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

**IN THE MATTER OF THE LICENSES
OF:**

**JEFFREY LANE MOWEN; and
ELIZABETH MOWEN a.k.a.
ELIZABETH WARD;**

Respondents.

**MOTION FOR SANCTIONS AS TO
ELIZABETH MOWEN**

**Docket No. SD-06-0037
Docket No. SD-06-0038**

The Utah Division of Securities (Division), by and through Assistant Attorney General, Jeffrey Buckner, and pursuant to Utah Admin. Code R151-46b-9(16), and Rule 16(d) of the Utah Rules of Civil Procedure, to the extent persuasive in this proceeding under Utah Admin. Code R151-46b-5(3), hereby moves for entry of an order: (a) establishing as fact the allegations against Elizabeth Mowen in the Division's Order to Show Cause; (b) prohibiting her from supporting or opposing any claims or defenses, or from introducing evidence; or (c) striking her

pleadings and rendering default judgment against her. The Division's motion is made and based on the accompanying memorandum of points and authorities.

Respectfully submitted this February 7, 2007.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL



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**MEMORANDUM OF POINTS AND
AUTHORITIES SUPPORTING
MOTION FOR SANCTIONS AS TO
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STATEMENT OF RELEVANT FACTS

Pursuant to the terms of a scheduling order dated August 7, 2006, the parties were required, among other things, to exchange documents relevant to this proceeding by September 4, 2006; to identify expert witnesses by December 15, 2006; and to submit a witness and exhibit list by January 15, 2007.

The Division produced the relevant, non privileged documents in its investigative file to Elizabeth Mowen (Mowen) on September 7, 2006, along with a privilege log and a bill in the amount of \$141 for photocopying. The Division served a copy of its witness and exhibit list on January 18, 2007, but did not identify any expert witnesses.

Mowen never served a witness and exhibit list, produced any documents pursuant to the scheduling order, and never paid for the photocopies. The Division again asked her for payment on January 3, 2007 and January 26, 2007. The Division told Mowen to produce a witness and exhibit list by February 2, 2007.

Instead of producing a witness and exhibit list or paying for the copies by February 2, 2007 or even asking for additional time, Mowen asked for a pre-trial order instead to determine the readiness of the case against her for trial. In her request, Mowen does not claim to have ever produced any documents, identified any expert witnesses, or served a witness and exhibit list in compliance with the scheduling order. Indeed, Mowen acknowledges receiving letters from the Division requesting payment for photocopies and “threatening sanctions,” and copies of pleadings related to the action against her, but seems to claim, as a defense to her non payment and disobedience to the scheduling order, entitlement to service of a copy of an order ruling on her husband’s motion to set aside a default judgment.¹

¹Because Mowen acknowledges receipt of these letters, the Division does not attach copies as exhibits. The Division will produce copies upon request.

LAW AND ARGUMENT

Rule 16(d) authorizes a court to enter sanctions against a disobedient party for failure to comply with a scheduling order. Utah R. Civ. P. 16(d). A similar provision is found in Utah Admin. Code R151-46b-9(16). Sanctions include:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

Utah Admin. Code R151-46b-16(d)(b)(ii).

In this case, Mowen failed to comply with the scheduling order, and offers no explanation for her disobedience or failure to pay for photocopies other than she never received a copy of a ruling on her husband's motion to set aside a default judgment. Whether Mowen should have received a copy of the order is irrelevant to whether she should have complied with the scheduling order or paid for photocopies. Mowen cites no authority that excuses her from paying for photocopies or compliance with the scheduling order because she never received a copy of a ruling on her husband's motion. *See Utah R. Civ. P. 5(a)(2)(rule governing what service required in default)*. Mowen does not claim any harm or prejudice as a result of failure

to receive a copy of the ruling. Indeed, Mowen cannot do so. The case against her and her husband is now going down separate tracks. Her husband is facing criminal charges. She is not. Her case is not conjoined to his. Separate scheduling orders have been entered against him and her.

The Division tried to resolve this matter with opposing counsel without success. Instead of trying to comply with the scheduling order, Mowen's response shows an unwillingness as well as a resistance to compliance. Mowen previously demonstrated her willingness to delay the proceedings by filing a meritless motion to dismiss after rejecting a very reasonable settlement offer – neither admit nor deny, and no fine. At this point, Mowen should be sanctioned for her disobedience. The Division cannot prepare for trial without knowing what documents Mowen has, what documents she intends to rely on at trial or which witnesses she may call. The Division should not be forced to proceed to trial without knowing.

CONCLUSION

For these reasons, sanctions are appropriate.

Respectfully submitted this February 7, 2007.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read "Jeffrey Buckner", written over a horizontal line.

Jeffrey Buckner
Assistant Attorney General

CERTIFICATE OF MAILING

I, Ina Jensen, hereby certify that I have this day served a copy of the foregoing **Motion for Sanctions as to Elizabeth Mowen and Memorandum of Points and Authorities Supporting Sanctions** by mailing a copy, with postage prepaid, to

Attorney James Driessen
305 N. 1130 East
Lindon, UT 84601

Attorney Michael Holje
Brown & Bradshaw
10 West Broadway #210
Salt lake City, UT 84101

Dated this 7th day of February 2006.



Ina Jensen