

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

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

<p>IN THE MATTER OF:</p> <p>FRANK J. GILLEN</p> <p>Respondent.</p>	<p>STIPULATION AND CONSENT ORDER</p> <p>Docket No. SD-07-0009</p>
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The Utah Division of Securities (the Division), by and through its Director of Enforcement, Michael Hines, and Frank J. Gillen hereby stipulate and agree as follows:

1. Frank J. Gillen was the subject of an investigation by the Division into allegations that he violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. In connection with that investigation, on February 2, 2007, the Division issued an Order to Show Cause to Frank J. Gillen alleging securities fraud and fraudulent practices.
3. Frank J. Gillen and the Division have agreed to settle this matter by way of this Stipulation

and Consent Order.

4. Frank J. Gillen admits to the jurisdiction of the Division over him and over the subject matter of this action.
5. Frank J. Gillen waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

I. THE DIVISION'S INVESTIGATIVE FINDINGS

6. Frank J. Gillen (Gillen) was a resident of Utah at all times relevant to the matters asserted in this action.
7. On April 27, 2005, Gillen solicited an investor, LJ, by e-mail, about an investment in Garb Oil & Power Corporation (Garb Oil¹).
8. In the e-mail, Gillen told LJ that Garb Oil had a contract to ship steel from Russia to China.
9. Gillen also said he had purchased a block of 1.7 million shares of Garb Oil on April 25, 2005, for \$.07, and that the price of the stock had already increased to \$.14-17; that he was going to purchase another block of one million shares of Garb stock, and would start selling it.
10. Gillen told LJ he would sell the Garb stock and he expected to recoup all of his (Gillen's) principal.

¹ Garb Oil & Power Corporation is a publicly-traded Utah corporation.

11. Gillen said he would split evenly with LJ, any profit Gillen received from the sale of the stock.
12. Gillen told LJ the Garb stock sold for \$5 to \$6 per share 15 years ago, and that Gillen believed he and LJ would do well selling the stock.
13. Gillen told LJ he could accept no more than a \$50,000 investment.
14. On April 28, 2005, LJ invested \$30,000 with Gillen, giving him two personal checks. One check was for \$20,000 and the other was for \$10,000. Both were made payable to Gillen, and were mailed to Gillen at his home address in Salt Lake County.
15. After investing, Gillen told LJ to open an account at Alpine Securities so Gillen could transfer shares of the Garb stock to LJ's account.
16. According to Gillen's instructions, LJ opened an account at Alpine Securities on July 12, 2005, but Gillen failed to transfer the shares to LJ's account.
17. Gillen told LJ to open an account at Wilson-Davis.
18. Once again, according to Gillen's instructions, LJ opened an account at Wilson-Davis on August 30, 2005. However, Gillen again failed to transfer the shares to LJ's account.
19. Gillen later told LJ the reason he did not transfer LJ's shares into LJ's Wilson-Davis account was because Gillen had suffered losses with his previous investment, and that by keeping all of the shares of Garb Oil in his account, Gillen could offset his losses with any capital gains realized with the stock.

20. Gillen promised to transfer a Garb Oil promissory note (Garb Note) he was holding into LJ's name, as security for his investment. Gillen told LJ the Garb Note was worth \$30-35,000.
21. LJ called John Brewer (Brewer), the president of Garb Oil, to verify the value of the Garb Oil note.
22. On March 30, 2006, Brewer told LJ, by e-mail, that the Garb Note Gillen had promised to transfer to LJ's account was worth only about \$11,000 instead of the \$30-35,000 represented by Gillen.
23. On March 31, 2006, LJ wrote a letter to Gillen, recounting his conversation with Brewer, and complaining about how Gillen handled LJ's investment.
24. On April 5, 2006, Gillen gave LJ a document entitled "Assignment of Promissory Note," stating that Gillen was assigning Gillen's portion of the Garb Note, valued at approximately \$11,000, to LJ.
25. On or about June 5, 2006, Gillen gave LJ a cashier's check for \$12,363 from monies he received from the Garb Note.
26. On or about November 30, 2006, Gillen gave LJ a promissory note in the amount of \$21,000. The note matured on June 30, 2007, included interest of \$2,100, and was signed by Gillen.
27. Despite several demands, LJ has received no additional payments of principal or interest from his \$30,000 investment with Gillen. LJ is owed \$17,637 in principal alone.

SECURITIES FRAUD

28. In connection with the offer and sale of securities to LJ, Gillen made misrepresentations of material fact, including, but not limited to, the following:
- a. That on April 25, 2005 he purchased 1.7 million shares of Garb stock for \$.07 per share. In fact, Gillen purchased only \$150,000 shares at \$.04 per share;
 - b. That after Gillen purchased 1.7 million shares of Garb stock (in April 2005) the price increased to \$.14-.17. In fact, in April 2005, Garb Stock never sold for more than \$.10;
 - c. That Garb Oil obtained a contract to ship steel from Russia to China;
 - d. That Gillen was going to purchase another block of one million shares of Garb stock;
 - e. That Gillen would recoup all of Gillen's principal invested in Garb stock after reselling the stock; and
29. In connection with the offer and sale of securities to LJ, Gillen failed to disclose material information to investors, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
- a. That Gillen was investigated by the SEC in 1997, and by the NASD in 1999 and 2000, in connection with the sale of stock, and was aware of all three investigations;
 - b. That in 2002, the NASD fined Gillen \$25,000 for selling unregistered securities;
 - c. That in 2003, the NASD revoked Gillen's securities license due to unpaid fines;
 - d. Some or all of the information typically provided in an offering circular or prospectus

regarding Garb Oil, such as:

- i. The business and operating history for Garb Oil;
- ii. Identities of Garb Oil's principals along with their experience in this type of business;
- iii. Garb Oil's financial statements;
- iv. What product Garb Oil sells, and the market for that product;
- v. The nature of the competition for the product;
- vi. Current capitalization of the issuer;
- vii. A description of how the investment would be used by the company;
- viii. The track record of the company to investors;
- ix. Risk factors for investors;
- x. The number of other investors;
- xi. The minimum capitalization needed to participate in the investment;
- xii. The disposition of any investments received if the minimum capitalization were not achieved;
- xiii. The liquidity of the investment;
- xiv. Discussion of pertinent suitability factors for the investment;
- xv. The proposed use of the investment proceeds;
- xvi. Any conflicts of interest the issuer, the principals, or the agents may have

with regard to the investment;

- xvii. Agent commissions or compensation for selling the investment;
- xviii. Whether the investment is a registered security or exempt from registration;
and
- xix. Whether the person selling the investment is licensed.

II. THE DIVISION'S CONCLUSIONS

30. Based on the Division's investigative findings, the Division concludes that:
- a. The investment contract and interest in a promissory note offered and sold by Gillen are securities under § 61-1-13 of the Act;
 - b. Gillen violated § 61-1-1 of the Act by making misrepresentations of material fact and omitting to state material facts in connection with the offer and sale of a security, disclosure of which was necessary in order to make representations made not misleading; and
 - c. Gillen violated § 61-1-1 of the Act by engaging in acts, practices, or courses of business that operate or would operate as a fraud or deceit on LJ.

III. REMEDIAL ACTIONS / SANCTIONS

31. Gillen admits the substance of the Division's investigative conclusions and consents to the sanctions below being imposed by the Division.
32. Gillen represents that any information he has provided to the Division as part of the

Division's investigation of this matter is accurate.

33. Pursuant to Utah Code Ann. § 61-1-6(1)(d) and in consideration of the guidelines set forth in Utah Admin. Code Rule R163-31-1, the Division imposes a fine of \$37,637, with the following provisions:
- a. The fine may be reduced by up to \$17,637 by any restitution paid to the investor within three years from the entry of this Stipulation and Consent Order;
 - b. An additional \$15,000 of the fine will be waived so long as Gillen violates no provisions of the Act between the date of the entry of the Order and January 29, 2013 or until full restitution of the \$17,637 is made, whichever comes first;
 - c. If Gillen materially violates any of the terms of this Stipulation and Consent Order, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due; and
 - d. The remaining fine amount (\$20,000.00 if restitution paid in full) is due to the Division within three years from the entry of this Stipulation and Consent Order.
34. Gillen agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.

IV. FINAL RESOLUTION

35. Gillen acknowledges that this Consent Order, upon approval by the Division Director, shall be the final compromise and settlement of this matter. Gillen further acknowledges that if

the Division Director does not accept the terms of the Consent Order, it shall be deemed null and void and without any force or effect whatsoever.

36. Gillen acknowledges that the Consent Order does not affect any civil or arbitration causes of action that third parties may have against Gillen arising in whole or in part from their actions, and that the Consent Order does not affect any criminal cause of action that a prosecutor might bring.
37. This Consent Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Consent Order in any way.

Utah Division of Securities

Date: 11/10/10

By: [Signature]
Michael Hines
Director of Enforcement

Respondent Gillen

Date: 11/10/10

by: [Signature]
Frank J. Gilken

Approved:

[Signature]
Jeff Buckner
Assistant Attorney General
J.S.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Gillen pay a fine of \$37,637. Each dollar paid by Gillen to the injured investor shall be credited by the Division toward payment of the fine, up to \$17,637 as described in paragraph 39 above. An additional \$15,000 shall be waived from the fine so long as Gillen violates no provisions of the Act between the date of the entry of the Order and January 29, 2013 or until full restitution is made, whichever comes first.

3. If Gillen materially violates any of the terms of this Stipulation and Consent Order, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due. The remaining fine amount (\$20,000 if restitution paid in full) is due to the Division within three years from the entry of this Order.

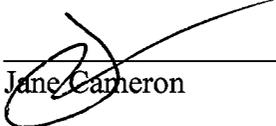
4. Gillen cease and desist from violating the Utah Uniform Securities Act.

BY THE UTAH SECURITIES COMMISSION:

DATED this 20~~th~~ day of January, 2010



Tim Bangerter



Jane Cameron

Erik Christiansen



Laura Polacheck



Michael O'Brien

Certificate of Mailing

I certify that on the 25th day of January 2011, I mailed, by certified mail, a true

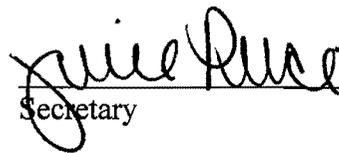
and correct copy of the Stipulation and Consent Order to the Respondents' counsel at:

Frank Gillen
2681 W. Kamas Dr.
Salt Lake City, UT 84118

Certified Mail # 7007 0220 0001 0005 4848

Frank Gillen
2215 Cedar Springs Rd. # 1505
Dallas, TX 75201

Certified Mail # 7007 0220 0001 0005 4831


Secretary