
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 FILING FROM
DENISE SULLIVAN REGARDING
DEFAULT**

Docket No. SD-06-0057

Docket No. SD-06-0058

Docket No. SD-06-0059

Docket No. SD-06-0060

By letter dated March 28, 2007, Respondent Sullivan resubmitted an affidavit she had signed in September 2006 and which she believed was not in the official record of these administrative proceedings.

The Official Record of Proceedings

The affidavit is in the official record of proceedings. It was received on September 22, 2006 and was placed in the record. The faulty assumption underlying Respondent Sullivan's March 28 letter is that the proceedings would not have continued after submission of that affidavit. The history of proceedings in this matter demonstrates that Respondent Sullivan has been on notice since November 2006 that submission of the affidavit was not sufficient grounds for her to believe the proceedings had been dismissed against her.

Background

- An Emergency Order to Cease and Desist and Order to Show Cause (Order) was issued against Ms. Sullivan and other respondents on August 21, 2006. The Notice of Agency

Action (NOAA) accompanying the Order required that a written response be filed within 30 days and stated that she was required to attend a hearing on September 25, 2006.

- On September 22, Respondent Sullivan submitted an affidavit to the Division via facsimile that provided some information about Flavor Brands and her involvement with the company, but failed to respond to the allegations in the Order or identify any defenses she was claiming.
- Respondent Sullivan 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 affidavit submitted by Sullivan was not adequate to constitute the type of answer required by the Utah Administrative Procedures Act or the NOAA. Respondent Sullivan 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. Respondent Sullivan was notified that failure to participate in the hearing would be grounds for entering default against her.
- Respondent Sullivan did not file a response that met the conditions of the statute as described in the October 5 scheduling order. Respondent Sullivan did not participate in the November 9th hearing.¹

¹ In her March 28, 2007 filing, Respondent Sullivan said she left a voice mail message with the attorney prosecuting the Division’s case saying she could not attend the hearing. She said he heard nothing further and assumed the matter was resolved. It is not clear which hearing she was referring to – the September hearing or the November hearing. Regardless, the law requires a respondent to do more than just leave a phone message and then assume all has been resolved. As noted above, Respondent Sullivan was given notice that her September affidavit was insufficient as an answer and that a response needed to be filed that met certain criteria. She failed to do so.

- Because Respondent Sullivan did not appear at the November 9, 2006 hearing or file a qualifying response, the Presiding Officer held her in default at the time of the hearing. On January 19, 2007, the Presiding Officer entered a default order against Sullivan.

Respondent Sullivan now writes in the apparent belief that default would have been entered only if the official record of these proceedings did not include her September 2006 affidavit. As noted above, that affidavit is in the record and the default was entered based on her failure to file a qualified response or to appear at hearings subsequent to that filing.

Setting Aside a Default Order

A Default Order has been entered against Respondent Sullivan. In the event she was not aware of the order, an additional copy is being provided with this order.

Respondent Sullivan may, however, seek to have the Default Order set aside. To do so, however, requires that she comply with the process set out in the statute and the Utah Rules of Civil Procedure (URCP). The Presiding Officer recognizes that Respondent is acting *pro se*, as her own attorney. Because of this, she was given additional latitude in the proceedings against her. Nevertheless, Respondent Sullivan is still required to comply with the statutory requirements.

Utah Code §63-46b-11(c) provides that a respondent may make a motion to set aside a default order that has been entered and outlines the procedure. First, the request must be made by motion. Second, a motion to set aside a default must satisfy the requirements of the URCP. Third, under URCP Rule 55(c), the respondent must demonstrate “good cause” to set aside the default. Good cause is demonstrated using the factors outlined in URCP Rule 60(b). Fourth, Rule 60(b) says that a court (here, the Presiding Officer) 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).

The Presiding Officer does not view Respondent Sullivan’s March 28 letter as a motion to set aside the default. If she does wish to seek to have the default set aside, she must make a motion satisfying the elements of Rules 55(c) and 60(b). If there is to be a motion to set aside the default, the Presiding Officer will grant Respondent Sullivan thirty days from the date of this order to file her motion, notwithstanding the time limitations of Rule 60(b).² Alternatively, she can contact Division staff and negotiate an agreement to either set aside the default or replace it with a stipulated order.

IT IS SO ORDERED.

DATED this 25th day of June, 2007.

Wayne Klein
WAYNE KLEIN
Director, Presiding Officer



² This additional time period is to provide adequate opportunity for Respondent Sullivan to submit a motion to set aside the default in the event Sullivan was not aware that the default order had been entered.

CERTIFICATE OF SERVICE

The undersigned certifies that on the 28th day of June, 2007 copies of the foregoing Response to Filing from Denise Sullivan Regarding Default (including an additional copy of the Default Order to Respondent Sullivan) as follows:

Hand Delivered

Benjamin Johnson
Division of Securities
160 East 300 South, 2nd Floor
Salt Lake City, UT 84111

Jeff Buckner
Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, UT 84111
Counsel for the Division of Securities

Via U.S. Mail

Denise Sullivan
P.O. Box 11274
Las Vegas, NV 89111
Respondent

PAMALA RADZINSKI