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

IN THE MATTER OF:

J.D. PULVER,

Respondent.

**ORDER SETTING ASIDE DEFAULT
AND SETTING A SCHEDULE FOR
HEARING**

Docket No. SD-06-0058

Background

This case was initiated on August 21, 2006 when the Division of Securities filed an Emergency Order to Cease and Desist and an Order to Show Cause against Respondent Pulver and others. On October 5, 2006, the Presiding Officer issued a ruling that the materials filed by Respondent Pulver in response were not sufficient to constitute an answer. Pulver was instructed that if he intended to defend himself in this proceeding, he needed to file an answer by November 6, 2006. That ruling laid out what an answer would need to contain to constitute a proper answer. A hearing was set for November 9, 2006.

Pulver did not participate in the scheduled hearing on November 9. After the hearing concluded, the Presiding Officer was contacted by Respondent Pulver who had not joined the 9:00 hearing because of confusion about the correct time zone. The Presiding Officer was able to get the Division's representatives to return and the hearing was reconvened for Pulver. In response to the October 5 Order, Mr. Pulver had submitted a two page document dated October 20, 2006 along with twelve pages of additional documents. The Presiding Officer ruled that this submission did not constitute the detailed, paragraph-by-paragraph, response required by the

October 5 Order. At that hearing, Mr. Pulver was given until November 30, 2006 to file a response meeting the requirements of an answer. A scheduling order was entered for further proceedings in the matter. No answer was filed by November 30, 2006.

An attorney representing Pulver wrote the Division on January 24, 2007, providing information regarding Pulver's conduct in the underlying matter. On February 1, 2007, attorneys for the Division notified Pulver's attorney that an answer needed to be filed for Pulver or a default order would be entered. On May 3, 2007, Pulver sent a letter to the Division providing information about his involvement with Flavor Brands, but still not an answer conforming to the requirements set forth in the October 5, 2006 ruling. Attorneys for the Division sent a letter to Pulver dated May 30, 2007 telling him an answer needed to be filed within ten days or default would be sought. No answer was filed.

On June 20, 2007 a default order was entered against Respondent Pulver.

By motion dated July 3, 2007, Pulver requested that the default order be set aside. He attached an affidavit, but still no answer. The Division opposed Pulver's motion. The Presiding Officer held a hearing on Pulver's motion on October 12, 2007. Pulver participated in the hearing via telephone. At that hearing, the Presiding Officer indicated that Pulver's motion lacked the filing of a proposed answer, an explanation of any grounds for setting aside the default under Rule 60(b), Utah Rules of Civil Procedure, and identification of a meritorious defense. The Presiding Officer granted Pulver until October 17 to file an answer and a supplemental motion addressing the missing requirements. A hearing was set for October 19, 2007, to rule on the motion.

On October 16, Pulver did file an amended motion, an affidavit, and an answer. The answer did comport with the style and substance required by the October 5, 2006 ruling from the

Presiding Officer.

At the hearing on October 19, 2007, the Presiding Officer attempted to contact Pulver at the phone number provided (and which was successfully used on October 12). In three attempts, the telephone number rang unanswered. A recording on an answering machine indicated the voice mailbox was full, so no messages could be left in the voice mail box. Pulver's wife contacted the Presiding Officer later in the day saying they had been ready to participate.

Ruling on the Motion

The Presiding Officer understands the frustration expressed by the Division at how long this case has proceeded without an answer by Pulver and at Pulver missing numerous deadlines to file an answer. Nevertheless, the Presiding Officer has decided to set aside the default order to permit Pulver to contest the allegations made against him by the Division. This is due to Pulver's *pro se* status and his belated – but apparently earnest – efforts to defend himself in these proceedings.

The default order will be set aside and a scheduling order is set forth below for further proceedings in this matter. The default order is being set aside along with a stern warning to Respondent Pulver. The conduct he has exhibited regarding this proceeding up to October 12, 2007, will not be tolerated in the future. If future any deadlines are missed, the Presiding Officer can be expected to grant a motion for default by the Division. If Pulver fails to participate in any hearings, a default may be entered. Respondent Pulver has the responsibility to either participate in hearings in person or ensure that his participation by telephone is arranged in advance and will be effective. If the Presiding Officer fails to make contact at the beginning of a hearing, it is Pulver's responsibility to contact the Division at (801) 530-6600 to connect to the hearing. If Pulver cannot do what is required to defend himself and keep these proceedings moving toward a

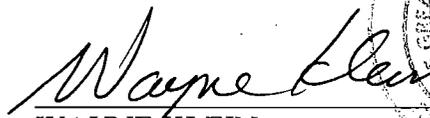
hearing, he should engage competent counsel to represent him. The Presiding Officer simply will not tolerate continued delays or further excuses.

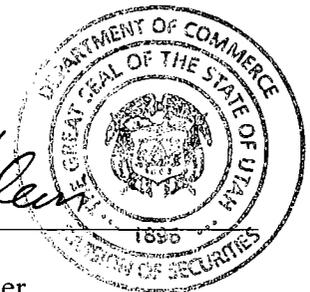
IT IS HEREBY ORDERED That:

1. Default. The Default Order entered June 20, 2007 is hereby set aside.
2. Discovery. Respondents and the Division must complete the exchange of discovery by November 30, 2007.
3. Motions. Any pre-hearing motions must be filed by December 28, 2007. Any responses must be filed by January 15, 2008, and replies, if any, by January 29.
4. Experts. By February 25, each party must identify any experts it intends to use at the hearing. Any experts that will be used at hearing must provide their written expert reports to the other parties by that date.
5. Witness and Exhibit Lists. Each party must provide the court and the other parties with a list of witnesses and exhibits that will be used at the hearing, except those to be used only for rebuttal, by March 24, 2008.
6. Hearing. The hearing will be set for early April 2008. The Presiding Officer expects that the matter will be assigned to an administrative law judge from outside the Division of Securities to hear the case. The actual hearing date will be set by the administrative law judge.

IT IS SO ORDERED.

DATED this 22nd day of October, 2007.


WAYNE KLEIN
Director, Presiding Officer



CERTIFICATE OF SERVICE

The undersigned certifies that on the 23rd day of October, 2007, copies of the foregoing Order Setting Aside Default and Setting Schedule for Hearing were served on the parties as follows:

Hand Delivered

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Via U.S. Mail

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