

**STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION**

IN THE MATTER OF:

Brett Ian Friedberg

Respondent

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FINDINGS, RULINGS AND ORDER  
INV2013-0007

**Procedural History**

On March 14, 2013, the Bureau of Securities (hereinafter “the Bureau”) filed a Staff Petition for Relief against the above-captioned Respondent requesting a summary suspension of the Respondent’s license to operate as a broker-dealer agent in New Hampshire and further suspension or revocation of the Respondent’s license upon issuance of a show cause order and any subsequent hearing. The Bureau alleged that the Respondent’s license was revoked for three years by the State of Arkansas for selling unsuitable securities and making misrepresentations about the securities sold and the suitability profile of an investor.

A Summary Suspension Order and Order to Show Cause was issued on March 20, 2013 by Deputy Secretary of State David M. Scanlan. On April 19, 2013, Respondent, through counsel, requested a hearing on the Order and simultaneously requested postponement of the hearing for sixty days. A hearing on the Order was set for April 29, 2013 and concurrently postponed to June 28, 2013. On June 3, 2013, the Respondent, with the consent of the Bureau, filed a Consent Motion for a Continuance of said hearing to July 2, 2013. The motion was granted and the hearing on the Order was rescheduled. A prehearing conference was held on June 27, 2013. The hearing was scheduled for and held at 10:00 a.m. on July 2, 2013.

**Findings of Fact**

The facts of this case are not disputed by the parties. While not set forth in a document stipulating findings of fact, the Respondent agreed both at the prehearing conference and the hearing the he did not dispute the facts as laid out in the Bureau’s Staff Petition. As a result, the facts as stated in the Bureau’s Staff Petition are incorporated herein. A copy is attached as Exhibit “A”.

## **Rulings of Law**

1. Pursuant to RSA 421-B:10, I(a) and (b)(5-a), the Secretary of State may by order deny, suspend, or revoke any license if he finds that the order is in the public interest and that the licensee is the subject of an adjudication or order entered after notice and opportunity for a hearing by an administrator of another state that reflects that the person has violated the securities law of another state. Mr. Friedberg is subject to this section.
2. Pursuant to RSA 421-B:10, I(a) and (b)(14), the Secretary of State may by order deny, suspend, or revoke any license if he finds that the order is in the public interest and for other good cause shown. Mr. Friedberg is subject to this section.
3. Pursuant to RSA 421-B:10, 1(a) and (b)(6), the Secretary of State may by order deny, suspend, or revoke any license if he finds that the order is in the public interest and if the licensee is the subject of an order entered within five years by the securities administrator of any other state suspending or revoking the license. Mr. Friedberg is subject to this section.
4. Pursuant to RSA 421-B:10, III, the Secretary of State may issue an order requiring the person to whom any license has been granted to show cause why the license should not be revoked. Said order was issued to Mr. Friedberg on March 20, 2013.
5. Pursuant to RSA 421-B:10, VI, the Secretary of State may, upon hearing, assess an administrative fine of not more than \$2,500 per violation, in lieu of or in addition to, an order to revoke a license. Mr. Friedberg is subject to this provision.
6. Pursuant to RSA 421-B:26, III, any person who, either knowingly or negligently, violates any provision of this chapter may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation or denial of any registration or license, or an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation. Mr. Friedberg is subject to this section.

## **Discussion**

As noted, the facts in this case are not disputed by the parties. At hearing, the Bureau established through sufficient documentary evidence that Mr. Friedberg was the subject of a Consent Order by the securities administrator of the state of Arkansas revoking Mr. Friedberg's license as a broker-dealer agent for HFP Capital Markets LLC for a period of three years. In response, Mr. Friedberg through counsel did not argue that the Bureau was without authority to impose the relief requested by the Bureau. Rather, the Respondent argued, citing comments to the Uniform Securities Act of 1956, that the purpose of sanctions under the Act are meant to be remedial in nature and not punitive. Respondent presented evidence in an attempt to support its argument that suspension or revocation of the Respondent's license in New Hampshire would be punitive, as the Respondent is already under heightened supervision by his broker-dealer and well aware of the need for increased care in the future with regard to the activities giving rise to the

Arkansas Consent Order. Lastly, the Respondent argued that the Bureau had not demonstrated that an order to suspend or revoke was in the public interest.

In response, the Bureau cited several prior Bureau enforcement matters (copies of which were provided to the presiding officer and counsel for the Respondent immediately after the hearing) addressing activities similar to those addressed in the Arkansas Consent Order. The Bureau argued that unlawful securities telemarketing activities, such as those of the Respondent that were the subject of the Arkansas Consent Order, have been an ongoing area of concern for the Bureau. In addition, the Bureau argued that violations of the suitability requirements, as laid out in the Arkansas Consent Order, are necessarily a concern of the public interest. The Bureau argued that Mr. Friedberg should therefore face revocation of his broker-dealer agent license in New Hampshire for a minimum of one year.

The presiding officer is persuaded by the Bureau's argument that the charges alleged by the state of Arkansas in the Consent Order are precisely the kind of charges that concern the investing public in New Hampshire. Mr. Friedberg has been licensed in New Hampshire since February 26, 2009. While he is not accused of engaging in the activities in New Hampshire that were the subject of the Arkansas Consent Order, nonetheless engaging in misrepresentation in the sale of a security and failing to conduct a thorough suitability review present a threat to investors wherever Mr. Friedberg is licensed, including New Hampshire. Evidence presented at hearing indicated that much of Mr. Friedberg's business is generated through cold calls. The Bureau was able to substantiate that the use of telemarketing techniques that employ misleading information and fail to follow suitability requirements has been an ongoing and serious problem in New Hampshire.

The presiding officer recognizes that Mr. Friedberg's broker-dealer has taken some remedial steps to address the actions in the Arkansas matter, most notably enhanced supervision of Mr. Friedberg. In addition, Mr. Friedberg has acknowledged his shortcomings with regard to the activities for which he was sanctioned in Arkansas. These are duly noted. Nonetheless, the presiding officer finds that the Bureau has met its burden with regard to the basis for revocation of Mr. Friedberg's license as a broker-dealer agent.

### **Order**

Finding it necessary and appropriate and in the public interest and for the protection of investors and consistent with the intent and purpose of the New Hampshire Securities Act, R.S.A. 421-B, it is hereby **ORDERED**, that:

1. The broker-dealer agent license of Brett Ian Friedberg is revoked for a period of one year. Such revocation shall be effective from March 20, 2013, the date upon which an Order for Summary Suspension was issued against the Respondent.
2. Brett Ian Friedberg may pursue appointment and licensure as an agent of a broker-dealer provided: **(1)** the appointing broker-dealer agrees to impose, and Brett Ian Friedberg is subject to, on-site heightened supervision for a period of 2 years; **(2)** a

plan for heightened supervision shall be submitted to the Bureau for approval along with any new license application for Brett Ian Friedberg; and (3) Brett Ian Friedberg is not assigned or employed in a one-person office.

3. Brett Ian Friedberg may petition the Director of Securities to remove the heightened supervision requirement no earlier than one year from the effective date of his appointment as a broker-dealer agent.

SIGNED,  
William M. Gardner  
Secretary of State  
By His Designee:

Date: 8/29/13



Kevin B. Moquin  
Presiding Officer  
N.H. Bureau of Securities Regulation