

Altman & Company P.C.
260 Madison Avenue, 22nd Floor
New York, New York 10016
Phone: (212) 683-7600
Fax: (212) 683-7655

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

IN THE MATTER OF:

ROBERT JOHN GRABOWSKI,
CRD #1639890,

Docket No. SD-06-0095

-and-

THE THORNWATER COMPANY, L.P.,

Docket No. SD-06-0096

Respondents.

ANSWER TO ORDER TO SHOW CAUSE

The Thornwater Company, L.P. (“Thornwater”) and Robert John Grabowski (“Grabowski”) (collectively herein referred to as the “Respondents”), by their attorneys, Altman & Company P.C., for their answer to the December 18, 2006 Order to Show Cause (the “Order”) of the Utah Division of Securities (the “Division”) state as follows:

1. Respondents deny the allegations contained in paragraph 1 of the Order.
2. Respondents deny the allegations contained in paragraphs 2, 4 and 5 of the Order as they are incomplete recitations of the facts. Respondents respectfully refer the Division to the document entitled “Stipulation and Consent As to The Thornwater Company,” which was purported to be “accepted, confirmed and approved” by three members of the Utah Securities

Advisory Board on August 16, 2006 (the “Stipulation”), for an accurate statement of the matters alleged in those paragraphs.

3. Respondents deny the allegations contained in the second sentence in paragraph 3 of the Order.

4. Respondents deny the allegations contained in paragraph 6 of the Order and refer to the Stipulation for the full contended terms, conditions and requirements of it.

5. Respondents deny the allegations contained in paragraphs 7 and 9 of the Order.

6. Respondents deny the allegations contained in paragraph 8 of the Order and aver that \$50,000 of the \$100,000 fine has been paid to date by Thornwater to the Division.

AFFIRMATIVE DEFENSES

7. The Order fails to state a claim or cause of action on which the requested relief or any relief can be granted.

8. The Division does not have jurisdiction to bring this action against the Respondents or secure any relief against either of them.

9. Thornwater has paid the Division \$50,000 in fines to date.

10. Thornwater has not materially violated the Stipulation.

11. Grabowski should not be barred from associating with any broker-dealer or investment advisor licensed by the Division because he has complied in all respects with the Stipulation and Consent Order entered as to him and he has in good faith sought to cause Thornwater to comply with if not the letter the spirit of the entirety of the Thornwater Stipulation.

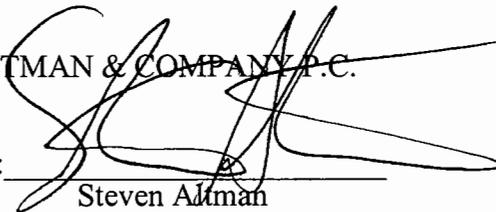
12. The Division has acted in bad faith and with unclean hands in bringing this action and in refusing to permit any flexibility for Thornwater in paying its fine.

13. The Division Director recused himself from hearing and presiding over prior Agency Action against the Respondents as a result of his involvement in prosecuting matters against them; he should similarly recuse himself from this action and the action should be

dismissed.

WHEREFORE, Respondents The Thornwater Company, L.P. and Robert John Grabowski respectfully request that this tribunal enter an order dismissing the Order to Show Cause in all respects or, in the alternative, staying it for 60 days so that Thronwater may complete payment of the amount set forth in the Stipulation, and granting Thornwater and Grabowski such other and further relief as is just and proper.

New York, New York
January 18, 2007

ALTMAN & COMPANY P.C.
By: 
Steven Altman

260 Madison Avenue, 22nd Floor
New York, New York 10016
(212) 683-7600

Attorneys for Respondents
The Thornwater Company L.P. and
Robert John Grabowski

CERTIFICATE OF SERVICE

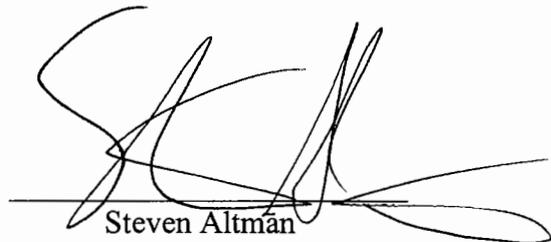
I, Steven Altman, hereby certify that on January 18, 2007, I caused the foregoing Answer to Order to Show Cause and the accompanying Affidavit of Steven Altman to be served:

by Federal Express (Originals with Exhibits) on:

Administrative Court Clerk
c/o Pam Radzinski
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, Utah 84114-6760

and by FedEx (complete copies with Exhibits) and fax (without exhibits) on:

Jeffrey Buckner
Assistant Attorney General
Utah Division of Securities
160 E. 300 South, Fifth Floor
Box 146872
Salt Lake City, Utah 84114-0872



Steven Altman

Altman & Company P.C.
260 Madison Avenue, 22nd Floor
New York, New York 10016
Phone: (212) 683-7600
Fax: (212) 683-7655

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

IN THE MATTER OF:

ROBERT JOHN GRABOWSKI,
CRD #1639890,

Docket No. SD-06-0095

-and-

THE THORNWATER COMPANY, L.P.,

Docket No. SD-06-0096

Respondents.

AFFIDAVIT OF STEVEN ALTMAN

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

STEVEN ALTMAN, being duly sworn, states as follows:

1. I am an attorney licensed to practice law in the State of New York and the principal of Altman & Company P.C., counsel for respondents Robert John Grabowski ("Grabowski") and The Thornwater Company, L.P. ("Thornwater") (collectively, the "Respondents"). I submit this affidavit in response to the December 18, 2006 Order to Show

Cause (the "Order") of the Utah Division of Securities (the "Division") which seeks to bar Mr. Grabowski from associating with any broker-dealer or investment adviser licensed by the Division.

2. The requested relief should be denied because Thornwater has not materially violated any Order of the Division. As shown in the annexed documentary record and explained below, Thornwater has to date paid \$50,000 of the \$100,000 it agreed to pay the Division and has expressly represented that it intends to pay the balance within the next 60 days. Despite those payments and representations, the Division has refused to negotiate in good faith with the Respondents or even discuss any even minor deviation from what they contend is required on the record. Additionally, the Order to Show Cause should be dismissed because it was signed by the Director of the Utah Division of Securities who previously, before recusing himself, sat as an adjudicator in this matter.

Background: The Grabowski and Thornwater Stipulations

3. On August 4, 2006, Mr. Grabowski signed the document entitled Stipulation and Consent Order as to Robert John Grabowski (the "Grabowski Stipulation"), a copy of which is annexed as Exhibit A. The Grabowski Stipulation provided for a full and "Final Resolution" of the matter previously brought before the Division of Securities of the Department of Commerce of the State of Utah bearing Docket No. SD-02-0140. A signed copy of the Grabowski Stipulation was provided to the Division under cover of letter dated August 11, 2006. (See Exhibit B)

4. Mr. Grabowski was required under the terms of the Grabowski Stipulation to pay a fine of \$15,000. The payment by Mr. Grabowski of his fine was not without a scuffle with the Division. In what has turned out to be shades of the Division's now demonstrated heavy handed dealing with the Respondents, the Division demanded payment by Mr. Grabowski before the Grabowski Stipulation was signed by the Division's Securities Advisory Board. (See email threads dated August 15, 2006 between Jeff Buckner on behalf of the Division and Mr.

Rosenberg on Mr. Grabowski's behalf, copies of which are annexed as Exhibit C)

5. Mr. Grabowski thereafter paid his fine in full. Under cover of letter dated September 1, 2006 (a copy of which is annexed as Exhibit D), Mr. Grabowski, through counsel, provided the Division with a certified check in the amount of \$15,000. In that cover letter, my colleague Eric Rosenberg stated that we "trust that it [the enclosed check] is satisfactory and that his [Mr. Grabowski's] business with your office is concluded." The Division did not respond to the contrary.

6. Thornwater was party to a separate document entitled Stipulation and Consent as to The Thornwater Company (the "Thornwater Stipulation"), a copy of which is annexed as Exhibit E. The Thornwater Stipulation provides for, among other things, the payment of a fine of \$100,000 within 90 days of its entry. The reason – unlike the Grabowski Stipulation – payment was not to be immediate was that at the time Thornwater was and had been for some time out of business. That Thornwater had limited assets was a subject openly discussed with the Division.

7. The Division knew and understood that Thornwater intended to pay the fine from monies to be secured with its principal assets: securities in Sky Capital Holdings Ltd. ("Sky Holdings"), a then publically traded company listed on AIM on the London Stock Exchange. Sky Holdings is the parent of Mr Grabowski's present employer, Sky Capital LLC, a New York based broker-dealer and NASD member. Efforts to monetize the Sky Holdings shares, however, were interrupted on and following November 6, 2006, when a search warrant was executed at Sky Capital's offices, and subsequent delisting of Sky Holdings shares.

Thornwater's Good Faith Efforts and Actual Payment of the Fine

8. By letter dated November 14, 2006 (a copy of which is annexed as Exhibit F), counsel for Thornwater wrote to the Division, following up on a conversation earlier that day, seeking its consent to a 90-day extension of Thornwater's time to make the payment. The Division immediately denied that request by letter from Mr. Buckner dated November 15, 2006

(a copy of which is annexed as Exhibit G), seemingly without any consideration and certainly without any dialogue with Thornwater's counsel.

9. Curiously, while Thornwater's November 14 request for an extension was made by fax (due to its urgency), the Division's November 15 response and denial was sent by regular mail and was not received by my firm until December 1, 2006. Upon receipt of the November 15 letter, I immediately called Mr. Buckner. I told him that Thornwater through Mr. Grabowski was making substantial efforts to secure funds to pay the fine, that it intended to pay the fine in full, and asked that the Division not take any action without speaking further with me. Mr. Buckner agreed. (See Exhibit H: as I noted on a copy of Mr. Buckner's November 15 letter: "12/1 - Buckner - will call before doing anything!")

10. Thus, on December 6, 2006, I wrote to Mr. Buckner telling him that Thornwater maintained that it intended to pay the fine in full and that it was then able to do so in four \$25,000 monthly installments starting immediately:

As a result of a confluence of circumstances Thornwater has, as we have informed, encountered some difficulties monetizing assets it intended (and still intends) to use to pay that fine in full.

While Thornwater is not currently able to pay the entire sum it is able to immediately cause the sum of \$25,000 to be paid to the Division (I can probably overnight you a check by the end of the week), and commit to a payout of the balance over three additional months. We ask that you and the Division seriously consider this offer and accept it. Our client will of course be pleased to execute any paperwork that may be necessary in order to effect this, what we believe is a, modest amendment to the parties' agreement.

(Exhibit I) That letter was sent via fax because of its urgency. Mr. Buckner's response again was sent by regular mail.

11. By letter dated December 7, 2006 – which was not received in my office until December 18, 2006 (see Exhibit J: note "rec'd 12/18/06 SA") – Mr. Buckner informed that the Division declined the request made in my December 6 letter. Thornwater submits that Mr. Buckner's mode of communication was an intentional heavy-handed act by the Division carried

out by Mr. Buckner and evidence of a failure by the Division to act in good faith in seeking to enforce its and the State of Utah's rules and regulations.

12. At 7:00 a.m. on December 19, 2006, before I could even respond to the letter received on December 18, I received a voice mail message from Mr. Buckner, stating that the Division was "going to initiate an action today, yesterday or tomorrow" (sic), which I noted on a copy of Mr. Buckner's December 7 letter. (See Exhibit J) I then immediately left Mr. Buckner a return voice mail message and sent him a fax stating:

JEFF:

I received your voice mail at 7 am this morning (so you apparently sent it at 4 or 5 am your time). Please DO NOT INITIATE ANY ACTION AGAINST THORNWATER OR MR. GRABOWSKI as the fine is being paid. Please confirm receipt of this fax asap.

(Exhibit K) Mr. Buckner and the Division have not responded in any way to that fax.

13. In accordance with the representation made in my December 6 letter to Mr. Buckner, on December 19, 2006, Thornwater made the first \$25,000 installment payment to the Division. In the cover letter from me to Mr. Buckner enclosing the \$25,000 check, I confirmed (again) that it is Thornwater's intention to pay the fine in full and (again) asked that the Division not initiate any proceedings:

It is Thornwater's intention to pay the balance due of \$75,000 over the next 90 days (in \$25,000 increments) or sooner. We hope and trust that with this payment and the expected future payments, the Division will deem it appropriate not to initiate any proceedings against Thornwater at this time. As I stated in my December 6 letter, I confirm that my clients will be pleased to execute any paperwork that may be necessary in order to effect this, what we believe is a, modest amendment to the parties' agreement.

(Exhibit L) Mr. Buckner and the Division did not respond to my December 19, 2006 letter, though the check enclosed with it was cashed.

14. The Division's Notice of Agency Action and Order to Show Cause was received by my office during the week of December 25, 2006, while I was out of town on holiday with family.

15. Under cover of letter dated January 17, 2007 (a copy of which is annexed as Exhibit M), Thornwater made the second \$25,000 installment payment to the Division. In that letter, Thornwater reiterated its promise to pay the remaining balance within 60 days, asked the Division to dismiss or stay this action pending final payment, and asked that the letter be deemed an express request to negotiate a settlement:

I am pleased to enclosed a second check payable to the Utah Division of Securities (the "Division") in the amount of \$25,000. This payment is being made toward the \$100,000 due pursuant to the terms of the Stipulation and Consent Order in the above-referenced matter. Upon clearance of these funds, the balance owed by Thornwater will be \$50,000.

As I explained in my December 6 and 19 letters to you and you and I have discussed, it is Thornwater's intention to pay the remaining balance due over the next 60 days (in \$25,000 increments) or sooner. We hope and trust that with this payment and the expected future payments, the Division will deem it appropriate to dismiss or stay the current Agency Action pending that full payment. Thornwater will separately be responding to that Agency Action and Order to Show Cause. Please nevertheless deem this letter to be an express request by Thornwater to "negotiate a settlement" of the matter prior to hearing.

(Exhibit M)

16. Mr. Buckner and the Division did not respond to my January 17 letter so, on January 18, I called him and asked what terms the Division would agree to today to resolve the matter and avoid a hearing. Mr. Buckner hung up on me rudely; then called me back and hung up on me again. Respondents, as of this writing, await the Division's response.

Consequences of Bar to Mr. Grabowski

17. The consequences of a bar for Mr. Grabowski will be catastrophic. He is 39 years old. He has been in the securities business for 20 years, since January 1987. His license in the securities business is the only means he has to support his family, including two school age children, ages eight and 14 years old.

18. Sky Holdings' recent delisting has caused instability for Mr. Grabowski and his employer Sky Capital. While Sky Capital is not licensed in Utah, a bar of Mr. Grabowski

“from associating with any broker-dealer or investment-adviser licensed by the Division” will effectively preclude Mr. Grabowski from employment at virtually any other securities firm. It will be the death knell of his career. Respondents submit such a draconian result is not warranted on this record.

Recusal of the Division Director

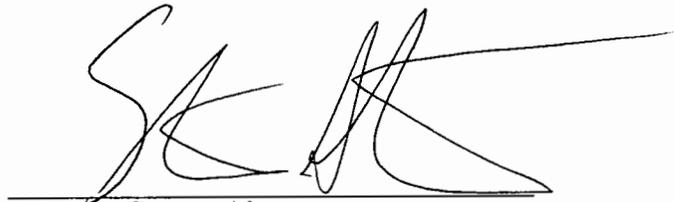
19. A prehearing conference was held on February 27, 2006 in the underlying agency actions against the Respondents. Among the issues addressed at the conference was the Division’s Director role as supervisor to Mr. Buckner and having participated in that capacity in some reviews of the prosecution of those actions.

20. By Prehearing Conference Ruling dated March 14, 2006 (a copy of which is annexed as Exhibit N), the Division Director recused himself from acting as hearing officer.

21. Switching back to a prosecutorial role, the Division Director now in this action has signed the Notice of Agency Action and Order to Show Cause. Respondents submit that the dual roles performed by the Director with respect to them evidences if not actual bias unacceptable perception of bias. Consequently, this action should be dismissed and respondents respectfully ask that the Director recuse himself from any subsequent action or proceeding relating to them.

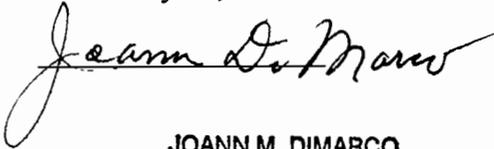
CONCLUSION

22. For all of the foregoing reasons, the Respondents request that this tribunal enter an order dismissing the Order to Show Cause in all respects or, in the alternative, staying it for 60 days so that Thornwater may complete payment of the amount set forth in the Stipulation, and additionally recusing the Director from these matters.



Steven Altman

Sworn to before me
on January 18, 2007



JOANN M. DIMARCO
Notary Public, State of New York
No. 31-01DI5007831
Qualified in New York County
Commission Expires February 8, 2007