

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

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In the Matter of

ROBERT D. HERGET and  
HERGET GROUP, LLC,

Respondents.

ORDER TO CEASE AND DESIST AND  
TO DENY AGENT AND INVESTMENT  
ADVISER REGISTRATION  
APPLICATION (SUMMARY)

File S-227158 (EX)

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The Administrator of the State of Wisconsin, Department of Financial Institutions, Division of Securities ("the Division"), having authority to administer and provide for enforcement of the Wisconsin Uniform Securities Law, Chapter 551, Wis. Stats. ("WUSL"), and having determined that this action is necessary and appropriate in the public interest and for the protection of investors, hereby enters this Order directing Respondents to immediately Cease and Desist from violating the WUSL and show cause why a final order should not be entered against them.

Division Staff has presented evidence sufficient for the Administrator to make the following findings of fact and conclusions of law:

**RESPONDENTS**

1. Robert D. Herget ("Herget") (CRD #6088351) is a Wisconsin resident born in April 1965 with a last known address of 3620 Oak Valley Lane, Waukesha, Wisconsin 53188. At all material times, Herget was the sole member, registered agent and control person for Herget Group, LLC.
2. Herget Group LLC ("HG") was a Wisconsin limited liability company organized on June 11, 2010 and administratively dissolved on November 6, 2013, with a principal place of business located at 17800 W. Capitol Drive, Brookfield, Wisconsin 53045. Herget was the registered agent and sole member of HG.

**FINDINGS OF FACT**

3. In or about December 2004, Herget co-founded a Wisconsin real estate development company called Herget & Plavsic Development, LLC ("HPD"), with a principal place of business in Brookfield, Wisconsin. Herget was one of two members of HPD, each with authority to act for and bind the company.
4. HPD's primary business activity was acting as the General Partner for a purported Wisconsin Limited Partnership called "The Bluffs of Oak Creek" ("Bluffs"). The Bluffs' primary business activity was represented by HPD to be the development of a parcel of land in Oak Creek, Wisconsin on which residential homes would be constructed for sale to the public.
5. According to records from the Wisconsin Department of Financial Institutions, Division of Corporate and Consumer Services, a Limited Partnership called The Bluffs of Oak Creek has never been organized in the State of Wisconsin.

6. From 2005 through 2010, HPD and its principals, including Herget, offered and sold limited partnership interests in the Bluffs to at least 27 investors, raising approximately \$2.6 million.
7. HPD and its principals distributed written materials to potential investors describing the investment opportunity consisting of a three-page description of the project called an "Investment Proposal", purported financial projections for the project, a list of comparable properties, a map and aerial photo of the development, and a Limited Partnership Agreement for the Bluffs, purporting to describe the limited partnership interests being offered in the non-existent Bluffs.
8. The written materials distributed to investors by HPD and its principals represented that invested funds would be used to fund the development and that investors would receive an annual return of between 8 and 10 percent, pro-rated based on the length of the investment, with additional returns also possibly generated from the development's profits depending on the length of time the investors chose to remain invested in the development.
9. The written solicitation materials represented to investors that HPD planned three to four phases on the development, with development costs to be funded by the sale of limited partnership interests.
10. The written solicitation materials also represented that initial investors in the Bluffs would receive return of their principal along with payment of accrued interest once ninety-nine percent of lots in phase one were sold.
11. Initial investors in the Bluffs were given first right of refusal to participate in subsequent phases of the development project, with the written solicitation materials representing that investors who remained involved in the entire development project would receive up to a 75 percent return.
12. Herget made verbal representations to at least one investor, including representations that the project was "unique" and had "no downside", that the limited partners would receive a list of other investors in the project as well as monthly "newsletters" describing the progress of the development, and that there would be quarterly or annual "board meetings" that the limited partners could attend. However, Herget never provided any investors with such a list or monthly newsletter and never held any board meetings for limited partners to attend.
13. Between August 2005 and October 2005, Herget personally transferred \$300,000 of investor funds into brokerage accounts with the broker-dealer Scottrade, including directing \$50,000 into a personal account held in Herget's name only.
14. Herget did not inform investors that he would deposit any of their funds into a brokerage account or use their invested moneys to purchase securities. Herget's use of the funds to invest in securities was directly contrary to his representations to investors that the funds would be used to pay for development costs.
15. In or about January 2007, HPD obtained a new \$5.95 million construction loan from a commercial lender to pay off an older commercial loan and to pay for development costs. Herget and his partner personally guaranteed the loan.

16. In or about March 2008, the engineering firm employed by HPD to develop the Bluffs ceased performing any work because it alleged that HPD failed to make timely payments to the firm as required by its contract.
17. In 2008, after defaulting on payments owed to various contractors working on the development, HPD and its principals executed promissory notes in favor of those contractors.
18. By September 2008, HPD was in default on its promissory notes with at least two contractors for the Bluffs development.
19. In or about January 2009, HPD defaulted on a promissory note issued to the engineering firm related to work performed on the Bluffs development.
20. In or about October 2008, one of HPD's contractors filed a lawsuit against HPD and its principals for defaulting on amounts owed to the contractor. In or about October 2009, judgment was entered in favor of the contractor and jointly and severally against HPD and its principals in an amount exceeding \$90,000.
21. From at least 2005 through 2007, Herget failed to pay personal income taxes owed to the federal government. At the latest, Herget received notice in or about July 2009 that a federal tax lien had been filed against his personal assets.
22. In or about August 2009, a second contractor retained by HPD for the development filed a lawsuit against Herget and his partner for failing to pay amounts owed for work on the development. In or about November 2009, judgment was entered against Herget and his partner in an amount exceeding \$20,000.
23. By September 2009, HPD was in default on its construction loan agreement for failing to make required loan payments.
24. On or about September 15, 2009, HPD and its principals, including Herget personally, entered into a Forbearance Agreement with HPD's commercial lender, whereby the lender agreed to forbear from foreclosing on the loan in exchange for concessions, including a mortgage on real property located at 17800 West Capitol Drive, Brookfield, Wisconsin and owned by another entity in which Herget was a principal.
25. In or about August 2009, Herget successfully solicited three investors in the Bluffs to purchase additional limited partnership interests for a total of \$72,500. Herget did not disclose to those investors any of the above-described financial problems with the development or Herget personally, all of which were material to investors.
26. In or about September 2009, Herget sold a promissory note issued by HPD to an existing Bluffs investor, E.B. <sup>1</sup>, for \$10,000 after representing to the investor that the funds would be used to pay for development costs. Herget did not disclose to the investor any of the above-described financial problems with the development or with him personally.
27. HPD defaulted on the September 2009 promissory note by failing to pay the interest and principal when the note matured on December 31, 2009.

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<sup>1</sup> All investors noted in this Order are identified by the initials of their first and last names.

28. Beginning in at least July 2010, Herget began soliciting individuals to invest in the development by purchasing promissory note securities from Herget's real estate brokerage firm, HG, of which Herget was the sole owner and member.
29. Herget represented to investors purchasing promissory notes from HG that their invested funds would be used to pay for infrastructure for the development.
30. From at least July 2010 through January 2011, Herget offered and sold promissory notes in HG to at least eight investors, raising a total of \$117,500, including the following:
  - a. August 2, 2010 sale to K.J. for \$5,000;
  - b. August 3, 2010 sale to married couple S.B. and S.B. for \$20,000;
  - c. July 16, 2010 sale to married couple P.M. and L.M. for \$10,000;
  - d. July 23, 2010 sale to married couple P.M. and L.M. for \$10,000;<sup>2</sup>
  - e. July 20, 2010 sale to married couple D.H. and L.H. for \$10,000;
  - f. July 27, 2010 sale to married couple G.H. and J.H. for \$10,000;
  - g. August 31, 2010 sale to J.W. for \$10,000;
  - h. December 27, 2010 sale to married couple J.W. and A.W. for \$6,500;
  - i. January 5, 2011 sale to J.W. for \$12,000;
  - j. November 14, 2010 sale to D.B. for \$15,000;
  - k. August 16, 2010 sale to J.M. for \$5,000;<sup>3</sup>
  - l. December 31, 2010 sale to J.W. for \$4,000.
31. Investors purchasing HG promissory notes were generally promised returns of between ten and twelve percent.
32. Herget induced investors to purchase promissory notes by personally guaranteeing most of the notes.
33. Herget did not disclose to any investors when offering and selling HG promissory notes that the development and Herget personally were experiencing material financial difficulties, including defaults on payments to contractors and lenders, the forbearance agreement, the defaults on promissory notes and loans from other investors, and the tax liens against Herget's personal assets.
34. As of October 23, 2010, Herget had already defaulted on payments for at least three promissory notes issued to investors by HG. Herget continued thereafter issuing promissory notes to investors without disclosing that he had already defaulted on previous promissory notes.
35. Herget used investor funds raised from the sale of HG promissory notes to make payments on bank loans unaffiliated with the Bluffs development, to cover bank account overdrafts, to pay HG employees, and to make payments directly to Herget personally, including through cash withdrawals, all contrary to Herget's representations to the investors that their invested funds would only be used to pay for the costs of the development.

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<sup>2</sup> Investors P.M. and L.M. received \$500 in total payments for their two promissory notes, leaving a balance owed of \$19,500 plus interest.

<sup>3</sup> Investor J.M. received \$600 in total payments for his promissory note, leaving a balance owed of \$4,400 plus interest.

36. In or about January 2011, Herget issued a HG promissory note to Investor J.W. for \$12,000. To induce the investor, Herget agreed to secure the note by pledging as collateral the ownership interest in real estate located at 17800 W. Capitol Drive, Brookfield, WI 53045. Herget did not disclose to the investor that the property was already mortgaged in favor of at least one commercial lender.
37. Herget was a registered Agent (AG) with Morgan Stanley (CRD# 149777) from June 8, 2012 to February 27, 2015.
38. On or about September 24, 2013, Herget was notified in writing by the Division that he was under investigation regarding his offers and sales of securities for the Bluffs development.
39. As part of the Division's investigation, Division staff conducted interviews of Herget on November 14, 2013 and May 22, 2014. During the interviews, Division staff instructed Herget that the investigation of his offer and sale of securities for the Bluffs development could result in negative consequences for his securities registration in Wisconsin.
40. On or about April 29, 2015, Herget applied through the Central Registration Depository ("CRD") to become a registered Agent (AG) and Investment Advisor representative (RA) in Wisconsin associated with the firm Waddell & Reed, Inc.
41. The U4 filing submitted by Herget to CRD omitted answering "yes" to Question 14G despite the fact that Herget was notified in writing of the Division's investigation and the potential consequences of it.

### CONCLUSIONS OF LAW

42. The limited partnership interests in HPD sold by Herget were securities pursuant to Wis. Stat. § 551.02(13) (2005-06) and Wis. Stat. § 551.102(28) (2007-08).<sup>4</sup>
43. The promissory notes issued by HG and offered and sold by Herget were securities pursuant to Wis. Stat. § 551.102(28) (2007-08).
44. HG was an "issuer" of securities as defined by Wis. Stat. § 551.102(17).
45. Herget acted as an "agent" for HG and HPD as defined by Wis. Stat. § 551.2(2) (2005-06) and Wis. Stat. § 551.102(2) (2007-08).
46. As detailed above, Herget and HG violated Wis. Stat. § 551.501(2) by, in connection with the offer and sale of securities, making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, including by making untrue statements of fact about how investor funds would be used and failing to disclose the numerous financial problems with the development and with Herget personally.

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<sup>4</sup> Pursuant to Wis. Stat. § 551.703, the applicable statutes are those in effect at the time of the violations alleged herein.

47. As detailed above, Herget and HG violated Wis. Stat. § 551.501(3) by engaging in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
48. Pursuant to Wis. Admin. Code § DFI-6.01, an issuer of securities or any person who is an officer, director or controlling person of the issuer is deemed to employ a "device, scheme or artifice to defraud" the purchasers of the securities within the meaning of Wis. Stat. § 551.501 (1) (2007-08) and Wis. Stat. § 551.41(1) (2005-06) if the person applies or authorizes or causes to be applied any material part of the proceeds from the sale of the securities in any material way contrary to the purposes specified in the prospectus used in the offering of the securities and not reasonably related to the business of the issuer as described in the prospectus.
49. As detailed above, Herget applied investor funds contrary to the purposes specified in the offering documents distributed to investors by using investor funds for personal expenses, investing in securities brokerage accounts, and for other purposes besides the Bluffs development.
50. Herget violated Wis. Stat. § 551.41(1) (2005-06) and Wis. Stat. § 551.501(1) by employing a device, scheme, or artifice to defraud investors in connection with the offer and sale of promissory notes and limited partnership interests to those investors.
51. Under Wis. Stat. § 551.412, a person's application for securities registration may be denied when the person has filed an application for registration in this state which, as of the effective date of the registration, was incomplete in any material respect or contained a statement that, in light of the circumstances in which it was made, was false or misleading with respect to a material fact.
52. The omission of a "yes" answer to Question 14G and the required disclosure reporting page supplementing that question, constitutes a significant misleading fact when filing for AG and RA registrations.
53. Under Wis. Stat. § 551.412, a person's application may be denied if the person willfully violated or willfully failed to comply with Chapter 551, Wis. Stats. or the predecessor act within the previous 10 years.
54. The conduct detailed above concerning Herget's misrepresentations and omissions of material facts to investors in the Bluffs development, and misapplication of investor funds, constitute willful violations of Chapter 551, Wis. Stats. and/or the predecessor act.
55. Under Wis. Stat. § 551.412, a person's application may be denied if the person has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous 10 years.
56. The conduct detailed above concerning Herget's misrepresentations and omissions of material facts to investors in the Bluffs development, and misapplication of investor funds, constitute dishonest or unethical practices in the securities industry.

Therefore, pursuant to Wis. Stats. §§ 551.412 and 551.604,

**IT IS ORDERED THAT:**

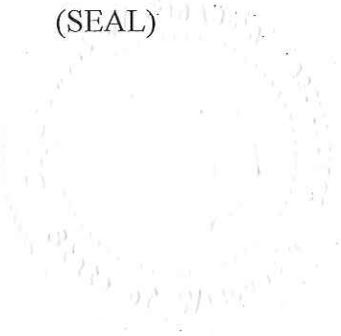
- a. The agent and investment adviser representative registration applications of ROBERT D. HERGET, filed with the Division on or about April 29, 2015, are denied.
- b. RESPONDENTS, their agents, servants, employees, and every entity and person directly or indirectly controlled or organized by or on any of their behalves, shall cease and desist from making or causing to be made to any person or entity in Wisconsin any further offers or sales of securities unless and until such securities qualify as covered securities or are registered under Wis. Stats. Ch. 551 or successor statute.
- c. All exemptions from registration set forth at Wis. Stats. Ch. 551 or successor statute that might otherwise apply to any offer or sale of any security of or by any RESPONDENTS, their successors, affiliates, controlling persons, and every entity and person directly or indirectly controlled or organized by or on any of their behalves, are hereby revoked.
- d. RESPONDENTS, their successors, affiliates, controlling persons, officers, agents, servants, employees, and every entity and person directly or indirectly controlled or hereafter organized by or on any of their behalves, are prohibited from violating Wis. Stats. Ch. 551 or successor statute that might otherwise apply to any offer or sale of security of or by RESPONDENTS.
- e. RESPONDENTS shall make payment for the return of principal to the eight (8) investors to whom Herget sold HG promissory notes between July 2010 and January 2011, totaling \$116,400,<sup>5</sup> and shall further pay to each investor interest at the legal rate of 5% per annum from the date that the corresponding promissory note was sold to each investor to the date of this Order, or if a petition for a hearing is filed as provided under Wis. Stats. §§ 551.412(6) and 551.604(2), to a date to be fixed by a final order.
- f. No later than 30 calendar days from the date of issuance of this Order, or if a petition for a hearing is filed as provided under Wis. Stats. §§ 551.412(6) and 551.604(2), by a date to be fixed by a final order, RESPONDENTS shall provide proof satisfactory to the Division that the restitution required by this Order has been paid.
- G. RESPONDENTS shall pay to the Division a civil penalty in the amount of \$50,000, as provided under Wis. Stats. §§ 551.412(3) and 551.604(4). Such payment shall be made payable to the Wisconsin Department of Financial Institutions and shall be remitted to the Division no later than 30 calendar days from the date of issuance of this Order, or if a petition for a hearing is filed as provided under Wis. Stats. §§ 551.412(6) and 551.604(2), by a date to be fixed by a final order.

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<sup>5</sup> This reflects the outstanding principal owed on promissory notes issued by HG, less payments of \$500 made to Investors P.M. and L.M. and \$600 to Investor J.M., as detailed in paragraph 30 of this Order.

EXECUTED at Madison, Wisconsin, this 14<sup>th</sup> day of July 2015.

(SEAL)



A handwritten signature in blue ink is positioned above a horizontal line. The signature is stylized and appears to be the name Patricia D. Struck.

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Patricia D. Struck  
Administrator  
Division of Securities