

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
P.O. Box 146760  
Salt Lake City, Utah 84114-6760  
Telephone: 801 530-6600  
Facsimile: 801 530-6980

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

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**IN THE MATTER OF:**

**ROY N. HAFEN, CRD#1106258**

**Respondent.**

**ORDER TO SHOW CAUSE**

Docket No. SD-06-0042

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**TO: Roy N. Hafen  
3075 Santa Clara Dr  
Santa Clara, UT 84765**

It appears to the Director ("Director") of the Utah Division of Securities ("Division") that Respondent Roy N. Hafen may have engaged in acts and practices that violate the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.* Those acts and practices are more fully described herein. Based upon the Division's investigation into this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

**A. THE PARTIES**

1. Walnut Street Securities, Inc. ("WSS"), CRD#15840, is a broker-dealer that has been licensed by the Division from October 28, 1985 to the present. WSS maintains its principal place of business in St. Louis, Missouri. At all times relevant to this action, WSS operated a branch office location at 1935 Vine Street, Suite 170 in Salt Lake City, Utah.
2. Roy N. Hafen ("Hafen"), CRD#1106258, was a WSS broker-dealer agent. Hafen was licensed in Utah as a broker-dealer agent for WSS from April 6, 2000 until February 7, 2002.
3. Hafen's license was temporarily suspended by the Division on February 5, 2002 by means of an emergency order. The emergency order alleged that Hafen effected securities transactions away from his broker-dealer and failed to comply with a request for information from the Division.
4. WSS permitted Hafen to resign from his association with WSS February 7, 2002. Hafen agreed to revocation of his broker-dealer agent license through a stipulation and consent order entered September 3, 2004.
5. Richard W. Mack ("Mack"), CRD#2400825, was designated as branch manager for the Salt Lake City branch office of WSS, and was the direct supervisor over Hafen. Mack qualified with the NASD as a general principal. Mack is presently licensed with the Division as an agent of Sammons Securities, LLC, CRD#115368. WSS, Mack and Turner are named as Respondents in a Petition for Order Revoking Licenses, Barring Licensees, and Imposing a Fine, filed contemporaneously with this Order to Show Cause.
6. Kelly G. Brady ("Brady"), a resident of Utah County, Utah, is an individual who solicited funds for Video Venue, an assumed name of Buckingham, LLC ("Video Venue"). Brady is

- not employed by, or affiliated with, WSS, and has never been licensed by the Division. Brady is the subject of a pending criminal action based upon the conduct described herein.
7. Video Venue is a limited liability company based in Oklahoma which actively engaged in business operations in Washington County, Utah. The Video Venue project was represented by Hafen as the production, sale and implementation of a patented screen system whereby advertising would be delivered to gas station customers while pumping fuel.
  8. Vedette, LLC (“Vedette”) is an Oklahoma limited liability company which actively engaged in business operations in Washington County, Utah, which owned the technical rights to the Video Venue process.

### **B. BACKGROUND**

9. In November 2001, the Division received an investor complaint concerning an unpaid promissory note. The Division thereafter learned that Hafen was acting as an agent for Red Mountain Investment Company, LLC ("Red Mountain") and Video Venue by selling investments for those companies.
10. Red Mountain was registered with the Utah Division of Corporations on January 10, 2001. Corporate records identify Brady as the manager and registered agent of Red Mountain. Hafen represented to some investors that Red Mountain owned patents and other essential rights necessary for the successful operation of the Video Venue project.
11. Brady began accepting monies for Video Venue in late 1999 and at that time was also accepting funds from investors for his factoring operations. Factoring is a type of

financial service whereby a firm sells or transfers title to its accounts receivable to a factoring company which then acts as a principal and not an agent in the collection of the receivable. Many of those factoring investments went into one of several bank accounts used to fund the development of Video Venue.

12. Investors providing money to Brady thought their funds would be used in the purchase and collection of trade receivables. Some investors stated that Brady did not mention Video Venue at the time Brady took their investments.
13. Brady and Hafen told other Video Venue investors:
  - a. Video Venue was in need of short-term operating capital to continue the development and installation of its gas pump video advertising screens.
  - b. Investors would receive a five percent per-month return on their money.
  - c. The loan period would be for no more than 90 days.
  - d. Before the end of the 90 day period, the company's long-term financing, which had already been contractually secured, would arrive and pay off all short-term loans.
  - e. Investors were also promised that for every \$300,000 invested in the company, the investor would receive a one percent equity ownership interest in Video Venue.
14. Brady and Hafen solicited new investors into Video Venue from early 2000 until late 2001.

15. On February 5, 2002, Division auditors attempted to meet with Hafen to discuss his involvement with Red Mountain and Video Venue. Hafen disclosed to Division auditors that he had done consultant work and received compensation from Red Mountain.
16. Hafen disclosed that he had personally invested in Red Mountain and had knowledge of many investors in St. George, Utah.
17. Hafen refused to comply further with the examination and refused to provide the Division with the names of investors.
18. Hafen subsequently stated that he would not provide immediate access to his business records but would comply and provide investor lists and information regarding his involvement and knowledge of Red Mountain and Video Venue if given an additional week. The requested documentation was never provided.
19. On February 5, 2002, the Division issued an emergency order to suspend Hafen's broker-dealer agent license for effecting transactions away from his broker-dealer and failing to comply with the Division's request for information.
20. On February 7, 2002, WSS permitted Hafen to resign rather than taking action to terminate Hafen.
21. Hafen subsequently consented to revocation of his broker-dealer agent license in September, 2004.
22. Hafen's solicitation efforts raised approximately \$3,252,000 from Utah investors, of which \$112,000 was eventually paid back to two investors. Two other investors, who

had contributed a total of \$800,000, filed a civil lawsuit which was subsequently settled.

Accordingly, the remaining Utah investors are still owed \$2,340,000.

23. In February 2005, the Division filed a civil action against WSS, Hafen, Mack, Turner, Brady, and Vedette in the Fifth District Court for Washington County, Utah, Civil No. 050500310.

### **FIRST CAUSE OF ACTION**

#### **Offer and Sale of Unregistered Securities under § 61-1-7 of the Act**

24. Beginning on a date uncertain, but at least from early 2000, Hafen offered or sold, either directly or indirectly to Utah residents, securities in Red Mountain and Video Venue.
25. The investments offered and sold by Hafen are securities under § 61-1-13(1)(x)(i) of the Act.
26. At no time have any of the securities of Video Venue offered and sold by Hafen been registered nor had he filed for an exemption from registration with the Division as required by § 61-1-7.
27. Hafen willfully violated § 61-1-7 of the Act.

### **SECOND CAUSE OF ACTION**

#### **Securities Fraud under § 61-1-1(2) of the Act**

28. Hafen offered or sold securities in Red Mountain and Video Venue to individuals in Utah in violation of § 61-1-1(2) of the Act, because he made false statements of material fact and omitted to state material facts which, in the light of the circumstances under which they were made, were necessary to make his other statements not misleading.

29. The false statements of Hafen include, but are not limited to, the following:
- a. Representing to investors that they would receive outright ownership interests in Video Venue equal to one percent for every \$300,000 invested. In reality, under Video Venue's Operating Agreement, Brady could not add other members to the LLC without the consent of all existing members.
  - b. Falsely stating that investor funds would be used to pay Video Venue's ongoing operational expenses when in fact, a large portion of investor funds was used to make payments to prior investors or diverted for personal/family purposes.
  - c. Representing to investors that there was no risk of loss to their principal.
  - d. Providing financial statements of Buckingham to some investors which materially misstated outstanding short-term loans as capital contributed to the entity.
30. In connection with the offer and sale of securities in Video Venue, Hafen omitted the following material information:
- a. Neither Brady nor Hafen disclosed to investors that Brady was paying commissions to Hafen out of investor funds.
  - b. Failing to disclose that Video Venue was in default on numerous contracts when offering new investors a five percent per month return with a required commitment of 30 to 90 days.
  - c. Failing to disclose to investors that Video Venue had no system of accounting controls on any of the investor funds sent to Video Venue's office in Florida.

- d. Failing to disclose the business risks faced by the company or the investment risks being assumed by the investor.
  - e. Failing to disclose the business and operating history of Video Venue.
  - f. Financial statements of the company.
  - g. The identity of the principals in the investment along with a description of their experience in this type of investment.
  - h. The number of other investors and the amount of money being raised from investors.
  - i. The track record of the company in repaying the investment.
  - j. Current capitalization of the issuer.
  - k. Minimum capitalization needed for the company's business plan to succeed.
  - l. An explanation of the disposition of any investments received if the minimum capitalization was not met.
  - m. Nature of the competition in the type of business in which Video Venue operated.
  - n. The existence and extent of any conflicts of interest.
  - o. The expected use of investment proceeds by Video Venue.
  - p. That the investment was a "ponzi" scheme in that funds from new investors were used to pay off loans of earlier participants.
  - q. That the securities being offered and sold were not registered with the State of Utah as required.
31. Hafen willfully violated § 61-1-1(2) of the Act.

### **THIRD CAUSE OF ACTION**

#### **Fraudulent or Deceptive Act, Practice, or Course of Business under § 61-1-1(3) of the Act**

32. Hafen willfully violated § 61-1-1(3) of the Act by engaging in acts, practices, and a course of business which operated as a fraud or deceit on other persons. His violative acts include, but are not limited to, the following:
- a. The pattern of misrepresentations and omissions referred to in paragraphs 24 through 31, above.
  - b. Operating a “ponzi” type investment program whereby money from new investors was used in part to pay obligations to prior investors.
33. Hafen further willfully violated § 61-1-1(3) of the Act because he engaged in acts, practices and a course of business which operated as a fraud or deceit on other persons by:
- a. Engaging in securities activities not recorded on the books and records of his registered broker-dealer.
  - b. Failing to disclose to WSS the extent of his outside business activities.

### **REQUEST FOR RELIEF**

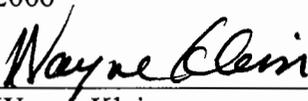
The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 to -11, and held before the Division. As set forth in the Notice of Agency Action accompanying this Order, Respondent is required to file a written response with the Division,

and a hearing on this matter has been scheduled for September 24, 2006 at 9am. The hearing will take place at the Division of Securities, Room 210, 160 East 300 South, Salt Lake City, Utah. If Respondent fails to file a written response or appear at the hearing, findings may be entered, a permanent Order to Cease and Desist may be issued, and a fine may be imposed against Respondent, as provided by Utah Code Ann. §§ 63-46b-8 or -11.

At the hearing, Respondent may show cause, if any he has:

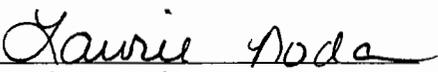
1. Why Respondent should not be found to have willfully violated the Utah Uniform Securities Act;
2. Why Respondent should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-1, -7 or any other section of the Act;
3. Why Respondent should not be barred from acting as or associating with a licensed broker-dealer or investment adviser within this state.
4. Why Respondent should not be ordered to pay fines to the Division in amounts to be determined at the hearing.

Dated this 3<sup>rd</sup> day of August, 2006

  
Wayne Klein  
Director  
Utah Division of Securities



Approved:

  
Laurie L. Noda  
Assistant Attorney General

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
Box 146760  
Salt Lake City, UT 84114-6760  
Telephone: (801) 530-6600

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

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**IN THE MATTER OF :**

**ROY N. HAFEN, CRD#1106258**

**Respondent.**

**NOTICE OF AGENCY ACTION**

**Docket no. SD-06-0042**

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THE UTAH DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Utah Division of Securities ("Division") hereby commences a formal adjudicative proceeding against you as of the date of the mailing of this Notice. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63-46b-3 to -11 and -20. The facts on which this action is based are set forth in the accompanying Order to Show Cause.

Within thirty (30) days of the mailing date of this notice, you are required to file an Answer with the Division. The Answer must include at least the information required by Utah Code § 63-46b-6(1). In addition, you are required by § 63-46b-6(3) to state: a) by paragraph, whether you admit or deny each allegation contained in the Order to Show Cause, including a

detailed explanation for any response other than an unqualified admission; b) any additional facts or documents which you assert are relevant in light of the allegations made; and c) any affirmative defenses (including exemptions or exceptions contained within the Utah Uniform Securities Act) which you assert are applicable. To the extent that factual allegations or allegations of violations contained in the Order to Show Cause are not disputed in your Answer, they will be deemed admitted.

Please note that a hearing on the Order to Show Cause has been scheduled for September 25, 2006 at 9 a.m. The hearing will take place at the Division of Securities, Room 210, 160 East 300 South, Salt Lake City, Utah.

If you fail to file an Answer or fail to appear at the Order to Show Cause hearing, you may be held in default in accordance with Utah Code Ann. § 63-46b-11 without any further notice to you, or the hearing may proceed without your participation under § 63-46b-8.

The presiding officer in this case is Wayne Klein, Director, Division of Securities, 160 East 300 South, P.O. Box 146760, Salt Lake City, UT 84114-6760, telephone (801) 530-6600. An administrative law judge may be assigned after the initial hearing. At any hearings, the Division will be represented by the Attorney General's Office, 160 East 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310. You may appear and be heard and present evidence on your behalf at any such hearings. You may be represented by counsel of your choice in these proceedings.

You may attempt to negotiate a settlement of the matter without filing an Answer or proceeding to hearing. Should you so desire, please contact the Utah Attorney General's Office.

Questions regarding the Order to Show Cause should be directed to Laurie Noda, Assistant Attorney General, 160 E. 300 South P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.

Dated this 3<sup>rd</sup> day of August, 2006.

  
Wayne Klein  
Director, Division of Securities  
Utah Department of Commerce



**Certificate of Mailing**

I certify that on the 4<sup>TH</sup> day of August, 2006, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Roy N. Hafen  
3075 Santa Clara Dr  
Santa Clara, UT 84765

Certified Mail # 7005 18200002 0259 5981

  
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Executive Secretary