

James L. Driessen, Bar #09473

February 16, 2007

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

In the Matter of:)

Jeffery Lane Mowen;)
and Elizabeth Ward (fka Elizabeth Mowen))

MOTION IN LIMINE

Docket no. SD-06-0037
Docket no. SD-06-0038
Director: Wayne Klein

Respondent Ward, by and through counsel moves to require both Respondents be heard together or in the alternative to limit the issues and evidence to be presented at any administrative hearing which is separate from Respondent Mowen in this matter.

Respondent Ward requests that the issues and evidence to be presented and considered, therefore, in any separate administrative hearings, as to Respondent Ward, should only concern the causes of action directly related to her and her conduct alleged. Respondent Ward cannot be required to defend for Respondent Mowen or be forced to justify conduct which was alleged in the complaint to have been done by Mowen and Mowen alone.

Respondent Mowen requests that her actions and her actions be considered as to the elements of a § 61-1-1 violation, which are:

1. in connection with the offer, sale, or purchase of any security
2. directly or indirectly

- a. employ any device, scheme, or artifice to defraud; or
- b. make any untrue statement of a material fact; or
- c. to 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; or
- d. engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Respondent Ward respectfully requests the hearings in this matter either be heard together or the issues and evidence be limited as requested above.

Respectfully submitted this 16th day of February, 2007

BY: James L. Driessen
James L. Driessen, Attorney for Respondent Ward

- (a) The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.
- (b) On his own motion or upon objection by a party, the presiding officer.
- (i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious ...

ANALYSIS

Relevant intrinsic evidence is generally admissible; extrinsic non-relevant evidence is generally inadmissible. Compare UT. R. Evid., Rule 402. In order to determine relevance, the Director must turn to each cause of action. "Evidence is relevant if it possesses 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" State v. Martin, 44 P.3d 805 (2002 UT) (quoting Utah R. Evid. 401). "[T]he standard for determining the relevancy of the evidence is 'very low,' and even evidence with the 'slightest probative value' is relevant." Id. at ¶ 34 (quoting State v. Jaeger, 973 P.2d 404 (1999 UT), ¶¶ 12, 16, (quoting Edward L. Kimball & Ronald N. Boyce, Utah Evidence Law 4--2 (1996))). Where evidence "has no probative value to a fact at issue, it is irrelevant and is inadmissible under rule 402." Jaeger, 973 P.2d 404 (1999 UT) at ¶ 13, emphasis added.

The key here is whether the first element of a U.C.A. § 61-1-1 violation which is "in connection with the offer, sale, or purchase of any security ..." can even be relevant when the Attorney for the Division insists these cases are to be heard separately and all alleged conduct in this matter for an actual transaction that is alleged to come under the definition of a "security" under the Act, U.C.A. § 61-1-13, is conduct related to Respondent Mowen and not to Respondent Ward.

Therefore, any evidence as to whether or not the alleged "real estate deal" is a security under the statute, is evidence only relevant to the allegations against Mowen. Issues and evidence as to Respondent Ward should be limited only to the statements she made and whether or not she had any knowledge of the alleged transactions prior to their taking place.

Respondent request the issues and evidence to be heard at the hearing be so limited.

Respectfully submitted this 16th day of February, 2007

BY: James L. Driessen
James L. Driessen, Attorney for Respondent Ward

Certificate of Service

I hereby certify that I mailed, postage prepaid, by first class mail, a true and correct copy of the forgoing Motion in Limine to the following this 16th day of February, 2007.

Or, (check box and initial if appropriate)

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SIGNED,

James L. Driessen

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