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

IN THE MATTER OF:

FLAVOR BRANDS, INC.,
J.D. PULVER,
TIM HASKIN, and
DENISE SULLIVAN,

Respondents.

**RESPONSE TO LETTER FROM TIM
HASKIN REQUESTING THAT
DEFAULT BE SET ASIDE**

Docket No. SD-06-0057
Docket No. SD-06-0058
Docket No. SD-06-0059
Docket No. SD-06-0060

Background

By letter dated June 3, 2007 and received at the Division of Securities on June 18, Respondent Haskin asks that the Default Order entered against him on April 3, 2007 be set aside.

A history of proceedings in this matter will provide needed context to the reasons why Mr. Haskin's letter does not provide grounds to set aside the default order.

- An Emergency Order to Cease and Desist and Order to Show Cause (Order) was issued against Mr. Haskin and other respondents on August 21, 2006. In the Notice of Agency Action (NOAA) accompanying the Order required that a written response be filed within 30 days and stated that he was required to attend a hearing on September 25, 2006.
- Respondent Haskin sent a letter to the Division dated September 13 (received September 18) that provided some information about his involvement with Flavor Brands, but failed to respond to the allegations in the Order or identify any defenses he claimed.

- Respondent Haskin did not appear at the September 25 hearing, either personally or through an attorney.
- On October 5, 2006, the Presiding Officer issued an order ruling that the letter submitted by Haskin was not adequate to constitute the type of answer required by the Utah Administrative Procedures Act or the NOAA. Respondent Haskin was given another opportunity to file an answer. The Presiding Officer explicitly emphasized that the response “must answer the allegations of the Division, including indicating whether the Respondent admits or denies the allegations of each paragraph in the Orders.” The answer was to be filed by November 6, 2006 or else default would be entered. A scheduling hearing was set for November 9.
- On November 9, 2006, the Presiding Officer issued a scheduling order which noted that while Respondent Haskin had participated in the scheduling hearing, he had not filed a response meeting the conditions set forth in the October 5 order. At that hearing, the Presiding Officer gave Respondent Haskin *still another* opportunity to file a response containing the type of information required in an answer. The Presiding Officer reiterated: “Respondents must file responses that indicate, for each paragraph of the Division’s August 21, 2006 Emergency Order . . . the extent to which he agrees or disagrees with each factual assertion” Respondent Haskin was given until November 16 to file such a response. A scheduling order set deadlines for other events in this case including the filing of any prehearing motions, identifying any experts, and providing witness and exhibit lists. None of these were provided.
- On April 3, 2007, the Presiding Officer found Respondent Haskin in default for failing to file a response meeting the conditions required. A default order was issued.

Setting Aside a Default Order

The April 3, 2007 Default Order gave Respondent Haskin notice that he could petition to have the default set aside pursuant to Utah Code §63-46b-11(c) and the procedures outlined in the Utah Rules of Civil Procedure (URCP).

While Respondent Haskin's June 3 letter makes a reference to §63-46b-11(c), it is only a reference. That section provides that the request to set aside a default must be made by motion and it must follow the procedures outlined in the URCP. The Presiding Officer recognizes that Respondent Haskin is acting *pro se*, as his own attorney. Because of that, the Presiding Officer gave several additional opportunities to Respondent Haskin to satisfy the requirements that he file an answer and outlined, in detail, what had to be done. Nevertheless, Respondent Haskin failed to follow those instructions. Here, again, Respondent Haskin has failed to take any of the actions required by §63-46b-11(c) or the URCP.

URCP Rule 55(c) says that a default can be set aside "for good cause." If there is just cause, it must be demonstrated pursuant to the guidelines set forth in URCP 60(b). Rule 60(b) says that *if* there is a motion and *if* there is just cause that would further justice, a court can set aside a default for any of six reasons (including mistake, newly discovered evidence, fraud, the judgment being void, satisfaction of judgment, or other reason justifying relief). Respondent Haskin's letter has not even made an attempt to identify reasons to set aside the default as required by the URCP. Absent even an attempt, combined with Respondent Haskin's repeated failings to file a response when invited to do so, the Presiding Officer must conclude that Respondent Haskin has failed to make a colorable effort to provide justification for setting aside the default.

Accordingly, the Default Order entered on April 3, 2007 will not be set aside.¹

IT IS SO ORDERED.

DATED this 25th day of June, 2007.


WAYNE KLEIN
Director, Presiding Officer



CERTIFICATE OF SERVICE

The undersigned certifies that on the 2nd day of ~~June~~^{July}, 2007 copies of the foregoing

Response to Request that Default Order be Set Aside were served on the parties as follows:

Hand Delivered

Benjamin Johnson
Division of Securities
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Via U.S. Mail

Tim Haskin
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Respondent



¹ In his letter, Respondent Haskin also asks that fellow respondent J.D. Pulver be cleared of any wrong doing. Any requests relating to Respondent Pulver need to be made by him or his attorney and any relevant information needs to be submitted through the hearing process, not in a letter addressed to the Presiding Officer.