

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH**

IN THE MATTER OF:

**COUCH & COMPANY, INC. ,
CRD #18433;and
RAYMOND K. MCKAYLE,
CRD #1381579**

Respondents.

**MOTION FOR ENTRY OF
DEFAULT JUDGMENT**

Docket No. SD-01-0126

Docket No. SD-01-0127

The Utah Division of Securities (“Division”) hereby moves for a default judgment against Couch & Company, Inc. (“Couch & Company”), CRD #18433, and Raymond K. McKayle (“McKayle”), CRD #1381579,(collectively “Respondents”) based on the following:

1. On October 24, 2001, the Division commenced a formal adjudicative proceeding by issuing a Petition for an Order Revoking the Licenses of Respondents (“Petition”) and a Notice of Agency Action (“Notice”).
2. A copy of the Petition and Notice was sent by certified mail to Couch & Company at 40 Exchange Place, Ste 1601, New York, NY 10005, the last address shown on the Central

Registration Depository (CRD). The letter was returned to the Division with a Postal Notation that Couch & Company had moved and left no forwarding address.

3. A copy of the Petition and Notice was sent by certified mail to McKayle at 945 E. 102 St., Brooklyn, NY 11236, his last address shown on the CRD. The letter was then forwarded to 27 Linden Blvd. # 1, Brooklyn, NY 11226. On November 27, 2001 the Petition and Notice were returned to the Division as “unclaimed.”
4. The Notice of Agency Action required a written response within thirty (30) days of the date of the Notice.
5. For all formal adjudicative proceedings, Utah Code Ann. § 63-46b-6 (Supp. 1988) requires Respondents to file and serve a written response to a petition.
6. As of the date of this motion, no response has been filed, and Respondent has not made any contact with the Division.

WHEREFORE, the Division requests that the Court find Respondent in default pursuant to Utah Code Ann. § 63-46b-11(1)(c) and requests the Court to enter a judgment for the Division as follows:

1. That Respondent be adjudged and decreed to have engaged in the acts alleged in the Petition;
2. That by engaging in those acts, Respondent be adjudged and decreed to have violated the provisions of the Utah Uniform Securities Act; and
3. That Respondent’s broker-dealer agent license be revoked.

DATED this 26 day of November, 2001.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL


Jeffrey Buckner
Assistant Attorney General

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IN THE MATTER OF:

**COUCH & COMPANY, INC. ,
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CRD #1381579**

Respondents.

AFFIDAVIT OF NON-RESPONSE

Docket No. SD-01-0126

Docket No. SD-01-0127

Toni Massey, first being duly sworn, deposes and states as follows:

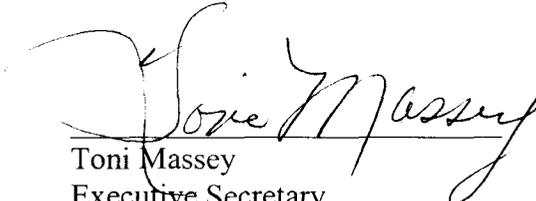
1. I am the Executive Secretary for the Department of Commerce, Division of Securities ("Division"). I have personal knowledge of all matters stated in my affidavit.
2. As executive secretary for the Division of Securities, I am responsible for supervising the mailing of the Division's Petitions and for receiving any responses filed by licensees.
3. On October 25, 2001, the Division mailed a copies of the Petition to Couch & Co., Inc. and Raymond K. McKayle by certified mail along with copies of the Notice of Agency

Action advising them that a default order would be entered if they failed to file written responses to the Petition within thirty (30) days of the date of the Notice of Agency Action.

4. The Post Office returned both Petitions. The Petition and Notice sent to Couch and Company was returned with a notation that Couch & Company had moved and left no forwarding address. The Petition and Notice sent to McKayle was forwarded to another address and then returned to the Division as "unclaimed."

5. As of the date of this Affidavit, the Division has not received a response from Couch & Company nor McKayle.

DATED this 5 day of ^{Dec}~~November~~, 2001.


Toni Massey
Executive Secretary

SALT LAKE COUNTY)
) ss
STATE OF UTAH)

Signed and subscribed to before me this 5 day of ^{Dec}~~November~~, 2001.



Notary Public

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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH**

IN THE MATTER OF:

**COUCH & COMPANY, INC. ,
CRD #18433;and
RAYMOND K. MCKAYLE,
CRD #1381579**

Respondents.

**NOTICE OF ENTRY OF
DEFAULT AND ORDER**

Docket No. SD-01-0126

Docket No. SD-01-0127

I. DEFAULT

A formal adjudicative proceeding was initiated by the Division's Petition to Revoke ("Petition") and Notice of Agency Action ("Notice") dated October 24, 2001 to Couch & Company, Inc. ("Couch & Company"), CRD #18433, and Raymond K. McKayle, ("McKayle"), CRD #1381579, (collectively "Respondents"). The Division sent a copy of the Petition and Notice to each Respondent by certified mail to the last known address shown on the Central Registration Depository (CRD). The Petition and Notice sent to Couch & Company was returned with a notation that Couch & Company had moved and left no forwarding address. The

Petition and Notice sent to McKayle were forwarded from the original address to a new address but were returned to the Division as “unclaimed.”

The Notice of Agency Action required Respondents to file a written response within thirty (30) days from the date of the Notice. Respondents have not filed a response or contacted the Division. On November 28, 2001, the Utah Attorney General’s office filed a Motion for Default against Respondents.

Utah Code Ann. § 63-46b-11(1)(c) provides that an order of default may enter if Respondents fail to file a written response to a petition for a formal adjudicative proceeding. Respondents have filed no written response and have not contacted the Division to discuss resolution of this matter. Accordingly, Respondents are held in default.

After the issuance of a default order, Utah Code Ann § 63-46b-11 (4)(a) provides that further proceedings may be conducted to complete the adjudicative proceeding without participation of the defaulting party. Accordingly, the Court makes the following findings of fact:

II. FINDINGS OF FACT

1. Couch & Co. (CRD #18433) was a broker-dealer with its corporate headquarters located at 40 Exchange Place, Suite 1601, New York, NY 10005. Couch & Co. was licensed in Utah from July 27, 1999 to December 31, 2000 but maintained no place of business in Utah.

2. McKayle, CRD #1381579, is an individual who was employed by Couch & Co. McKayle was licensed in Utah with Couch & Co. from September 8, 1999 to October 16, 2000, and with L.H. Ross and Company, Inc. (“L.H. Ross”) from October 19, 2000 to November 16, 2000. McKayle requested withdrawal of his license in Utah on the day that the Division’s examiners began an audit at L.H. Ross. The Division is informed, and believes, that McKayle lives in or near Brooklyn, New York.
3. In August 2000, the Division received a complaint against Couch & Company and McKayle, filed on behalf of Charles Broadbent (“Broadbent”), alleging excessive trading, unsuitable transactions and forgery.
4. Based upon this complaint, securities examiners from the Division conducted a field audit of Couch & Co. on November 15-17, 2000.
5. The Division’s audit and subsequent investigation revealed:
 - A. Broadbent’s new account form was likely forged. In speaking with the Division on November 3, 2000, Broadbent confirmed this by stating that the signature on the new account form was not his signature. In addition, a handwriting analysis evidences that it is “highly probable” that the signature on the form is not Broadbent’s signature.
 - B. At the time McKayle opened Broadbent’s account, Broadbent was 88-years-old. His birth date is February 8, 1911. The new account form listed his birth date as February 8, 1931. During the audit, an employee of Couch and Company

admitted to the Division examiners that he had found other new account forms with inaccurate birth dates.

- C. In June 2000, Broadbent sent a \$40,000 check to Couch & Co. The check was cashed, but the deposit never appeared on Broadbent's statement.
- D. In February 2000, Broadbent was solicited to invest in the Couch & Company.com private placement--an illiquid speculative investment involving a high degree of risk.
- E. Copies of Broadbent's Purchaser Suitability Questionnaire for the Couch & Company.com Holding Corporation private placement were obtained from Couch & Co. ("Couch's questionnaire") and from Broadbent ("Broadbent's questionnaire"). Upon review of the two documents, the Division noted the following discrepancies in the responses:
 - 1. Broadbent's questionnaire stated Broadbent's exact age; Couch's questionnaire did not.
 - 2. In response to the question "[w]as your annual Adjusted Gross Income for both the calendar years 1998 and 1999 in excess of \$50,000?" The response on Broadbent's questionnaire is "no"; the response on Couch's questionnaire is "yes."
 - 3. Question 11(b) on the Questionnaire asks "[i]f the answer to Question 11(a) is yes was your annual Adjusted Gross Income for the following

calendar years 1998 and 1999 in excess of? (Check one for each year).”

Because Broadbent’s response to 11(a) was “no,” Broadbent did not answer this question. However, the response on Couch’s questionnaire states that for 1998, Broadbent’s Adjusted Gross Income was in excess of \$150,000, and for 1999, Broadbent’s Adjusted Gross Income was in excess of \$200,000. A review of Broadbent’s tax returns evidences that Broadbent’s adjusted gross income was \$24,809 for 1998 and \$100,606 for 1999.

4. Question 12(a) on the Questionnaire asks “[i]s your average annual Adjusted Gross Income from all sources anticipated for the two year period ending 12/31/2001 in excess of \$50,000?” The response on Broadbent’s questionnaire is “no.” The response on Couch’s questionnaire is “yes”.
5. Question 12(b) on the Questionnaire asks “[i]f the answer to Question 12(a) is yes is your annual Adjusted Gross Income from all sources anticipated for each year of the two year period ending December 31, 2001 in excess of? (Check one).” Because Broadbent’s response to 12 (a) was “no,” Broadbent did not answer this question. The response on Couch’s questionnaire indicates that Broadbent’s Adjusted Gross Income for 2001 is anticipated to be in excess of \$200,000.

6. Question 16 on Couch's questionnaire indicates that Broadbent has 50 years of investment experience. In a recorded interview on November 3, 2000, Broadbent stated that he began investing in 1976, when he retired.
 7. Question 16(a) on the Questionnaire states "[p]lease indicate the frequency of your investment in marketable securities." The response on Broadbent's questionnaire is "seldom". The response on Couch's questionnaire is "often".
 8. Question 16(b) on the Questionnaire states "[p]lease indicate the frequency of your investment in unmarketable securities." The response on Broadbent's questionnaire is "never;" the response on Couch's questionnaire is "occasionally".
 9. Question 16(c) on the Questionnaire asks "[d]o you understand the risks in this investment?" The response on Broadbent's questionnaire is a handwritten "I think so". The response on Couch's questionnaire is "yes".
 10. The signatures on the two questionnaires do not match.
- F. Broadbent said that his account was managed by McKayle although the new account forms designated it as a "house account." During the time Broadbent's account was listed as a "house account," eight transactions were effected in Broadbent's account. Of the eight transactions, six were initiated before McKayle

was licensed in Utah. McKayle did not become the agent of record until after he became licensed in Utah on September 8, 1999.

- G. The Couch and Co. complaint file contained a copy of Broadbent's complaint, referenced above, as well as a signed statement from McKayle responding to Broadbent's complaint. McKayle's statement acknowledged that Broadbent had been McKayle's customer since May 1999 prior to being licensed by the Division.
- H. Broadbent's new account form, filled out by McKayle, listed Broadbent's investment objectives, in order of priority, as growth, speculation and income. However, when the Division asked Broadbent his investment objectives, he stated safety of principal was most important and then "probably some growth." When specifically asked about speculation, Broadbent replied "I haven't been inclined to want to speculate. I've wanted to follow the advice of very conservative advisers."
- I. Broadbent had conservative investments, mostly in mutual funds, money market accounts and government securities, until, at the direction of McKayle, he liquidated his conservative investments to pay for trades initiated at McKayle's recommendation.
- J. Broadbent's account had excessive concentration in speculative stocks.
- K. Broadbent's investment in the Couch & Company.com private placement represents 20 percent of the total amount raised in the private placement.

- L. In October 2000, Couch & Co. sent Broadbent a certificate, dated July 17, 2000, for 4,000 shares of the Couch & Company.com private placement. This transaction was entered into after Broadbent sent a letter to McKayle and Couch & Co. cancelling Broadbent's "permission to buy or sell in my [Broadbent's] account." The certified letter was delivered on July 7, 2000, ten days before the stock certificate was issued.
- M. A review of the account opening dates on the Utah client list provided by Emmett A. Larkin, Inc. ("Larkin"), and the records of the Central Registration Depository (CRD), revealed that Couch & Co. opened several accounts for Utah clients prior to being licensed in Utah.
- N. Couch & Co. maintained 22 active Utah client accounts. Three of the accounts or 13.64 % were found to have turnover ratios in excess of five times. The three accounts that were excessively traded/churned were the accounts of:
1. Lyle and Mechelle Parry (the "Parrys") with an annual turnover rate of 7.23 and a cost to equity ratio of 25.87 percent. The Parry's account would have required a 25.87 percent return to break even.
 2. Vernile Prince ("Prince") with an annual turnover rate of 6.35 and a cost to equity ratio of 22.50 percent. Prince's account would have required a 22.50 percent return to break even.

3. Broadbent with an annual turnover rate of 5.86 and a cost to equity ratio of 7.66 percent. Broadbent's account would have required a 7.66 percent return to break even.
- O. Vernard B. Greene ("Greene") and McKayle were the agents of record on these accounts.
- P. In addition, the account of Broadbent contained transactions that were unsuitable based upon his age, investment objectives, financial situation and needs.
- Q. Upon review of Couch's complaint files, the Division found a history of customer complaints against McKayle. These complaints alleged unauthorized trading, failure to execute trades, and overcharging on commissions. Despite the numerous customer complaints, McKayle claimed, on the Division's registered representative questionnaire provided to him at the subsequent audit of LH Ross that none of his clients had "filed a complaint against [him] in the last two years."

III. CONCLUSIONS OF LAW

6. Jurisdiction is vested in the Director, pursuant to § 61-1-18 of the Act.
7. Sections 61-1-6(1)(b), 61-1-6(1)(g), and 61-1-6(1)(j) of the Act provide that upon approval by a majority of the Securities Advisory Board, the Director, by means of adjudicative proceedings conducted in accordance with the Administrative Procedures Act, codified at Utah Code Annotated, Title 63, Chapter 46b; may issue an order revoking

any license granted by the Division, and may impose a fine if he finds that it is in the public interest, and finds that the licensee has (1) willfully violated or willfully failed to comply with any provision of this chapter. . . or any rule or order under this chapter, (2) engaged in dishonest or unethical practices in the securities business, or (3) failed to reasonably supervise its agents or employees.

8. Respondents' acts, as described above, constitute fraudulent practices in violation of Utah Code Ann. § 61-1-1 which states:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to:

(1) Employ any device, scheme, or artifice to defraud.

(2) Make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. . .

(3) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

Specifically, forging the new account documents, altering Broadbent's birth date so that it appeared the speculative investments were more suitable for the investor, cashing Broadbent's check without depositing the funds into Broadbent's account until months later when questioned about it, and incorrectly filling out the Purchaser Suitability Questionnaire, constitute a device, scheme or artifice to defraud, and/or an act, practice or course of business that would act as a fraud.

9. Section 61-1-3 (1) of the Act states:

It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

10. Respondents violated §61-1-3(1) of the Act in the following instances:
 - A. Designating Broadbent's account as a "house account" prior to McKayle's licensure when in fact McKayle was the agent from the time the account was opened; and
 - B. Opening accounts for Utah clients prior to Couch & Co.'s licensure as a broker-dealer in Utah.

11. Section 61-1-3(2)(a) of the Act states:

It is unlawful for any broker-dealer or issuer to employ or engage an agent unless the agent is licensed.

12. McKayle was not licensed in Utah when Broadbent's account was opened. Accordingly, Couch & Company and Couch employed an unlicensed agent to make sales in Utah, and attempted to hide this fact by designating the account to the house account.
13. Section R164-6-1g(C) of the Utah Administrative Code, ("U.A.C.") defines "dishonest and unethical business practices" to include:

(2) inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account.

(3) recommending to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that such transaction or recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives,

financial situation and needs, and any other relevant information known by the broker-dealer.

(4) executing a transaction on behalf of a customer without prior authorization to do so.

(5) exercising any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both.

17. The “dishonest and unethical business practices” enumerated in R164-6-1g(C) are applied to agents in R164-6-1g(D).

(D) Agents.

In relation to agents of broker-dealers or agents of issuers, as used in Subsection 61-1-6(1)(g) "dishonest or unethical practices" shall include:

...

(7) engaging in conduct specified in subsections (C)(2), (C)(3), (C)(4), (C)(5), (C)(6), (C)(9), (C)(10), (C)(15), (C)(16), (C)(17), (C)(18), (C)(24), (C)(25), (C)(26), (C)(28), (C)(29) or (C)(30) of Rule R164-6-1g.

18. Respondents participated in numerous dishonest and unethical business practices including, but not limited to:
- A. Churning/excessively trading the accounts of the Parrys, Prince and Broadbent;
 - B. Misrepresenting Broadbent’s investment objectives;
 - C. Misrepresenting Broadbent’s age on his new account form;
 - D. Directing 88-year-old Broadbent to sell his conservative investments to pay for trades initiated at McKayle’s recommendation;

- E. Excessive concentration of Broadbent's account in illiquid speculative stocks with a high degree of risk;
 - F. Sending Broadbent a certificate for the Couch and Company.com private placement that was apparently issued 10 days after Broadbent withdrew his permission to make buys or sells in Broadbent's account; and
19. In addition, Couch & Company failed to supervise McKayle warranting disciplinary action under § 61-1-6(1)(j) of the Act.
20. Based upon the numerous violations of the Act as noted above, it is in the public interest that Respondents' licenses to act as a broker-dealer and/or broker-dealer agent be revoked, suspended or barred pursuant to §61-1-6 of the Act.
21. Respondents are no longer currently licensed to sell securities. Respondents' licenses, however, may be revoked pursuant to the withdrawal procedures set forth in §61-1-6(6)(c)(i) that states:

If no proceeding is pending or instituted, and withdrawal automatically becomes effective, the director may initiate a revocation or suspension proceeding under Section 61-1-6 within one year after withdrawal became effective.

Couch & Company's withdrawal in Utah on December 31, 2000 and McKayle's withdrawal on November 16, 2000. Therefore, the proceeding initiated on October 24, 2001 was initiated within one year after the withdrawals.

IV. ORDER

WHEREFORE, IT IS ORDERED that:

1. That Couch and Company's broker-dealer license in Utah be revoked;
2. That McKayle's broker-dealer agent license in Utah be revoked, and that McKayle be barred from employment with a licensed broker-dealer or investment adviser; and
3. That Respondents pay to the Division a fine, jointly and severally, of up to \$150,000.

DATED this 14th day of Dec ~~November~~, 2001.



S. Anthony Taggart
Director
Division of Securities.

Pursuant to §63-46b-11(3), Respondent may seek to set aside the Default Order entered in this proceeding by filing such a request with the Division consistent with the procedures outlined in the Utah Rules of Civil Procedure.

SECURITIES ADVISORY BOARD

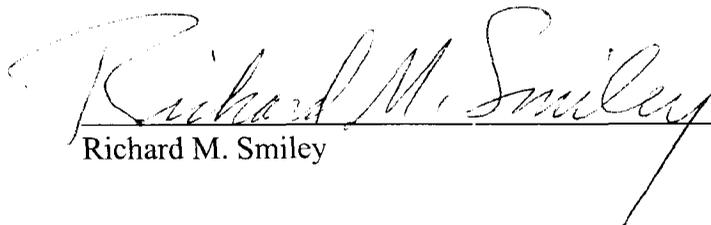
The foregoing Notice of Entry of Default and Order is hereby accepted, confirmed and approved by the Utah Securities Advisory Board.

DATED this 5 day of ^{December}~~November~~, 2001.

Henry Autry



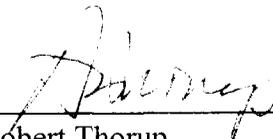
John R. Jackson



Richard M. Smiley



W. Rex Thornton



A. Robert Thorup

CERTIFICATE OF MAILING

I hereby certify that on the 6 day of December, 2001, I mailed, certified mail, return receipt requested, a copy of the foregoing Motion for Entry of Default Judgment to:

Couch & Company, Inc., 40 Exchange Place, Ste 1601, New York, NY 10005.

Certified Mail #:7000 1670 0000 6025 7320.

Raymond K. McKayle, 27 Linden Blvd #1, Brooklyn, NY 11226-3103

Certified Mail #:7000 1670 0000 6025 7337.


Executive Secretary