

BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF IOWA

IN THE MATTER OF	:	
	:	
MICHAEL S. MURPHY	:	CEASE AND DESIST ORDER
MILLERTON TRADING, LLC A/K/A MILLERTON	:	
PROPERTIES, INC., A/K/A MILLERTON GROUP, LTD.:	:	BUREAU FILE NO.: C03-07-012

COMES NOW Therese M. Vaughan, the Commissioner of Insurance of the State of Iowa, pursuant to the provisions of the Iowa Uniform Securities Act, chapter 502, and finds as follows:

I. PARTIES AND JURISDICTION

1. The Iowa Commissioner of Insurance, pursuant to Iowa Code section 502.601 (2003), has the duty of enforcing the laws of the State of Iowa relating to the offer or sale of securities.
2. Michael S. Murphy (“Murphy”) is an individual, with a last known mailing address of 137 Dances Bay Road, Elizabeth City, NC 27909. Murphy is or has served as the President, Chief Executive Officer and Director of Millerton Trading, LLC a/k/a Millerton Properties, Inc. a/k/a Millerton Group, Ltd.
3. Millerton Trading, LLC a/k/a Millerton Properties, Inc. a/k/a Millerton Group, Ltd. (“Millerton”) is an entity with a last known mailing address of 137 Dances Bay Road, Elizabeth City, NC 27909.
4. Respondents have engaged or are about to engage in an act(s) or practice(s) within the State of Iowa constituting a violation of Iowa Code chapter 502 or any rule or order adopted or issued pursuant to Iowa Code chapter 502. The Commissioner of Insurance is authorized to issue this summary order directed to any person requiring the person to cease and desist from engaging in such act(s) or practice(s) or other affirmative action as in her judgment is necessary

to comply with the requirements of Iowa Code chapter 502, pursuant to Iowa Code section 502.604 (2003).

II. FACTUAL BACKGROUND

1. Paragraphs 1-4 of Division I are incorporated herein by reference.
2. On September 29, 1998, Murphy, on behalf of Millerton, entered into a "Deposit Agreement" with Howard E. Hustedt and Marcia J. Hustedt (collectively the "Hustedts") of Odebolt, Iowa. The Deposit Agreement stated that the Hustedts would deposit the sum of \$288,300 with Millerton to purchase United States Government securities.
3. On September 29, 1998, Murphy, on behalf of Millerton, entered into a "Trading Authorization / Power of Attorney" with the Hustedts granting Millerton the authority to purchase zero coupon United States Treasury Bills with a face value totaling \$300,000.
4. On October 4, 1998, Murphy, on behalf of Millerton, sent a letter to Howard E. Hustedt regarding the account at Millerton. The letter states, in part, that:

This letter confirms that upon receipt of your funds into the Millerton Properties, Inc. account at Citibank New York, Millerton shall immediately instruct Citibank to segregate said funds into a subsidiary account at Citibank Securities or Bear Stearns/Citibank. The funds will be credited for the benefit of your individual name or a corporate entity of your choice. **Whichever method is chosen, upon your instruction, will receive account statements when there is activity and on a monthly basis.**

(emphasis added).

5. On or about October 28, 1998, Howard E. Hustedt wired approximately \$290,000 to Millerton for credit to the account of MJH, LLC, an Iowa limited liability company. MJH, LLC was an entity used by its officers including the Hustedts to invest funds on behalf of a group of Iowa investors.

6. On October 28, 1998, Millerton issued a "Confirmation" to Howard E. Hustedt and MJH, LLC stating that the purchase of \$300,000 face value of United States Treasury Bills had been completed. The maturity date of the treasury bills was October 14, 1999. United States Treasury Bills are securities under Iowa Code section 502.102(19).
7. On November 9, 1998, Howard E. Hustedt, on behalf of MJH, LLC, signed a "Deposit Agreement" with Murphy, on behalf of Millerton, which established an account at Bear Stearns & Co. for the receipt of funds from MJH, LLC. The Deposit Agreement states that the account at Bear Stearns & Co. is an account of Wilkinson Boyd Asset Management for the benefit of Millerton Group, Ltd.
8. Michael Boyd of New Canaan, CT was the Chief Executive Officer of the former non-Iowa licensed broker-dealer Wilkinson Boyd Capital Markets, Inc. located at 199 Elm Street, New Canaan, CT 06840. Wilkinson Boyd Capital Markets, Inc. ceased to exist on January 18, 2002. Michael Boyd was also the Chief Executive Officer of the former unlicensed Wilkinson Boyd Asset Management, Inc., an investment advisory firm located at 199 Elm Street, New Canaan, CT 06840.
9. On November 9, 1998, Bear Stearns & Co. issued a position description stating that \$300,000 of United States Treasury Bills had been purchased in an account for a net cost of \$288,658 with Millerton as the title holder.
10. On December 30, 1998, Murphy, on behalf of Millerton, entered into a "Demand Note" with Michael Boyd of New Canaan, CT for the sum of \$250,000 at a 5% interest rate. On information and belief, Millerton liquidated the United States Treasury Bills held for the benefit of MJH, LLC and used substantially all of those funds to make the loan to Michael Boyd.
11. Murphy and Millerton did not inform MJH, LLC or the Hustedts at the time that the United States Treasury Bills had been sold and the proceeds delivered to Michael Boyd. MJH, LLC and

its officers, including the Hustedts, did not authorize the sale or give discretionary authority to Murphy or Millerton for the sale of the treasury bills.

12. In spite of repeated attempts during 1999 and 2000 by MJH, LLC and its officers to ascertain the status of its investment or to liquidate the investment and return the proceeds, Murphy and Millerton failed or refused to inform MJH, LLC and its officers about the sale of the \$300,000 face value of United States Treasury Bills or the status of their investment.

13. On January 7, 2001, Murphy, on behalf of Millerton, provided MJH, LLC and its officers a document entitled "Written Consent of the Directors of Millerton Trading, LLC" stating that Millerton had adopted the following resolution:

RESOLVED, that funds deposited by the company via a Demand Note, executed on December 30th, 1998 with Michael Boyd of New Canaan, Connecticut, in the amount of \$250,000 (two hundred fifty thousand) with a 5% interest coupon, be allocated upon their repayment directly to their legal owner, and no other persons or entity;

The legal owner of these funds is MJH, LLC of 211 South Main Street, Odebolt, Iowa 51458, represented by Duane Swarts, Howard Hustedt and Marcia Hustedt.

RESOLVED, that Michael Murphy, Chief Executive Officer of Millerton Trading, LLC, is authorized to execute any and all documents necessary to accomplish the transaction on behalf of the Company.

The resolution was signed by Murphy as a director for Millerton.

14. To date, MJH, LLC has still not recovered the \$250,000 that was loaned to Michael Boyd by Murphy and Millerton.

15. Millerton and Murphy made misrepresentations and omissions of material fact to investors about the MJH, LLC investment including, but not limited to, the following:

a. misrepresented the investment risks by falsely stating to MJH, LLC and its officers that its investment in \$300,000 face value of United States Treasury Bills would be maintained in a brokerage account at Bear Stearns & Co.;

- b. misrepresented that MJH, LLC and its officers would receive written confirmations of the sale of an investment and would receive monthly account statements;
- c. misrepresented that MJH, LLC and its officers would receive the return of the principal and any earnings upon the maturity of the treasury bills in their account;
- d. failed to disclose to MJH, LLC and its officers plans to liquidate the investment in the United States Treasury Bills and to use the proceeds to fund a loan to Michael Boyd;
- e. misappropriated and/or misused investor funds for the benefit of Murphy and Millerton.

VIOLATIONS OF IOWA UNIFORM SECURITIES ACT

III. MISREPRESENTATIONS

1. Paragraphs 1-4 of Division I are incorporated herein by reference.
2. Paragraphs 2-15 of Division II are incorporated herein by reference.
3. Millerton and its principals, officers, directors, agents, representatives, account executives, and affiliates including, but not limited to, Murphy, have made untrue statements of material fact in the sale of these securities.
4. Therefore, Millerton and its principals, officers, directors, agents, representatives, account executives, and affiliates including, but not limited to, Murphy, have violated Iowa Code Section 502.401 (2003) by making untrue statements of material facts and should be ordered to cease and desist.
5. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Chapter 502, Code of Iowa (2003) - The Iowa Uniform Securities Act.

IV. OMISSIONS

1. Paragraphs 1-4 of Division I are incorporated herein by reference.
2. Paragraphs 2-15 of Division II are incorporated herein by reference.
3. Paragraphs 3-4 of Division III are incorporated herein by reference.
4. Millerton and its principals, officers, directors, agents, representatives, account executives, and affiliates including, but not limited to, Murphy, have made omissions of material facts in the sale of these securities.
5. The omission of these material facts, in light of the circumstances surrounding the sale of securities, is misleading.
6. Therefore, Millerton and its principals, officers, directors, agents, representatives, account executives, and affiliates including, but not limited to, Murphy, have violated Iowa Code Section 502.401 (2003) by failing to state material facts, and should be ordered to cease and desist.
7. This action is necessary and appropriate in the public interest and for the protection of investors and consistent with the purposes fairly intended by the provisions of Chapter 502, Code of Iowa (2003) - The Iowa Uniform Securities Act.

V. ORDERS

WHEREFORE, IT IS HEREBY ORDERED pursuant to the powers granted to the Commissioner of Insurance by Iowa Code section 502.604 (2003) as follows:

- A. Millerton and its principals, officers, directors, agents, representatives, account executives, affiliates, including, but not limited to, Murphy, shall Cease and Desist making untrue statements of material facts in the offer or sale of securities, in violation of Iowa Code section 502.401 (2003).

B. Millerton and its principals, officers, directors, agents, representatives, account executives, affiliates, including, but not limited to, Murphy, shall Cease and Desist omitting material facts which, in light of the circumstances surrounding the sale of securities, are misleading in violation of Iowa Code section 502.401 (2003).

C. Millerton and Murphy shall be assessed a civil penalty of \$10,000, jointly and severally, for violations of the Iowa Uniform Securities Act pursuant to Iowa Code section 502.604(3).

NOTICE REGARDING FAILURE TO REQUEST A HEARING

If you fail to request a hearing within thirty (30) days of the date of this Cease and Desist Order, the Order shall be a final Order of the Commissioner of Insurance and shall be enforceable by the Commissioner of Insurance in an administrative or court proceeding.

NOTICE REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RIGHT TO SEEK JUDICIAL REVIEW

The failure to request a hearing can constitute a failure to exhaust your administrative remedies and limit the issues subject to judicial review. You may seek judicial review of this Order pursuant to Iowa Code chapter 17A after the Order becomes final. The Order becomes final thirty (30) days after it is issued if you do not timely request a contested case hearing, or following hearing if you do timely request a contested case hearing.

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that any person who willfully violates this order shall be deemed in contempt of the order pursuant to Iowa Code section 502.604. The administrator may petition the district court to hold a hearing to enforce the order as certified by the administrator. The

district court may assess a civil penalty against the person in an amount not less than three thousand dollars but not greater than ten thousand dollars per violation and may issue further orders as it deems appropriate.

YOU ARE ALSO NOTIFIED that a person who willfully violates any provision of this chapter, or any rule or order under this chapter, is guilty of a class "D" felony pursuant to Iowa Code section 502.605(1)(a). A person who willfully violates section 502.401, 502.402, 502.403, or section 502.408, subsection (1) or (2), resulting in a loss of more than ten thousand dollars is guilty of a class "C" felony pursuant to Iowa Code section 502.605(1)(b).

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final Cease and Desist Order may adversely affect existing business or professional licenses and result in license revocation or disciplinary action. For example, a final Cease and Desist Order issued to a licensed insurance agent may subject the insurance agent to insurance license revocation or other disciplinary action. Further notice is given that the Iowa Insurance Division may review this Cease and Desist Order for a potential license revocation or disciplinary action.

NOTICE OF RIGHT TO REQUEST HEARING

NOTICE IS HEREBY GIVEN that Millerton Trading, LLC a/k/a Millerton Properties, Inc. a/k/a Millerton Group, Ltd., Michael S. Murphy or any individual representing any Respondent, may request a hearing in this matter. This request must be in writing and must be filed within thirty (30) calendar days of the date of this Order with Robert Koppin, Enforcement Attorney, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. A notice of the hearing shall be prepared and shall be given at least fifteen (15) days before the date of the hearing unless the

parties agree to an earlier date. The hearing shall be held within forty-five (45) days after the date of the notice of the hearing unless extended by the presiding officer for good cause with at least fifteen days notice to the parties. The resulting hearing will be held in accordance with Iowa Code Chapter 17A (2003).

Dated this 12th day of February, 2004.

THERESE M. VAUGHAN
Commissioner of Insurance

/s/ Therese M. Vaughan

by THERESE M. VAUGHAN
Commissioner of Insurance

COPY SENT BY CERTIFIED AND FIRST CLASS MAIL TO:

Millerton Trading, LLC
c/o Michael Murphy
137 Dances Bay Road
Elizabeth City, NC 27909

Michael Murphy
137 Dances Bay Road
Elizabeth City, NC 27909