BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

IN THE MATTER OF: JEFFREY LANE MOWEN; ELIZABETH WARD (fka Mowen); Respondents.	**ORDER RELATING TO J. MOWEN CLAIM THAT RESPONSE WAS FILED** Docket No. SD-06-0037 Docket No. SD-06-0034

Procedural Background

These proceedings were initiated by an Order to Show Cause and Notice of Agency Action issued by the Division on June 29, 2006. A hearing was held on August 4, 2006. Jeffery Mowen attended the hearing. He was accompanied by Michael T. Holje, who indicated he was in the process of being retained by Mr. Mowen. At that time, Mr. Mowen had not yet filed a Response.

Mr. Holje requested additional time for Mr. Mowen to file a response. At the hearing, and as provided in the written Scheduling Order dated August 7, 2006, Mr. Mowen was granted until August 18 to file his Response. No Response was received by the Division by September 5, 2006, so a Default Order was entered on September 6, 2006. That Order was mailed to Mr. Mowen and Mr. Holje.

By letter dated September 11, 2006, Mr. Mowen notified the Presiding Officer that he had filed a Response to the Division's Order to Show Cause on August 10. He provided a copy of his Response and a Certificate of Mailing stating that he had mailed copies to the Division and

to the Attorney General's Office and hand-delivered a copy to co-Respondent Elizabeth (Mowen) Ward.

Discussion

If Mr. Mowen filed his Response with the Division before August 18, 2006, the Default Order was issued improvidently and should be vacated. However, a search of the Division's records does not indicate that a copy of the Response was received by the Division. Additionally, the Attorney General's office has indicated that it, likewise, did not receive a copy of Mr. Mowen's Response. If the Response was mailed on August 10, it did not arrive at either location indicated on Mr. Mowen's Certificate of Mailing.

If the Response was not delivered to the Division or the Attorney General's Office, the Default was entered properly. In that instance, Mr. Mowen could seek to have the Default set aside (rather than being vacated), by making a motion to set aside the Default and providing good cause for why he failed to file a Response.

Order

If Respondent Mowen asserts that he did, in fact, mail a Response to the Division and to the Attorney General on August 10, 2006, he shall provide to the Division and the Attorney General a notarized affidavit stating that he did mail the Response and describe the particulars of the mailing such as whether the mailing was sent from his home, a business, or at the post office, how the postage was affixed (*e.g.*, whether metered mail or postage stamps were used), and whether the mailings were returned to him by the postal service. Additional information could be included that would corroborate the signature on the Certificate of Mailing such as any receipts from the post office for stamps or an affidavit from Elizabeth Ward attesting to the fact that she received it on August 11 or that she participated in the mailing of the Response.

In lieu of providing an affidavit, Respondent Mowen can file a motion to have the Default set aside. This motion would be under Utah Code Ann. §63-46b-11(3) and address the factors listed in Utah Rules of Civil Procedure 60(b), describing the mistake or excusable neglect that would justify setting aside the Default.

Any affidavit by Mr. Mowen or motion to set aside the Default must be submitted by October 23, 2006 to be considered. Otherwise, the Default Order will remain in effect.

Any filings by Mr. Mowen must contain mailing addresses that are more accurate or be hand delivered. Any mailings need to indicate the government office to which the mailing is addressed, rather than simply listing the employee's name. They also should include more complete addresses. For example, mailings to the Attorney General's Office should be addressed to Jeff Buckner, Assistant Attorney General, P.O. Box 140872 (or 160 East 300 South, 5th Floor), Salt Lake City, UT 84114-0872. Mailings to the Division's clerk should be addressed as Pam Radzinski, Division of Securities, P.O. Box 146760 (or 160 East 300 South, 2nd Floor), Salt Lake City, UT 8411-6760.

Because the prior mailings were not received, Mr. Mowen should send future mailings 1) by certified or registered mail, 2) by hand delivery, or 3) accompanied by a facsimile copy ((801) 530-6980).

IT IS SO ORDERED.

DATED this 2nd day of October, 2006

WAYNE KLEIN
Director, Presiding Officer

CERTIFICATE OF SERVICE

The undersigned certifies that on the 2nd day of October, 2006 copies of the foregoing Order Relating to J. Mowen Claim that Response was Filed were served on the parties as follows:

Hand Delivered

Jen Korb
Division of Securities
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Jeff Buckner
Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, UT 84111
Counsel for the Division of Securities

Via U.S. Mail

Jeffrey L. Mowen
915 East 440 North
Lindon, UT 84062
Respondent

Michael T. Holje
Brown, Bradshaw & Moffat
10 West Broadway, Suite 210
Salt Lake City, UT 84101
Counsel for Respondent Mowen

Heather Bailey