

BEFORE THE  
STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SECURITIES

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In the Matter of  
Michael Niemczyk Associates, Inc.,  
Respondent.

PETITION FOR ORDER

File No. S-08027-LX

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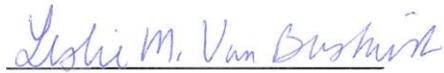
The staffs of the Bureau of Licensing & Compliance and the Bureau of Enforcement of the Division of Securities, Department of Financial Institutions, State of Wisconsin have conducted an investigation in this matter pursuant to § 551.56, Wis. Stats., and as a result thereof allege as follows:

1. Michael Niemczyk Associates, Inc. ("MNA") (CRD #124000) is an Illinois corporation licensed as an Investment Adviser in Illinois with a last known address of 1800 Nations Drive, Suite 207, Gurnee IL 60031;
2. Michael Louis Niemczyk (CRD#3097183) ("Niemczyk") is an individual who is the owner of MNA with the same last known business address as MNA.
3. On April 7, 2008, MNA applied through the CRD to become licensed as an Investment Adviser in Wisconsin;
4. On April 10, 2008, the staff notified MNA of the need to complete its application by October 4, 2008, or the staff would ask the Administrator to deny its application;
5. On June 20, 2008, the staff mailed a letter to Niemczyk at MNA asking Niemczyk to update his U-4 in relation to questions Part 1A Item 11 D(4) and Part 1B Item 2F of his advisory form ADV, reminding him of his obligation to update his U4 within 30 days of any change.
6. The staff became aware that on November 6, 2002, Niemczyk entered into a Consent Order of Censure and Revocation with the State of Illinois agreeing to the following: the censure; revocation of his Illinois securities license registration; pay a \$1000 fine; furnish current and future Illinois advisory clients updated written disclosure documents that comply with all the applicable provisions of the laws, rules and regulations of the Illinois Securities Act; and not maintain custody of his investment advisory clients' funds or securities or accept pre-payment of fees in excess of \$500.
7. The Illinois order referenced in ¶ 6 was not disclosed on Niemczyk's U4 or ADV filed with the State of Wisconsin on April 7, 2008.
8. On July 23, 2008, the staff sent an e-mail to Niemczyk and Bruce Deemer ("Deemer") at National Compliance Consultants – the firm handling the Wisconsin filing for NMA - reminding Niemczyk to make sure his U4 and Form ADV are both current.

9. On July 24, 2008, the staff again e-mailed Deemer on behalf of NMA to have Niemczyk update his U4.
10. On July 25, 2008, an e-mail was sent by the staff to Deemer asking if Niemczyk had updated his Form ADV, and to have Niemczyk respond to the division by e-mail or letter validating this.
11. The staff received no response to any of the e-mails sent July 23, 24, and 25<sup>th</sup> 2008, described above.
12. On August 15, 2008, the staff requested Deemer and Niemczyk provide the current Illinois ADV Part II and/or Brochure plus any other documents which are used by MNA to engage clients. Deemer responded the documents requested are the same ones previously submitted to the staff.
13. On August 18, 2008, the staff sent an e-mail to Niemczyk asking if he is using the same ADV Part II and Schedule F in Illinois that were submitted here in Wisconsin. No response was received from Niemczyk.
14. On September 4, 2008, the staff again requested Niemczyk provide a current Form ADV as referenced in ¶ 13 above. Niemczyk's asserted the staff had a current application and no other disclosures were necessary.
15. On September 26, 2008, Deemer inquired if anything more was needed for the staff's consideration. On September 29, 2008, the staff asked Deemer and Niemczyk to review the U4 and Adv for accuracy.
16. The staff received no response to the e-mail in ¶ 15.
17. On September 30, 2008, the Division became aware of activity by MNA with TD Ameritrade, whose records indicate that MNA had exceeded the de-minimis exclusion of 5 or fewer clients within a 12 month period.
18. The failure of MNA to complete its application despite repeated staff requests for information as described above provides a basis, pursuant to §. 551.34(1)(a), Wis. Stats., for the denial of its license application.

THEREFORE, the staffs of the Bureau of Licensing & Compliance and the Bureau of Enforcement petition the Administrator for the issuance of the attached Order.

DATED this 17<sup>th</sup> day of October, 2008.

  
Leslie M. Van Buskirk  
Attorney Supervisor  
Bureau of Enforcement

  
Mark Eisenmann  
Licensing Examiner  
Bureau of Licensing & Compliance