

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
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

IN THE MATTER OF:

WARREN KYLE FOOTE

Respondent.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT

Docket No. SD-07-0053

The Utah Division of Securities (Division) hereby moves for a default judgment against Warren Kyle Foote, based on the following:

1. On August 9, 2007 the Division commenced a formal adjudicative proceeding by issuing an Order to Show Cause (OSC) and Notice of Agency Action (Notice) to Warren Kyle Foote (Foote).
2. On August 13, 2007, the Division mailed, by certified mail, an OSC to Foote, along with a Notice, advising that a default order would be entered if he failed to file a written

response to the OSC within thirty (30) days of the mailing date of the Notice. The Division mailed the OSC and Notice to four possible addresses where Foote might be found, all within Salt Lake County.

3. On or about August 15, 2007, the Division received notice from the United States Postal Service (USPS) that delivery to Foote at the 843 South 1900 East address was unsuccessful.
4. On August 20, 2007 the Division received notice from the USPS that delivery to Foote at the Hollywood Avenue address was unsuccessful.
5. On September 13, 2007, the Division confirmed through the USPS's online track and confirm website, that on August 14, 2007, the OSC and Notice were successfully delivered to Foote's remaining two addresses.
6. At the September 13, 2007 initial administrative hearing Foote did not appear. The presiding officer indicated on the record that he would consider a motion by the Division to default Foote.
7. As of the date of this motion, the Division has not received a response from Warren Kyle Foote.

WHEREFORE, the Division requests that the presiding officer find Warren Kyle Foote in default pursuant to Utah Code Ann. § 63-46b-11(1)© and requests that the presiding officer enter a default order for the Division as follows:

1. That Warren Kyle Foote be adjudged and decreed to have engaged in the acts alleged in the August 9, 2007, OSC, in violation of the Utah Uniform Securities Act;
2. That Warren Kyle Foote be ordered to permanently cease and desist from any violations of the Act; and
3. That Warren Kyle Foote be ordered to pay a fine of one hundred thousand dollars (\$100,000) to the Division.

DATED this 14 day of September, 2007.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL


JEFF BUCKNER
Assistant Attorney General

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

IN THE MATTER OF:

WARREN KYLE FOOTE

Respondent.

AFFIDAVIT OF SERVICE AND NON-
RESPONSE

Docket No. SD-07-0053

I, Pam Radzinski, first being duly sworn, depose and state as follows:

1. I am the Executive Secretary for the Department of Commerce Division of Securities (the Division).
2. As executive secretary for the Division, I am responsible for supervising the mailing of the Division's Orders to Show Cause and for receiving any responses filed by respondents.
3. On August 13, 2007, the Division mailed, by certified mail, an Order to Show Cause (OSC) and Notice of Agency Action (Notice) to Warren Kyle Foote (Foote). The

Division mailed the OSC and Notice to four possible addresses where Foote might be found, all within Salt Lake County.

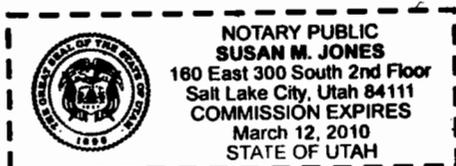
4. On or about August 15, 2007, the Division received notice from the United States Postal Service (USPS) that delivery to Foote at the 843 South 1900 East address was unsuccessful.
5. On August 20, 2007 the Division received notice from the USPS that delivery to Foote at the Hollywood Avenue address was unsuccessful.
6. On September 13, 2007, the Division confirmed through the USPS's online track and confirm website, that on August 14, 2007, the OSC and Notice were successfully delivered to Foote's remaining two addresses.
7. As of the date of this motion, the Division has not received a response from Warren Kyle Foote.

DATED this 17th day of September, 2007.


PAM RADZINSKI
Executive Secretary

SALT LAKE COUNTY)
) ss
STATE OF UTAH)

Signed and subscribed to before me this 17th day of September, 2007.




Notary Public

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

IN THE MATTER OF:

WARREN KYLE FOOTE

Respondent.

NOTICE OF ENTRY OF
DEFAULT AND ORDER

Docket No. SD-07-0053

I. BACKGROUND

A formal adjudicative proceeding was initiated by the Utah Division of Securities' (the Division) Order to Show Cause (OSC) and Notice of Agency Action (Notice) dated August 9, 2007, against Warren Kyle Foote (Foote). The Division has moved for entry of a default judgment against Foote based on his failure to file a written response to the August 9, 2007 OSC, and his failure to appear at the September 13, 2007 initial administrative hearing.

II. FINDINGS OF FACT

1. On August 13, 2007, the Division mailed, by certified mail, an OSC to Foote, along with a Notice, advising that a default order would be entered if he failed to file a written response to the OSC within thirty (30) days of the mailing date of the Notice. The Division mailed the OSC and Notice to four possible addresses where Foote might be found, all within Salt Lake County.
2. On or about August 15, 2007, the Division received notice from the United States Postal Service (USPS) that delivery to Foote at the 843 South 1900 East address was unsuccessful.
3. On August 20, 2007 the Division received notice from the USPS that delivery to Foote at the Hollywood Avenue address was unsuccessful.
4. On September 13, 2007, the Division confirmed through the USPS's online track and confirm website, that on August 14, 2007, the OSC and Notice were successfully delivered to Foote's remaining two addresses.
5. At the September 13, 2007 initial administrative hearing Foote did not appear. The presiding officer, Wayne Klein, indicated on the record that he would consider a motion by the Division to default Foote.
6. The Division has yet to receive a response from Foote.

Investor D. G.

7. In February or March 2006, D. G. attended a real estate seminar held by Foote at a hotel in Salt Lake City, Utah. D. G. was introduced to Foote at the conclusion of the seminar.

8. Foote told D. G. about his success in the business of hard-money lending. Foote and D. G. agreed to meet for lunch at a later date to discuss Foote's investment opportunities.
9. All communication between Foote and D. G. took place in Salt Lake County, Utah.
10. When Foote and D. G. met for a second time, Foote solicited an investment from D. G. in a deal that Foote said had the potential of producing \$5 to \$10 million in profit.
11. D. G. invested \$100,000 with Foote, and shortly thereafter, when Foote was unable to come up with Foote's half of the investment, D. G. asked for his money back.
12. Foote returned D. G.'s \$100,000, and afterwards they maintained a friendship.
13. In June or July 2006, Foote solicited another investment from D. G.
14. Foote told D. G. he had between \$6 and \$8 million invested in small businesses, and if just one of the businesses became a success, Foote stood to make a return of 400% on his investments.
15. Foote told D. G. he would take D. G.'s investment funds and invest in small businesses.
16. Foote said he would pay D. G. a return of 50% per year on the investment.
17. D. G. declined to invest.
18. In mid-July 2006, D. G. met Foote at Foote's office in Salt Lake County.
19. Foote solicited D. G. to invest \$300,000 in a land development project in Idaho (the Idaho Project).
20. Foote said he was going to purchase five lots in Idaho, and that he already had buyers lined up to purchase three of the five lots.

21. Foote told D. G. that Foote would make more from the sale of three of the lots than what Foote would pay for all five.
22. Foote said he would use the remaining two lots as collateral for other land development projects.
23. Foote said he would purchase the five lots within 30 days, and then sell three of the lots within another 60 days.
24. Foote said D. G.'s investment funds would be combined with Foote's funds as a down-payment on the five lots.
25. D. G. declined to invest \$300,000 in the Idaho Project.
26. On or about July 25, 2006, Foote went to D. G.'s home in Salt Lake County, and asked D. G. if he would invest \$30,000 in the Idaho Project.
27. Foote told D. G. that in return for the \$30,000 investment, Foote would pay D. G. a monthly return of 2% and D. G. would also receive 12% of the proceeds from the sale of the three lots.
28. Foote told D. G. he would get his investment back by August 5, 2006 (11 days), and Foote personally guaranteed that the Idaho Project would be a success.
29. Foote showed D. G. the promissory note Foote would give to D. G. if D. G. invested.
30. D. G. told Foote he would invest the \$30,000 in the Idaho Project, but only if Foote's company, Development Partners, LLC¹ (Development) appeared on the titles to the Idaho properties, and only if D. G. would get 12% of Development in the event Foote defaulted on the promissory note.

¹ Development Partners, LLC was registered as a Utah limited liability company on July 19, 2006, and its entity status is currently "active." Foote is the registered agent, and sole manager and member of Development Partners, LLC.

31. Foote agreed to D. G.'s additions, and used D. G.'s computer to edit the promissory note to reflect the changes.
32. The promissory note, dated July 25, 2006, in the amount of \$30,000, states that Foote will pay D. G. \$31,500 on or before July 29, 2006, or \$31,500 plus 2% interest if not paid until August 5, 2006. The promissory note goes on to state that if D. G. is not paid in full by August 5, 2006, D. G. will receive 12% ownership in Development. The promissory note is signed by Foote on behalf of Development.
33. On or about July 25, 2006, D. G. invested \$30,000 in Foote's Idaho Project by giving Foote a cashier's check.
34. On or about August 5, 2006, D. G. Called Foote but was unable to reach him.
35. In the second week of August 2006, Foote called D. G. and told D. G. he planned to pay D. G. his principal and interest, along with 12% ownership in Development.
36. On or about November 30, 2006, Foote gave D. G. a personal check for \$27,000. D. G. was unable to cash the check because Foote's account had been closed.
37. To date, Foote has returned just \$5,000 of D. G.'s investment. D. G. is still owed \$25,000 in principal alone.

Investor S. S.

38. S. S. met Foote while preparing a story about Foote in S. S.'s magazine.
39. After the interview for S. S.'s magazine, S. S. and Foote maintained a friendship.

40. Foote told S. S. he had made money through hard-money lending, and wanted to help people by “sharing the wealth.”
41. In January 2007, Foote asked S. S. to invest in three different investment opportunities. S. S. and Foote had multiple conversations about the investment opportunities, all of which took place in Salt Lake County.
42. S. S. declined, and said she was not ready to invest.
43. In late January 2007, Foote told S. S. he was working on many deals and was too busy to focus on smaller real estate deals, but that he had one last deal in which S. S. could invest.
44. Foote told S. S. the following about the real estate deal:
- a. Foote was part of Development Partners, LLC, which managed investor funds.
 - b. Foote would bring many people into the deal, pool investor money to build up funds, and then use the funds to make hard-money loans.
 - c. Hard-money lending was very much a part of what goes on in the real estate market.
 - d. The investment opportunity in which S. S. could get involved required a pooled amount of \$109,000.
 - e. S. S.’s money would be combined with another investor’s funds to make the full \$109,000.
 - f. There was no risk involved because the investment would be secured by real estate.

- g. S. S. could sell her investment to another investor at any time if she wanted out.
 - h. An individual, R. C., was in need of \$109,000 as a bridge loan until R. C.'s mortgage came through. Foote said R. C. would need the funds for approximately 45 days, and was willing to pay a high rate of interest.
 - i. The real estate deal would close on March 30, 2007, which is when S. S. would get her principal and interest.
 - j. S. S. would make at least \$7,819 from her investment, and if the closing did not take place on March 30, 2007, R. C. would have to pay S. S. \$7,819 per month until the deal closed or S. S. foreclosed on the property.
 - k. Foote would make a commission on the investment.
 - l. Even if S. S. had to foreclose, S. S. would make money on the deal.
 - m. Foote had prior investors, and had made one couple, T. L. and L. L., a lot of money.
45. In February 2007, Foote asked S. S. how much money she could invest.
46. S. S. told Foote she had checked her finances and could get \$50,000 from a home equity loan.
47. Foote agreed to take S. S.'s investment funds, and said another investor would cover the remaining \$59,000 to come up with the total \$109,000 needed.
48. Foote gave S. S. a form to sign, which authorized Development to "oversee the lending of funds to [R. C.]," and included certain restrictions. Some of the restrictions included that S. S. must be named on the title to R. C.'s property, S. S. must receive payment in

full no later than March 30, 2007, and that R. C. must pay 7.5% interest per month. S. S. signed the form, which is dated February 6, 2007.

49. On or about February 6, 2007, S. S. invested by wiring \$50,000 to Foote's bank account.
50. S. S.'s \$50,000 was deposited into Foote's account at Bank of the West on or about February 6, 2007, bringing the account balance to \$47,481.46.
51. Foote used S. S.'s money to pay payroll, commissions, utilities fees, rent, cell phone bills, and to pay money owed to a collection agency.
52. By February 22, 2007, Foote's bank account was closed with a balance of \$0.
53. In early April 2007, Foote gave S. S. three separate documents, entitled "Note Secured by Mortgage," "Statement of Settlement," and "Real Estate Mortgage," after S. S. requested additional documentation of her investment. Each document appears to have been signed by R. C., and all are dated February 6, 2007.
54. On April 18, 2007, after making several demands for Foote to return her investment, Foote met S. S. at a US Bank and gave S. S. two official checks: one for \$7,819 and the other for \$982, both made payable to S.S. The \$7,819 check was for interest due on the investment, and the \$982 was to cover payments S. S. made on the home equity loan she used to invest.
55. As of today's date S. S. is still owed \$41,199 in principal alone and continues to pay interest on her home equity loan.

Misrepresentations and Omissions

56. In connection with the offer and sale of securities, Foote made false statements, including, but not limited to, the following:

- a. Foote told D. G. he was guaranteed to make a return of 2% monthly from an investment in the Idaho Project in 11 days, in addition to 12% of the proceeds from the sale of three lots.
- b. Foote told D. G. he would receive 12% ownership of Development if Foote defaulted on the promissory note.
- c. Foote told S. S. he would bring in many investors, pool their money, and use the funds to make hard-money loans.
- d. Foote told S. S. the project in which she was investing required a pooled amount of \$109,000.
- e. Foote told S. S. there was no risk involved because her investment was secured by real estate.
- f. Foote told S. S. he had made a lot of money for prior investors (T.L. and L.L.), when in fact, by the time S. S. invested, T.L. and L.L. had hired an attorney to try and get their investment back from Foote.
- g. Foote told S. S. her money would be used to provide a bridge loan to R. C., who needed the money until he obtained a mortgage.
- h. Foote told S. S. she would receive at least \$7,819 (approx. 16% return) from her investment, and if the deal did not close on March 30, 2007, R. C. would have to pay S. S. \$7,819 per month until the deal closed or S. S. foreclosed on the property.
- i. Foote told S. S. if she had to foreclose on R. C.'s property, she would still make money on the deal.

- k. Foote told S. S. that she could sell her investment to another investor at any time if she wanted out.
57. In connection with the offer and sale of securities, Foote failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
- a. That Foote filed for bankruptcy on December 1, 2004.
 - b. That when D. G. invested, Foote had unpaid civil judgments against him in the amount of \$2,449.37.
 - c. That when S. S. invested, Foote had unpaid civil judgments against him in the amount of \$8,620.12.
 - d. That Foote would use S. S.'s investment funds for personal expenses.
 - e. That when S. S. invested, Foote had already failed to pay back D. G.'s investment.
 - f. That when S. S. invested, one of Foote's prior investors had hired an attorney to collect invested funds from Foote.
58. Based upon the foregoing, Warren Kyle Foote violated § 61-1-1 of the Act.

III. CONCLUSIONS OF LAW

59. The service of the OSC and the Notice initiating these proceedings is valid upon Warren Kyle Foote.
60. Because Foote failed to file a written response to the August 9, 2007 OSC, and because he failed to appear at the September 13, 2007 initial hearing, he is in default.

61. The promissory note and investment contract offered and sold by Foote to investors are securities under § 61-1-13 of the Act. An investment contract includes “any investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor.” UTAH ADMIN. CODE R164-13-1(B)(1).
62. In connection with the offer and sale of securities, Warren Kyle Foote misrepresented material facts to investors.
63. By this conduct, Warren Kyle Foote violated § 61-1-1 of the Act.
64. In connection with the offer and sale of securities, Warren Kyle Foote failed to disclose material information to investors which was necessary to make the statements made not misleading.
65. By this conduct, Warren Kyle Foote violated § 61-1-1 of the Act.

IV. ORDER

Based on the above, the presiding officer hereby:

1. Declares Warren Kyle Foote in default for failing to file a written response to the August 9, 2007 OSC and for failing to appear at the September 13, 2007 hearing.
2. Enters, as its own findings, the Finding of Fact described in Section II above.
3. Enters, as its own conclusions, the Conclusions of Law described in Section III above.
4. Finds that Warren Kyle Foote violated the Utah Uniform Securities Act by misrepresenting material facts in connection with the offer of a security in or from Utah in violation of § 61-1-1.

5. Finds that Warren Kyle Foote violated the Utah Uniform Securities Act by failing to disclose material information in connection with the offer of a security in or from Utah in violation of § 61-1-1.
6. Orders Warren Kyle Foote to permanently CEASE and DESIST from any violations of the Act.
7. Orders Warren Kyle Foote to pay a fine of one hundred thousand dollars (\$100,000) to the Division, by November 30, 2007.

DATED this 17th day of September, 2007.


WAYNE KLEIN
Director, Division of Securities



Pursuant to § 63-46b-11(3), Respondent may seek to set aside the Default Order entered in this proceeding by filing such a request with the Division consistent with the procedures outlined in the Utah Rules of Civil Procedure.

Certificate of Mailing

I certify that on the 17TH day of September, 2007, I mailed, by certified mail, a true and correct copy of the Notice of Entry of Default and Order to:

Warren Kyle Foote
2150 S. 1300 E. #500
Salt Lake City, UT 84106

Certified Mail # 7005 1820 0003 7190 6069

Warren Kyle Foote
10 W. Broadway, Suite 505
Salt Lake City, UT 84101

Certified Mail # 7005 1820 0003 7190 6076



Executive Secretary