

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

IN THE MATTER OF: David Lerner

FILE NO. 1200420

**CONSENT ORDER OF REVOCATION**

TO THE RESPONDENT:

David Lerner  
CRD# 307120  
11 Rosehill Drive  
Manhasset, NY 11030

David Lerner Associates, Inc.  
477 Jericho TPKE  
P.O. Box 9006  
Syosset, NY United States 11791-9006

WHEREAS, Respondent on the 26th day of February 2013 executed a certain Stipulation to Enter Consent Order of Revocation (the "Stipulation"), which hereby is in corporate by reference herein.

WHEREAS, by means of the Stipulation, Respondent has admitted to the jurisdiction of the Secretary of State and service of the Notice of Hearing of the Secretary of State, Securities Department, dated December 10, 2012 in this proceeding (the "Notice") and Respondent has consented to the entry of this Consent Order of Revocation ("Consent Order").

WHEREAS, by means of the Stipulation, the Respondent acknowledged, without admitting or denying the truth thereof, that the following allegations contained in the Notice of Hearing shall be adopted as the Secretary of State's Findings of Fact:

- 1 That at all relevant times, the Respondent was registered with the Secretary of State as salesperson in the State of Illinois pursuant to Section 8 of the Act.

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2. That on October 22, 2012 FINRA entered Order of Offer of Settlement (“AWC” or “Order”) submitted by the Respondent regarding Disciplinary Proceeding No. 2009020741901 which sanctioned the Respondent as follows:
  - a) Suspended from association with any FINRA member in any capacity for 1 year, 11/19/2012 to 11/18/2013;
  - b) Suspended as a supervisor for 2 Years, 11/19/2013 to 11/18/2015; and
  - c) Fined \$250,000.
  
3. IN VIOLATION OF. Sections 17(a)(1), 17(a)(2) and (a)(3) of the Securities Act of 1933, FINRA Rule 2010, NASD Rule 2210 (d)(1); Lerner's member firm recommended and sold over \$442 million of a \$2 billion non-traded real estate investment trust (REIT) without performing adequate due diligence in violation of its suitability obligations. Earlier REITS under the same management inappropriately valued the REITS' shares at a constant artificial price notwithstanding years of market fluctuations, performance declines, increased leverage and excessive return of capital to investors. Lerner's firm, in its capacity as best efforts underwriter for all of the REITS, continues to solicit thousands of customers to purchase the REIT without performing adequate due diligence to determine that there is a reasonable basis to recommend the security to any customer. Lerner have made false, exaggerated and misleading claims regarding the investment returns, market values, performance and prospects of the closed REITS to over a thousand customers during at least four of his firm's investment seminars. The firm, through Lerner and other representatives, repeatedly gave seminar presentations to investors using seminar slides that were not fair and balanced and did not provide a sound basis for evaluating the facts in regard to the REITS programs. Lerner made oral presentations regarding the REITS at seminars. These seminar presentations constituted a public appearance and were communications with the public under the FINRA advertising rules. The seminar slides and Lerner's seminar presentations also omitted numerous material facts and qualifications that caused the communications to be misleading. The seminar slides and Lerner's seminar presentations contained numerous false, exaggerated, unwarranted or misleading statements and claims regarding the valuations, performance, prospects, risks, and practices of the REIT programs, as well as customer insurance protection through the firm and the prospects for a merger of the closed REITS. To counter negative media attention regarding the firm and the REITS following the filing of the original complaint in this proceeding, Lerner sent letters to all of the firm's customers. Lerner signed these letters, each of which was mailed to over 50,000 customer households Lerner's letters to customers omitted material information causing the communication to be misleading The letters also contained exaggerated, false, and misleading statements regarding the valuations, performance, prospects, risks, and practices of the REIT programs. One of the letters made exaggerated claims regarding FINRA'S No Objections opinion regarding the fairness and reasonableness of the

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underwriting terms and arrangements. The other letter made unwarranted, exaggerated, and misleading claims regarding a potential opportunity for closed REIT shareholders to participate in consolidation, sale, listing on a national exchange, or other event that would allow them to dispose of their illiquid shares. To induce new and existing customers to purchase the REIT, Lerner and the firm made untrue representations of material fact or omissions of material fact regarding the prior performance, steady distribution rates, unchanging valuations, and prospects of the closed REITS and/or the current REIT. Lerner and the firm made the untrue statements as alleged and omitted the material facts as alleged with intent to defraud investors or with recklessness. Lerner and the firm made intentional or reckless misrepresentations and omissions at seminars, in seminar materials, and in letters to customers. The firm's and Lerner's use of the seminars, seminar materials, and letters to customers constituted a fraudulent or deceitful practice or course of business to offer or sell REIT to investors.

4. That Section 8.E(1)(j) of the Act provides, inter alia, that the registration of a salesperson may be revoked 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 a practice in violation of any rule, regulation or standard duly promulgated by the self-regulatory Organization.
5. That NASD is a self-regulatory organization as specified in Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged, without admitting or denying the averments, that the following shall be adopted as the Secretary of State's Conclusion of Law:

The Respondent's registration as a Salesperson in the State of Illinois is subject to revocation pursuant to Section 8.E(1)(j) of the Act.

WHEREAS, by means of the Stipulation Respondent has acknowledged and agreed that his registration as a salesperson and in the State of Illinois shall be Revoked.

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WHEREAS, the Secretary of State, by and through his duly authorized representative, has determined that the matter related to the aforesaid formal hearing may be dismissed without further proceedings.

NOW THEREFORE IT SHALL BE AND IS HEREBY ORDERED THAT:

1. The Respondent's registration as a Salesperson and in the State of Illinois shall be and is **REVOKED**.
2. The formal hearing scheduled on this matter is hereby dismissed without further proceedings

ENTERED: This 7<sup>th</sup> day of March 2013.



JESSE WHITE  
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State of Illinois

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