

Ms. Bakerink - on behalf of Respondent - sent an electronic message to the Court on June 16, 2008 after the initial prehearing teleconference had been conducted. Respondent thus inquired whether the July 7, 2008 hearing might be rescheduled and conducted on either June 30, 2008 or July 1, 2008.

Upon review of that request with the Division, the Court notified the parties that the hearing would be rescheduled for June 30, 2008. However, the Division contacted the Court by electronic mail on June 18, 2008 and informed the Court that its expert witness would not be available as to submit her report and prepare for the hearing if it were conducted on June 30, 2008. Sparing extended detail, the hearing was again rescheduled.

An August 5, 2008 hearing was thus conducted before J. Steven Eklund, Administrative Law Judge for the Department of Commerce. Thereafter, evidence was offered and received. At the close of the hearing, the Court took the matter under advisement and informed the parties that it would submit a Recommended Order to the Division and the Securities Advisory Board within 30-45 days for their review and action.

Based on review of the evidence and arguments presented in this proceeding, the Court now enters the following:

FINDINGS OF FACT

1. Respondent is a limited liability company located in San Diego, California. Respondent has been licensed as a broker-

dealer in Utah since January 3, 2006. Respondent applied for licensure as an investment adviser in Utah on January 3, 2006 and became so licensed on February 2, 2007. Respondent is a licensed broker-dealer in 32 states and is licensed as an investment adviser in four (4) states. Ms. Bakerink is Respondent's chief executive officer and chief financial officer. She is also a part owner of that company.

2. SMC Capital Management, Inc. (hereinafter, SMC) is a Utah corporation located in Sandy, Utah and has been a federal-covered investment adviser registered with the United States Securities and Exchange Commission since April 3, 1971. SMC is notice-filed as a federal-covered adviser in Utah.

3. Eagle Gate Securities, Inc. is a dissolved Utah corporation which was located in Salt Lake City, Utah. Eagle Gate Securities, Inc. was licensed in Utah as a broker-dealer and investment adviser until it withdrew both licenses on December 31, 2005.

4. Gary R. Gygi was a licensed broker-dealer agent and licensed investment adviser representative affiliated with Eagle Gate Securities, Inc. from April 29, 2003 until December 31, 2005. Mr. Gygi has been licensed in Utah as a broker-dealer agent affiliated with Respondent since January 4, 2006. Respondent submitted an application to the Division on September 14, 2006, seeking Mr. Gygi's licensure as an investment adviser

representative in this state. The application was approved on February 5, 2007.

5. During its review of Respondent's investment adviser application, the Division determined Mr. Gygi had also been soliciting investment clients for SMC. The Division's review of the Central Registration Depository (CRD) database revealed that Mr. Gygi was not licensed as an investment adviser representative with SMC.

6. Respondent was notified in late November 2005 that Eagle Gate Securities, Inc. was going to cease business. Respondent learned in early December 2005 that four (4) Eagle Gate Securities, Inc. agents were to become affiliated with Respondent. Respondent thus had approximately 29 days to transfer accounts for 600-700 clients of Eagle Gate Securities, Inc. and also transfer the licenses for the four representatives in question.

7. Ms. Bakerink requested Mr. Gygi to review his U-4 and make any necessary changes or corrections. She also met with the four agents on January 12, 2006.

8. Based thereon, Ms. Bakerink believed the four agents were all properly licensed in Utah as broker-dealers. On or about February 14, 2006, Mr. Gygi provided Respondent with a business card which recited he is a "Financial Adviser" with SMC. Ms. Bakerink thus believed Mr. Gygi was licensed in Utah as an

investment advisor representative through his affiliation with SMC.

9. Ms. Bakerink acknowledges a review of Mr. Gygi's U-4, the CRD database and the outside business activity disclosure report would have reflected Mr. Gygi was not licensed as an investment adviser representative. There is no factual dispute that Mr. Gygi was not duly licensed as an investment adviser representative in Utah from January 2006 until February 2007.

10. Ms. Bakerink assumed Mr. Gygi was properly licensed as an investment adviser, given his prior affiliation with Eagle Gate Securities, Inc. and SMC. Ms. Bakerink acknowledges she was not purposefully misled in any respect by Mr. Gygi regarding his licensure status, although his business card should not have recited he was a "Financial Adviser".

11. Ms. Bakerink also acknowledges it was her responsibility to confirm that Mr. Gygi was properly licensed. Ms. Bakerink believes she was compromised in her ability to do so, given the compressed time available to effect the transfer of Mr. Gygi's affiliation from Eagle Gate Securities, Inc. to Respondent's company.

12. The Division initiated an adjudicative proceeding as to SMC on August 23, 2007. The Division thus alleged SMC associated with an unlicensed investment adviser representative (i.e., Mr. Gygi), SMC paid Mr. Gygi solicitation fees totaling \$37,626.94

between January 2006 through September 2006 while he was unlicensed and SMC made misrepresentations and failed to disclose material facts to its clients in that regard.

13. The Division thus sought entry of an \$80,000 fine as to SMC. Pursuant to a March 5, 2008 Order, the Division and SMC settled that proceeding by stipulation to provide for entry of a \$2,500 fine, payable within thirty (30) days of the Order.

14. The Division initiated an adjudicative proceeding as to Mr. Gygi on August 23, 2007. The Division thus alleged Mr. Gygi transacted business as an investment adviser without being duly licensed and he engaged in securities fraud when he failed to disclose to investors that he was not licensed as an investment adviser.

15. Based thereon, the Division thus sought entry of a \$40,000 fine. Pursuant to a June 18, 2008 Order, the Division and Mr. Gygi resolved that case by stipulation to thus provide for entry of a \$4,000 fine, payable within thirty (30) days of the Order.

CONCLUSIONS OF LAW

The Division contends Respondent failed to confirm Mr. Gygi was properly licensed as an investment adviser and Respondent allowed Mr. Gygi to solicit investment clients while he was not duly licensed. The Division asserts Respondent failed to implement and/or enforce policies and procedures reasonably

designed to detect and prevent Mr. Gygi's securities law violations and Respondent failed to reasonably supervise Mr. Gygi. The Division thus seeks entry of a \$5,000 fine.

Respondent acknowledges its supervisory policies require that the licensing status of employees is to be monitored by Ms. Bakerink or her designee. Respondent recognizes that customers should be able to rely that their firm has systems of supervision and internal controls to provide safeguards against inadvertent violations of laws, rules and regulations. Respondent concurs that strict compliance with all laws and regulations which govern the securities industry is paramount.

Respondent concedes it was not proper to assume Mr. Gygi was appropriately licensed, notwithstanding his prior affiliation with Eagle Gate Securities, Inc. and SMC. Respondent acknowledges it should have carefully reviewed Mr. Gygi's status on the CRD database to ascertain and confirm whether he could be properly engaged as investment adviser.

Utah Code Ann. §61-1-6 provides as follows:

(1) Subject to the requirements of Subsections (2) and (3), the director, by means of adjudicative proceedings conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may issue an order:

. . .
(d) imposing a fine....

Section 61-1-6(3) also provides:

Before the director may issue an order under Subsection (1) that . . .imposes a fine, the Securities

Advisory Board shall:

- (a) review the order; and
- (b) if a majority of the Securities Advisory Board approves the order, authorize the director to issue it.

Section 61-1-6(2) further provides:

The director may impose the sanctions in Subsection (1) if the director finds that it is in the public interest and finds, with respect to the...licensee...that the person:

...(j) has failed reasonably to supervise the person's agents or employees if the person is a broker-dealer, or his investment adviser representatives or employees if the person is an investment adviser;... .

Respondent admits it failed to ensure Mr. Gygi was properly licensed as an investment adviser representative during the thirteen (13) months in question. Respondent acknowledges it was aware Mr. Gygi was soliciting investment clients for SMC. The Court finds and concludes Respondent failed to comply with §61-1-6(2)(j). A proper factual and legal basis thus exists to enter a disciplinary sanction as to Respondent's license.

The essential dispute between the parties in this proceeding is the amount of the fine to be imposed. The Division contends Respondent's failure to ensure Mr. Gygi was properly licensed reflects a serious concern because investors should be able to expect proper licensure exists for any person engaged as an investment adviser representative. The Division asserts such licensure provides a threshold level of confidence, coupled with

the appropriate affiliation of the investment adviser representative with a company and adequate supervision by that company of the investment adviser representative.

The Division also asserts the failure to ensure that proper licensure exists presents a significant risk to the investing public. The Division further urges this case represents more than a simple oversight by Respondent. The Division notes Mr. Gygi conducted significant transactions during the thirteen (13) months when he was not duly licensed.

The Division acknowledges it is unaware of any investors who sustained financial harm due to either Mr. Gygi's unlicensed status or Respondent's failure to appropriately ensure he was duly licensed. The Division recognizes Respondent did not obtain any investment advisory fees from Mr. Gygi's unlicensed activities.

The Division concedes Respondent may be properly considered to be the least culpable party when compared to Mr. Gygi and SMC. The Division acknowledges fines of \$4,000 and \$2,500, respectively, were entered as to those parties. Nevertheless, the Division urges a \$5,000 fine is reasonable in this case, considering that Respondent elected to proceed with a hearing rather than resolve the case by agreement with the Division. The Division further suggests that a \$5,000 fine is slightly lenient, given all the circumstances of this case.

Respondent contends its misconduct was neither intentional nor egregious. Respondent acknowledges it failed to discharge its duties to ensure Mr. Gygi was properly licensed. However, Respondent urges no prior disciplinary action has been taken regarding its licensure in this state. Respondent also notes that - in response to the issues presented by this case - it has increased the frequency of monitoring the licensing status of its' employees or individuals affiliated with the company from once a year to every three (3) months.

Respondent asserts a \$5,000 fine is excessive, particularly when compared to the fines imposed as to Mr. Gygi and SMC. Respondent suggests a \$500 fine would be more reasonable, given the circumstances of this case.

The Court readily concurs with the Division's urgency that Respondent had a fundamental duty to confirm Mr. Gygi was properly licensed as an investment adviser representative. Certainly, a similar duty was properly expected of SMC for whom Mr. Gygi effected numerous transactions while he was unlicensed and solicited clients for SMC.

Respondent negligently failed to adequately review Mr. Gygi's licensing status when he became affiliated with Respondent. Despite Respondent's urgency that it had only minimal time to effect the transfer of client portfolios and agents from Eagle Gate Securities, Inc., a sufficient review

process to confirm Mr. Gygi's licensing status would not have been complicated nor required a great amount of time.

There is no evidence Respondent's failure to confirm that Mr. Gygi was duly licensed resulted in any actual injury. The Court recognizes there would have been some potential for harm due to the lack of compliance with licensing requirements.

There are two aggravating circumstances which should be considered in this proceeding. Respondent engaged in multiple offenses when: (1) it became affiliated with Mr. Gygi during such time that he was not duly licensed as an investment adviser representative; and (2) it failed to discharge its supervisory responsibility as to Mr. Gygi when it did not duly ascertain whether he was properly licensed. The Court also notes that a lengthy time elapsed before Mr. Gygi's unlicensed status was detected and it was the Division - rather than Respondent - which ultimately discovered that matter.

The Court finds and concludes there are various mitigating circumstances which should also be duly considered in this proceeding. Respondent has never been subject to any prior disciplinary action. Moreover, there is no evidence Respondent acted with either a dishonest or selfish motive. Further, Respondent has increased the frequency of monitoring the licensing status of its employees and persons affiliated with that company. Such a curative action would likely reduce the

prospects of any lengthy unlicensed activity in the future.

The Court finds and concludes that the aggravating and mitigating circumstances, set forth above, are of relatively equal weight. Significantly, the comparative degree of misconduct by Mr. Gygi, SMC and Respondent should necessarily be considered, particularly given the Division's assessment of Respondent as being the least culpable in those three cases.

The Court concludes there is no proper justification to impose a fine on Respondent greater than the fine imposed as to either Mr. Gygi or SMC. The Court also concludes it is not warranted to impose a \$5,000 fine on Respondent because this case was not otherwise resolved by stipulation and Respondent elected to proceed to a hearing.

The Court concludes Respondents degree of culpability is approximately equivalent to that of SMC, but it is significant Respondent did not realize any financial gains from Mr. Gygi's unlicensed activity during the thirteen (13) months in question. The Court duly acknowledges the appropriateness of the sanction entered in this proceeding is ultimately a matter left for decision by the Division and the Board. According due weight to the factors set forth herein, the Court concludes a \$2,000 fine is appropriate in this proceeding to reflect the relative degree of misconduct by Respondent.

RECOMMENDED ORDER

WHEREFORE IT IS ORDERED, Respondent WBB Securities, LLC shall pay a \$2,000 fine to the Division within thirty (30) days of the date this Recommended Order may be adopted by the Division and the Securities Advisory Board.

Dated this 27th day of October, 2008.


J. Steven Eklund
Administrative Law Judge

I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommended Order were submitted to Keith Woodwell, Director of the Division of Securities, on the 27th day of October, 2008 for his review and action.

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

IN THE MATTER OF

WBB SECURITIES, LLC, CRD #118440

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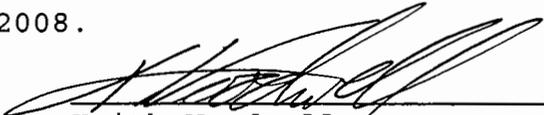
ORDER

: Case Nos. SD-07-0054

BY THE DIVISION:

The Division of Securities hereby accepts, confirms and approves the foregoing Findings of Fact, Conclusions of Law and Recommended Order.

Dated this 30th day of October 2008.

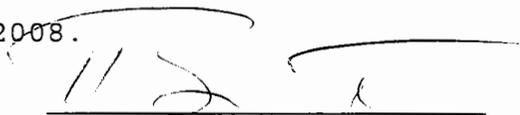


Keith Woodwell
Division Director

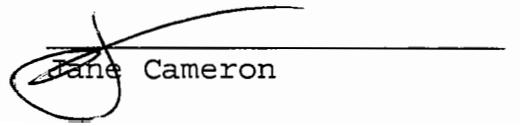
BY THE UTAH SECURITIES ADVISORY BOARD:

The foregoing Findings of Fact, Conclusions of Law and Recommended Order is hereby accepted, confirmed and approved by the Utah Securities Advisory Board.

Dated this 30th day of ~~November~~ ^{OCTOBER} 2008.



Timothy G. Bangerter



Jane Cameron

Laura Polacheck

Mark Pugsley

Craig J. Skidmore

Craig J. Skidmore

Agency review of this Order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, within thirty (30) days after the date of this Order. The laws and rules governing agency review are found in Section 63G-4-301 of the Utah Code and Section R151-46b-12 of the Utah Administrative Code.

CERTIFICATE OF MAILING

I hereby certify that on the 30TH day of OCTOBER, 2008, I mailed a true and correct copy of the Findings of Fact, Conclusions of Law, Recommended Order and Order to WBB Securities, LLC, Attn: M. LaRae Bakerink, 16835 West Bernardo Drive, Suite 203, San Diego CA 92127. A copy of the Findings of Fact, Conclusions of Law, Recommended Order and Order was hand delivered to D. Scott Davis, Assistant Attorney General, 160 East 300 South, Fifth Floor, P O Box 140872, Salt Lake City, UT 84114-0872.

PAMALA RADZINSKI

Pamala Radzinski
Executive Secretary