuity would not be a replacement annuity, that funds to purchase the new annuity did not come from an existing annuity, and that there were not any settlement fees, surrender charges or penalties of any kind.

35. By virtue of the foregoing, the Respondents have violated Sections 12.A, F, G, I and J of the Act.
36. That Section 8.E.1 (b) provides, inter alia, that 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 engaged in any unethical practice in connection with any security, the offer or sale of securities or any fraudulent business practice.
37. That Section 8.E.1 (f) provides, inter alia, that the registration of an investment adviser may be suspended or revoked if the Secretary of State finds that the investment adviser has failed reasonably to supervise the advisory activities of any of its investment adviser representatives or employees and the failure has permitted or facilitated a violation of Section 12 of the Act.
38. That Section 8.E.1 (g) provides, inter alia, that 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 violated any provisions of the Act.



Final Order

-9-

39. That Section 8.E.1 (m) provides, inter alia, that 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 investment adviser or investment adviser representative.
40. That by virtue of the foregoing, the Respondents' registrations are subject to suspension or revocation pursuant to Section 8.E.1(b), (f), (g) and (m) of the Act.
41. That Section 8.E.3 provides, inter alia, that the Secretary of State may institute a revocation or suspension proceeding within 2 years after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.
42. That Section 11.E(2) of the Act provides, inter alia, that if the Secretary of State shall find that any person has violated subsections F, G, I or J 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.
43. That 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 an order of censure or a fine as provided by rule, regulation or order not to exceed \$10,000.00 for each violation of the Act, may issue an order of public censure and may charge as costs of investigation all reasonable expenses, including attorney's fees and witness fees.

WHEREAS, the following proposed Finding of Fact of the Hearing Officer is rejected:

33. At all time relevant hereto, the Respondents signed or circulated statements or other papers or documents required by any provision of the Act or pertaining to any security knowing or having reasonable grounds to know any material representation contained therein to be false or untrue by representing to and misleading their clients who liquidated an existing annuity

Final Order

-10-

contract to purchase a new annuity contract that the surrender penalty charges to be incurred would be recovered by a positive market value adjustment, that the new annuity contract provided favorable bonuses and interest thereon, and that the new annuity was a better investment over their current annuity and in the client's best interests, that the new annuity would not be a replacement annuity, that funds to purchase the new annuity did not come from an existing annuity, and that there were not any settlement fees, surrender charges or penalties of any kind.

WHEREAS, the proposed Conclusions of Law are correct and are adopted by the Secretary of State as follows:

1. The actions, statements, representations, and/or omissions of the Respondents made in connection with the failure to offer or sell any security in accordance with the provisions of the Act are violations of Sections 12.A of the Act.
2. The actions, statements, representations, and/or omissions of the Respondents made in connection with the offer or sale of securities and that worked or tended to work a fraud or deceit upon Illinois purchasers are violations of Section 12.F of the Act.
3. The actions, statements, representations, and/or omissions of the Respondents which were untrue or misleading of material facts and were made to obtain money from Illinois purchasers are violations of Section 12.G of the Act.
4. The actions, statements, representations, and/or omissions of the Respondents employing any device, scheme or artifice to defraud in connection with the sale of any security, directly or indirectly, are violations of Section 12.I of the Act.
5. The actions, statements, representations, and/or omissions of the Respondents when acting as an investment adviser or investment adviser representative, by any means or instrumentality, directly or indirectly: (1) to employ any device, scheme or artifice to defraud any client or prospective client; (2) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client; or (3) to engage

Final Order

-11-

in any act, practice, or course of business which is fraudulent, deceptive or manipulative, are violations of Section 12.J of the Act.

WHEREAS, the Secretary of State makes the following additional conclusion of law: That Article 14 of the Criminal Code of 2012 has been found by the Illinois Supreme Court to be unconstitutional and therefore, Count II of the Amended Notice of Hearing should be dismissed and hereby is dismissed.

WHEREAS, the proposed Recommendations of the Hearing Officer are adopted by the Secretary of State.

NOW THEREFORE IT IS HEREBY ORDERED: That pursuant to the foregoing Findings of Fact, Conclusions of Law, and the Recommendations of the Hearing Officer:

1. The Investment Adviser and Investment Adviser Representative registrations of the Respondents are hereby revoked retroactive to their last date of registration;
2. The Respondents are hereby permanently prohibited from offering or selling securities in the State of Illinois;
3. The Respondents are fined \$330,000 payable to the Secretary of State Securities Audit and Enforcement Fund by certified check or money order within ten (10) days of the date of this Order.
4. The Respondents shall pay costs of investigation and expert witness fees of \$23,500 payable to the Secretary of State Securities Audit and Enforcement fund by certified check or money order within ten (10) days of the date of this Order.

ENTERED: This 9<sup>th</sup> day of April, 2014



JESSE WHITE  
Secretary of State  
State of Illinois

Final Order

-12-

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, as amended, 815 ILCS 5/1 et seq. (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.

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. I, 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.

Attorneys for the Secretary of State:

Shannon Bond

Jane Bunten

David Finnigan

Illinois Securities Department

300 W Jefferson St. Suite 300A

Springfield, Illinois 62702

Telephone: (217) 785-4947