
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 SETTING ASIDE DEFAULT
AGAINST JEFFREY L. MOWEN**

Docket No. SD-06-0037

Docket No. SD-06-0034

Procedural Background

On September 6, 2006, a Default Order was entered by the Presiding Officer against Respondent Jeffrey L. Mowen for his failure to file a Response by the extended deadline. On September 11, Mr. Mowen submitted a letter to the Division asserting that he had, in fact, filed a Response on August 10 and he provided an unsigned copy of the Response and a certificate of mailing. On October 2nd, the Presiding Officer issued an Order allowing Mr. Mowen to substantiate his claim by providing an affidavit or to justify why the Default Order should be set aside.

On October 10, 2006, the Division received a motion filed by Mr. Mowen (dated October 6) to set aside the Default Order. In his motion, Mr. Mowen maintained that he had filed a Response to the Order to Show Cause on August 10 and also claimed grounds to set aside the Default Order under the Administrative Procedures Act, §63-46b-11(3). On October 18, the Division opposed Mowen's motion, arguing that he had failed to file the affidavit specified by the October 2nd Order and that his motion to set aside the Default under §63-46b-11(3) failed to articulate a meritorious defense, justifying the setting aside of the Default. On October 23,

Mowen responded by filing an affidavit stating that his Response had been mailed as indicated in his certificate of mailing. On November 6, the Division made application for leave to file a sur-reply, to respond to statements raised by the Mowen affidavit.

Analysis

Respondent Jeffery Mowen has satisfied one of the conditions set in the October 2, 2006 Order, submission of an affidavit. However, he did not submit the affidavit by October 23, as required. (It was signed on October 23 and delivered to the Division the following day.) Mr. Mowen did file a motion to set aside the Default by claiming entitlement to the provisions of §63-46b-11(3). However, as noted by the Division, Respondent Mowen did not assert any meritorious defense to accompany any mistake or excusable neglect that led to the Default.

Technically the Division is correct. The Presiding Officer could deny the motion to set aside the Default based on Mowen's failure to meet the requirements of the law and the conditions of the October 2nd Order. In addition, the Response that Mowen says he mailed on August 10 has never been received by the Division or by the Attorney General's office. The copy in the files of the Division is an unsigned document that was attached to Mowen's motion to set aside the Default.

However, Mowen is not represented by counsel. He has supplied an affidavit that satisfies one of the options offered to him, albeit belatedly. He also has requested, in the alternative, that the Default Order be set aside, albeit without satisfying Utah R. Civ. P. Rule 60(b) mandate that a meritorious defense be articulated. In other words, he has come very close to compliance; he has claimed that he filed a timely Response and submitted two affidavits supporting that claim, and he has outlined colorable claims of mistake or excusable neglect. This, combined with the preference for deciding cases on the merits rather than by Default, augurs in favor of setting aside the Default Order and permitting Mr. Mowen to defend the case.

Order

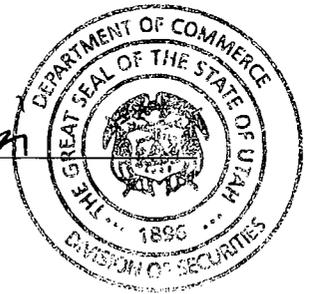
IT IS HEREBY ORDERED:

1. The Default Order entered against Respondent Jeffery L. Mowen is hereby set aside.
2. Mowen's Response is considered filed. Based on Mowen's affidavit that the answer was mailed and his providing an unsigned copy, the unsigned copy is deemed to be verified by the affidavit and acceptable.
3. The Division's Application for Leave to File a Sur-Reply is denied.
4. A scheduling hearing will be held on Monday, December 11, 2006 at 11:00 a.m. at the Division of Securities. Mr. Mowen is required to participate in that hearing in person, by telephone, or through counsel. While allowances were made for his failure to completely comply with previous orders in this matter, strict compliance with this Order and future orders will be required. If Mr. Mowen wishes to participate by telephone, he must make arrangements with the Division in advance of the hearing date.

IT IS SO ORDERED.

DATED this 22nd day of November, 2006


WAYNE KLEIN
Director, Presiding Officer



CERTIFICATE OF SERVICE

The undersigned certifies that on the 22nd day of November, 2006 copies of the foregoing Order Setting Aside Default Against Jeffrey Mowen 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
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Counsel for the Division of Securities

Via U.S. Mail

Jeffrey L. Mowen
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Respondent

Pamela Robinson