

RECEIVED

SEP 07 2006

D.E. WILLIAMS, Respondent
336 Fifth Ave.
Salt Lake City, UT 84103
(801) 355-1275

Department of Commerce
Division of Securities

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

IN THE MATTER OF D.E.WILLIAMS
Respondent

Reply to Opposition to
Motion to Quash
Docket No. SD-06-0024

Respondent hereby respectfully files his Reply to Division's Opposition to Respondent's Motion to Quash.

On August 7, 2006 Respondent filed a Motion to Quash the Utah Division of Securities Division's ("Division) ORDER TO SHOW CAUSE ("Order") Dated May 3, 2006 on the following grounds. The Division filed an Opposition to Motion to Quash on August 9, 2006. The following is the Respondent's Reply to said Opposition by Division:

In the Division's paragraph titled **LAW AND ARGUMENT**, the Division misstates the Respondent's grounds to Quash the Division's Order to Show Cause. Misstatements include, but are not limited to:

“(c) the fine is excessive...” Division omits the Respondent’s position that the Division has demonstrated no legal authority to levy a fine against the Respondent in excess of \$ 500 per alleged offense. Contrary to the Division’s assertion, the respondent has cited Utah Statutes and Constitutional protections. This, and all the Respondent’s arguments are sound and have merit.

As to Division’s further opposition:

Statute of Limitations

The case cited by the Division, *Rogers v Division of Real Estate* (“Rogers”), does not apply in the instant case. *Rogers* involves a disciplinary action to revoke a real estate license. In the present case the Division does not seek a disciplinary action (the revocation of a license), but seeks to invoke a severe punitive penalty (\$250,000) which is grossly in excess of the legally permitted statutory fine of \$1500 (three alleged offenses at \$500 per offense) as provided in Utah Code section 61-1-20(2)(vii). The Division does not cite any legal authority or any Division Administrative rule that would permit the Division to levy a fine so far in excess of the fine permitted under statute for the Court to impose.

Issue of Double Jeopardy.

The cases the Division cites refer to parallel civil and criminal cases. No case is cited that refers to parallel criminal and administrative actions. Parallel civil cases do not result in

orders that attach a felony conviction for failure to comply with said civil order. In the present case the Division seeks that a \$250,000 fine be imposed by Division Order against the Respondent. Failure to pay the ordered fine would, by statute, put Respondent in immediate jeopardy of a felony conviction. Utah Code 61-1-21(1) states:

61-1-21. Penalties for violations.

(1) A person is guilty of a third degree felony who willfully violates any provision of this chapter except Sections 61-1-1 and 61-1-16, or who willfully violates any rule or order under this chapter, or who willfully violates Section 61-1-16 knowing the statement made to be false or misleading in any material respect.

Dismissal vs. Motion to Quash

The Division misstates the Respondent's position. The Respondent expressly *does not* seek a dismissal at this time, but seeks the quashing of the Division's Order to Show Cause as clearly stated.

Conclusion

Respondent asserts that the Division has no statutory authority, and has provided no legal justification to:

1. Nullify the five-year Statute of Limitations for a non-disciplinary and punitive action.
2. Impose a \$250,000 dollar fine that is \$248,500 in excess of the maximum fine the Court may levy.

3. Place the Respondent in Double Jeopardy of a felony conviction for failure to pay a Draconian fine that Defendant has no present or likely future means to pay.
4. Deny the Respondent legal counsel in a matter that attaches a felony penalty.
5. Overreach the Division's statutory scope to provide expedient and inexpensive rulings on disciplinary matters; and has drifted into adjudicating complex legal matters that are the jurisdiction of the Utah District Court.
6. Permit a former employee of the Attorney General's Office with a conflict of interest to goad the Division into prosecuting this case.

THEREFORE, for the above stated reasons, Respondent moves the Division to Quash the Order to Show Cause in the above captioned matter.

Respondent

 9-7-06

D.E. Williams