Division of Securities
Utah Department of Commerce
160 East 300 South, Second Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

| IN THE MATTER OF:<br><br>CANROSE REFINING OF ARIZONA, INC.,<br>MICHAEL D. OSTLER<br><br>Respondents. | AFFIDAVIT OF SERVICE AND NON-RESPONSE<br><br>Docket No. SD-07-0071<br>Docket No. SD-07-0072 |
|---|---|

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, Notice of Agency Action, and for receiving any responses filed by Respondents.

3. On October 12, 2007, the Division mailed, by certified mail, an Order to Show Cause to Canrose Refining of Arizona, Inc. (Canrose), and Michael D. Ostler (Ostler), along with a Notice of Agency Action (Notice).

4. The Notice designated the adjudicative proceeding as formal, and advised them that a default order would be entered if they failed to file a written response to the Order to Show Cause within thirty (30) days of the mailing date of the Notice or appear at a hearing originally set for November 19, 2007.

5. On October 22, 2007, the Order to Show Cause and Notice sent to Canrose were returned to the Division with the word "refused" stamped on the envelope.

6. On November 5, 2007, the Order to Show Cause and Notice sent to Ostler was returned to the Division with the word "unclaimed" stamped on the envelope, showing three attempts to deliver on October 13, 2007, October 26, 2007 and October 31, 2007.

7. On December 4, 2007, the Division mailed another Order to Show Cause and Notice with a new hearing date to Ostler and Canrose by regular mail. The Notice advised them that a default order would be entered if they failed to file a written response to the Order to Show Cause within thirty (30) days of the mailing date of the Notice or appear at a new hearing date set for January 15, 2008.

8. The Order to Show Cause and Notice were not returned.

9. As of the date of this Affidavit, the Division has not received the required response from either Canrose or Oslter, and neither has contacted the Division or counsel for the Division, or appeared at the hearing on January 15, 2008.

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DATED this 11TH day of FEBRUARY 2008.

PAM RADZINSKI
Executive Secretary

SALT LAKE COUNTY )
) ss
STATE OF UTAH )

Subscribed and sworn to before me this 11th day of February, 2008.

Notary Public

NOTARY PUBLIC
SUSAN M. JONES
160 East 300 South 2nd Floor
Salt Lake City, Utah 84111
COMMISSION EXPIRES
March 12, 2010
STATE OF UTAH

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

| | |
|---|---|
| IN THE MATTER OF: | **NOTICE OF ENTRY OF DEFAULT AND ORDER** |
| CANROSE REFINING OF ARIZONA, INC.<br>MICHAEL D. OSTLER,<br><br>Respondents. | Docket No. SD-07-0071<br>Docket No. SD-07-0072 |

## I. BACKGROUND

A formal adjudicative proceeding was initiated by the Division's and Order to Show Cause (OSC) and Notice of Agency Action (Notice) dated October 11, 2007, against Canrose Refining of Arizona, Inc., and Michael D. Ostler (Respondents). A hearing was convened on both November 19, 2007 and January 15, 2008. At the January 15, 2008, the Presiding Officer held Michael D. Ostler and Canrose Refining of Arizona, Inc. in default.

## II. FINDINGS OF FACT

Based on the undisputed averments in the Emergency Order, the Presiding Officer makes the following findings of fact:

1. On October 12, 2007, the Division commenced a formal adjudicative proceeding against Canrose Refining of Arizona, Inc. (Canrose), and Michael D. Ostler (Ostler) by issuing an Order to Show Cause and Notice of Agency Action.

2. On October 12, 2007, the Division mailed, by certified mail, the Order to Show Cause to Canrose and Ostler, along with a Notice, advising them that a default order would be entered if they failed to file a written response to the Order to Show Cause within thirty (30) days of the mailing date of the Notice or appear at a hearing originally set for November 19, 2007.

3. On October 22, 2007, the Order to Show Cause and Notice sent to Canrose were returned to the Division with the word "refused" stamped on the envelope.

4. On November 5, 2007, the Order to Show Cause and Notice sent to Ostler was returned to the Division with the word "unclaimed" stamped on the envelope, showing three attempts at delivery on October 13, 2007, October 26, 2007 and October 31, 2007.

5. On December 4, 2007, the Division mailed another Order to Show Cause and Notice with a new hearing date to Ostler and Canrose by regular mail. The Notice advised them that a default order would be entered if they failed to appear at a new hearing date set for January 15, 2008 or file a written response to the Order to Show Cause within thirty (30) days of the mailing date of the Notice.

6. The Order to Show Cause and Notice of Agency Action were not returned.

7. Neither Canrose nor Ostler filed an answer or any other response, contacted the Division or counsel for the Division, or appeared at the hearing.

8. Canrose Refining of Arizona, Inc. is an Arizona corporation that was registered on August 28, 2002, but was administratively dissolved on March 24, 2005, for failing to file an annual report. Michael D. Ostler was the president and CEO of Canrose. Canrose was never registered as a foreign entity in Utah.

9. Michael D. Ostler resides in Utah County, Utah.

10. In 2003, Ostler solicited advance-fees totaling $130,000 from at least four investors (three from Utah, one from Arizona) as part of Canrose's "lending program." Ostler told investors if they paid an advance-fee, they would receive millions of dollars in funding via a "Letter of Credit" issued by an unnamed European bank.

11. Investors never received the promised Letters of Credit, and Canrose and Ostler failed to refund the advance-fees.

12. Canrose's and Ostler's "lending program" is a security under the Act, either as an "evidence of indebtedness" or an "investment contract."

**Investor JS**

13. In August 2003, in Maricopa County, Arizona, Ostler offered an investment in Canrose's lending program to JS. Ostler told JS and two of her friends the following regarding Canrose's lending program:

    a. JS would receive a Letter of Credit from out of the country;

b. In order to participate in the investment opportunity, JS needed to set up a limited liability company (LLC), and when the LLC was organized and the Letter of Credit was in place, JS and her LLC could draw money against the Letter of Credit and use it any way she deemed appropriate for the LLC, such as making loans, investing, purchasing real estate, or paying debts;

c. The Letter of Credit would be held by Bank One in Arizona in the name of JS or her LLC;

d. When the Letter of Credit matured in two years, JS, her LLC, and Canrose would decide whether to keep or sell the investments made by JS and her LLC;

e. Profit from any investment sold would be split equally between JS and Canrose;

f. The Letter of Credit would arrive at Bank One within 30 days of when JS completed the contracts with Canrose;

g. JS and her LLC would need to pay Canrose $15,000 up-front to obtain the Letter of Credit;

h. JS and her LLC would receive a Letter of Credit for $2.5 million;

i. Canrose was in the gold mining business;

j. Ostler's business partner, a Louis Bilhete, was a multi-billionaire and an expert in Letters of Credit;

k. Bilhete gave Ostler a $2.5 million Letter of Credit in a Texas bank which would mature in January 2005, and Ostler would then receive $2.5 million in cash;

l. Ostler's father, brother, and friends were using Letters of Credit;

m. Other investors' Letters of Credit had already "funded";

n. If JS's Letter of Credit did not "fund," JS would get her money back.

14. Over the next several weeks Ostler instructed JS, via telephone, how to register her LLC. JS was in Arizona during these telephone calls, and Ostler's location varied between Utah, Arizona, and Canada.

15. On September 12, 2003, JS set up and registered Sunrise Investments & Developments LLC (Sunrise), in Arizona as her LLC for the lending program, and opened a bank account for Sunrise at Bank One. Prior to setting up Sunrise, JS had also organized an entity named Sapphire Developments, Inc (Sapphire).

16. On September 12, 2003, JS, as president of Sapphire, entered into an agreement with Canrose (Agreement 1). JS met Ostler at Bank One in Arizona where she and Ostler signed Agreement 1. A bank employee by the name of Ms. DeMarco may have been present as well. Agreement 1 states:

> SAPPHIRE will make an initial capital contribution of Fifteen Thousand Dollars ($15,000) to Sunrise in exchange for Two Million Five Hundred Thousand Dollars ($2,500,000) in letters of credit . . . to be issued in "good funds" to SUNRISE no later than thirty (30) days from the execution date of this Agreement . . .

17. Agreement 1 also states:

> In the event of default . . . , CANROSE agrees to return the entire initial capital contribution amount of Fifteen Thousand Dollars ($15,000) to SAPPHIRE and/or [JS], in her capacity as Director of

> SAPPHIRE, no less that [sic] thirty-seven (7) [sic] days following the execution of this agreement.

18. On September 12, 2003, JS wrote a check for $15,100 drawn on her savings account at Cyprus Credit Union in Utah and deposited the check into Sunrise's bank account at Bank One in Phoenix, Arizona. On September 17, 2003, JS transferred $15,000 from Sunrise's account to Canrose's account at Bank One, by faxing an authorization letter to Ms. DeMarco at Bank One in Phoenix, Arizona.

19. Canrose's account had a balance of $12,714.77 before JS' transfer. JS' transfer brought the account balance to $27,714.77. On September 24, 2003, JS' mother's investment of $40,000 was deposited into Canrose's account. Between September 24 and December 8, 2003, there were more than 230 transactions charged to the account (with no other deposits), leaving the balance at $44.96. Approximately $10,278 was spent on gas, travel and food; $10,402 was withdrawn at ATMs; $6,944 was paid to individuals; $3,312 was spent on utilities; $1,200 went to what appears to be relatives of Ostler; $5,600 was paid to Premier Excavation; $8,000 was transferred to other accounts controlled by Ostler; and $13,752 was spent at Home Depot, P&J Ceramics, Northern Shore, Bedrock Supply, Zeebest Plastics, and Anachemia Science.

20. In October or November 2003, Ostler telephoned JS, and said if JS invested another $5,000, she would receive an $8 million Letter of Credit.

21. On December 2, 2003, Ostler faxed JS a note that said "Please call me. I need to know if you have made your decision or not. This has become a time sensitive issue and I just need to know. Thanks, Michael Ostler 801- . . ."

22. On December 24, 2003, JS signed a second agreement with Ostler (Agreement 2). Agreement 2 states that JS made "an additional capital contribution of Five Thousand Dollars ($5,000.00) to SUNRISE in exchange for Eight Million Three Hundred and Thirty Three Thousand Three Hundred Dollars and Thirty Three cents ($8,333,333.33) in letters of credit . . ."

23. On December 26, 2003, JS invested $5,000 in Canrose, via bank transfer, from Sunrise's account to Canrose's account at Bank One, bringing the account balance to $8,717.08. Of the money deposited into the account, Ostler withdrew $3,210 in cash, spent $210 on fuel, $110 on dining and groceries, and $5,000 was paid to Larry Miller Chevrolet. The balance in the account on January 12, 2004 was negative $1,949.

24. Canrose and Ostler have not returned JS's money, and they still owe her $20,000.

**Investor JW**

25. JW learned about Canrose through a friend, RI, in Salt Lake County. On May 23, 2003, JW gave RI a check for $5,000 to participate in RI's $2.5 million Letter of Credit through Canrose. After discussing the Canrose lending program in more detail with RI, JW learned that Ostler was involved. JW had known Ostler from high school nearly forty years ago.

26. Sometime between May 23 and July 29, 2003, JW drove to Wendover, Utah with her boyfriend to meet with Ostler. Ostler told JW and her boyfriend the following regarding the lending program:

a. The investment was through Louis Bilhete;

b. In order to participate in the program, JW would need to form an LLC with Canrose.

c. For a minimum of $15,000, JW could get $2.5 million in funding for her LLC through a Letter of Credit;

d. JW's $15,000 would be used for "all the expenses involved in setting up the Letter of Credit including attorneys' fees, bank charges, and accounting;"

e. When the Letter of Credit was in place, JW could use it like a line of credit for her LLC, and invest the money in any business venture she wished;

f. After the Letter of Credit had been in place for two years, it would "mature." Once the Letter of Credit matured, profits from JW's investments would be split equally with Canrose;

g. A 3% bank fee payment for the Letter of Credit would also be split between JW and Canrose; and

h. If the $2.5 million Letter of Credit did not arrive, Ostler and Bilhete would "pay back [JW's] investment with a Letter of Credit that was to mature in 2004".

27. JW was excited about the lending program and introduced family members, including her sister and mother, to the program. JW told her sister and her husband, SF and LF, they could invested through JW's LLC.

28. On July 29, 2003, JW borrowed $15,000 from her mother, investor JH, to invest with Ostler.

29. On July 30, 2003, JW collected a $15,000 check from SF and LF and deposited it along with the $15,000 check from her mother into Canrose's account at Bank One branch office in Salt Lake County, Utah, bringing the account balance to $30,772.95.

30. Between July 30 and August 14, 2003, Ostler withdrew approximately $3,330 from ATMs; spent $933 on travel; gave $1,627 to an unknown person; paid $3,337 to T-Mobile; transferred $3,300 to Ostler Mining; gave $4,089 to people who appear to be Ostler's relatives; and paid $3,304 to Wheeler Machinery. On August 14, 2003, the account had a balance of $7,159.39.

31. On August 1, 2003, JW registered J. Hansen Investments, LLC with the Utah Division of Corporations as her LLC to participate in the lending program. JW was a member and registered agent of J. Hansen Investments, LLC, and Canrose Refining of Arizona, Inc. was a member.

32. In return for the $30,000 investment, Ostler promised JW a $7.5 million Letter of Credit, but did not say when she would receive the Letter of Credit.

33. On or about August 15, 2003, JW purchased an official check from Utah Central Credit Union for $2,500 made payable to Canrose, and deposited the check into Canrose's account

at a Bank One branch office in Salt Lake County, along with a $7,500 check from SF and LF made payable to Canrose. JW also made arrangements with RI and Ostler to transfer the $5,000 she gave to RI in May 2003, to JW's Letter of Credit. JW's deposit brought Canrose's account balance to $17,159,39.

34. Between August 15 and 26, 2003, the account balance dropped to $243.63. Ostler withdrew approximately $367 at ATMs; spent $2,199 in travel; gave $787 to people who appear to be relatives of Ostler; gave $2,500 to an unknown person; paid $2,400 to Wheeler Machinery; paid America First Mortgage $470; paid $100 to AGI Insurance; and spent $5,559 on items that could not be identified.

35. On August 18, 2003, JW paid $1,000 as an earnest money deposit on investment property in Mesquite, Nevada. Ostler told JW to proceed with the purchase because her Letter of Credit would be funded in two weeks. When the Letter of Credit did not arrive as promised by Ostler, JW lost her earnest money deposit.

36. In June 2004, JW met with Ostler and Bilhete in Salt Lake City. Also present were RI, SF and LF. At the meeting, Bilhete told JW her money was safe and he was leaving for Europe that week to obtain the funds. Ostler and Bilhete said JW's money was in the bank and would be paid out when the Letters of Credit arrived at a specified bank.

37. JW received none of the promised Letters of Credit and she has requested the return of her money several times in person to Ostler and by e-mail to Ostler and Bilhete.

38. Canrose and Ostler still owe JW $22,500.

**Investors SF and LF, Husband and Wife**

39. In June or July 2003, LF and SF met with Ostler, JW, and JS at JW's home in Salt Lake County. At the meeting, Ostler told the group the following about the lending program:

    a. To participate an investor would need to form an LLC with Canrose;

    b. Ostler and his partner, Louis Bilhete, owned Canrose;

    c. Bilhete was the "money-man" and Bilhete was helping Ostler with the Letters of Credit;

    d. For $15,000 an investor would receive a $2.5 million Letter of Credit which could be used to by the investor and his or her LLC to invest in real estate or other ventures;

    e. The profits received from the LLC's investment(s) would be split equally between the LLC and Canrose; and

    f. The investment was a "sure thing" and there would be no problems.

40. LF and SF discussed the lending program and decided to invest as part of JW's LLC, Sunrise.

41. On July 30, 2003, LF and SF purchased a cashier's check for $15,000 made payable to Canrose Refining of Arizona and gave the check to JW.

42. JW deposited the check into Canrose's account on July 30, 2003, along with JW's investment check of $15,000, bringing the account balance to $30,772.95.

43. Between July 30 and August 14, 2003, Ostler withdrew approximately $3,330 at ATMs; spent $933 on travel; paid $1,627 to an unknown person; paid $3,337 to T-Mobile; transferred $3,300 to Ostler Mining; paid $4,089 to people who appear to be Ostler's relatives; and paid $3,304 to Wheeler Machinery. During this period, there was one deposit of $5,000 from an unknown person. On August 14, 2003, the account had a balance of $7,159.39.

44. On December 12, 2003, LF and SF borrowed $25,000 against their home equity line of credit and deposited it into Canrose's account at a Bank One in Salt Lake County, bringing the balance to $25,044.96. Between December 12 and 24, 2003, no other deposits were made to the account and charges to the account brought the balance down to $3,717.08. Of the charges to the account, approximately $3,260 was withdrawn at ATMs; $928 was spent on food, gas, and travel; $423 was spent at Burlington Coat Factory; $71 was spent on utilities; $3,100 was transferred to other accounts controlled by Ostler; $3,500 was paid to Ostler; $5,000 was spent at Larry Miller Chevrolet; $2,560 was paid to other individuals; and $2,392 was spent on insurance, a passport, taxes and business expenses related to Universal Rewind and Anachemia Science.

45. With each investment Ostler promised larger Letters of Credit. For LF's and SF's investment of $25,000, Ostler promised them a Letter of Credit in the millions of dollars.

46. Canrose and Ostler still owe LF and SF $47,500.

## Investor JH

47. On or about September 24, 2003, during a telephone call, Ostler told JH and her daughter, JW, the following regarding the investment lending program:

    a. The investment was through Louis Bilhete;

    b. To participate, an investor would need to form an LLC with Canrose;

    c. For a $15,000 fee, an investor would receive a $2.5 million Letter of Credit;

    d. The $15,000 fee would be used for expenses involved in setting up the Letter of Credit including attorneys' fees, bank charges, and accounting;

    e. When the Letter of Credit issued, the investor could use it like a line of credit for his or her LLC, and use it for investing or business purposes;

    f. After two years the Letter of Credit would mature and the LLC's profits would be split equally with Canrose along with the obligation to pay a 3% bank fee; and

    g. If the Letter of Credit did not arrive, Ostler and Bilhete would refund an investor's money with a Letter of Credit that was to mature in 2004.

48. Ostler was aware that JH was a 73-year-old widow who lived on a fixed income, and any money she might invest would be drawn on JH's home equity line.

49. Ostler told JH to invest all of the equity in her home with the promise that JH would get her home paid-off in two weeks.

50. According to JW, when she and her mother spoke to Ostler by telephone on September 24, 2003, Ostler was scrambling to get the last bit of money he needed to obtain the Letters of

Credit. Ostler promised JW that her mother would receive a $10 million Letter of Credit for the $40,000 she borrowed on her home equity line of credit.

51. Ostler assured JW there was no way her mother would lose her money. Ostler said, "Trust me [JW], this will be the best thing that ever happened. Everyone will be happy" and "You're taking care of your family."

52. On September 22, 2003, JH and her daughter went to JH's bank to get the home equity loan. The $40,000 check was made payable to Canrose Refining of Arizona.

53. On September 24, 2003, JW deposited her mother's money into Canrose's account at a Bank One branch office in Salt Lake County. The deposit brought Canrose's balance to $57,449.94.

54. Between September 24 and December 8, 2003 there were more than 230 transactions charged to the account, leaving the balance at $44.96. Ostler spent approximately $10,278 on gas, travel and food; withdrew $10,402 at ATMs; paid $6,944 to unknown persons; paid $3,312 on utilities; gave $1,200 to what appears to be relatives of Ostler; paid $5,600 to Premier Excavation; transferred $8,000 to other accounts controlled by Ostler; and spent $13,752 at Home Depot, P&J Ceramics, Northern Shore, Bedrock Supply, Zeebest Plastics, and Anachemia Science.

55. Canrose and Ostler still owe JH $40,000.

<u>Misrepresentations/Omissions and Fraudulent Conduct</u>

56. In connection with the offer and sale of a security to investors, Canrose and Ostler, directly or indirectly, made false statements, including, but not limited to, the following:

a. Investors would need to set up an LLC with Canrose to participate;

b. In return for an advance-fee of $15,000, investors would receive a Letter of Credit for $2.5 million;

c. Investors could draw against the Letter of Credit and use the money however the investor wanted;

d. Profit an investor made from any investment would have to be split equally with Canrose;

e. The investment was through an individual by the name of Louis Bilhete;

f. Ostler told JS her Letter of Credit would arrive within 30 days of executing the agreements with Canrose;

g. Ostler told JS that Canrose was in the gold mining business;

h. Ostler told JS that his business partner, Louis Bilhete, was a multi-billionaire and an expert in Letters of Credit;

i. Ostler told JS that Bilhete gave Ostler a $2.5 million Letter of Credit in a Texas bank which would mature in January 2005, giving Ostler access to the money;

j. Ostler told JS that Ostler's father, brother, and friends were using Letters of Credit;

k. Ostler told JS that other investors' Letters of Credit had already funded and others would soon fund;

l. Ostler told JS if her Letter of Credit did not fund, she would get her money back;

m. Ostler told JW the advance-fee would be used for "all the expenses involved in setting up the Letter of Credit including attorneys' fees, bank charges, and accounting;"

n. Ostler told JW that she would have to split the payment of a 3% bank fee with Canrose;

o. Ostler told JW and JH if the $2.5 million in Letter of Credit did not arrive, Ostler and Bilhete would return their investment with another Letter of Credit that would mature in 2004;

p. Ostler told JH if she invested all of the equity in her home in Canrose's lending program, she could pay-off her home equity loan in two weeks; and

q. Ostler told LF and SF that the investment was a "sure thing."

57. In connection with the offer and sale of a security to investors, Canrose and Ostler, directly or indirectly, 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 Ostler filed for Chapter 7 bankruptcy in 2001, and the case was terminated in 2002 prior to discharge;

b. That Ostler filed for Chapter 13 bankruptcy in 2002, and the case was dismissed in 2003;

c. That Ostler had been sued many times since 1995 and had judgements entered against him totaling more than $300,000;

d. That funds deposited into Canrose's account would not be used for fees associated with obtaining a Letter of Credit, but would be used by Ostler to pay personal expenses;

e. Some or all of the information typically provided in an offering circular or prospectus regarding Canrose Refining of Arizona, Inc., such as:

   i. The business and operating history for Canrose;

   ii. Identities of the principals for Canrose, along with their experience with arranging loans through Letters of Credit;

   iii. Financial statements for Canrose;

   iv. The market for Canrose's service(s);

   v. The nature of the competition for the service(s);

   vi. The current capitalization for Canrose;

   vii. A description of how the investment would be used by Canrose;

   viii. The track record of Canrose 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.

58. Canrose and Ostler engaged in acts, practices, or courses of business that operate or would operate as a fraud or deceit on investors, including, but not limited to, (a) representing to investor JS that her decision to participate in the lending program a second time was time-sensitive, to force her to make a quick decision; and (b) promising investors larger Letters of Credit from larger advance-fees.

## III. CONCLUSIONS OF LAW

Based on the undisputed findings of fact, the Presiding Officer makes the following conclusions of law:

59. The Division has jurisdiction over the subject matter of this action.

60. Service of the Emergency Order and Notice initiating these proceedings is valid upon Canrose and Ostler.

61. Canrose and Ostler are in default for failure to file a written response or otherwise appear and defend.

62. The advance-fee "lending program" offered and sold by Canrose and Ostler to investor JS falls within the definition of a security (evidence of indebtedness) under § 61-1-13 of the Act, because Canrose and Ostler sold JS Agreement 1 and Agreement 2 for substantial consideration, and pursuant to those agreements, JS received what appeared to be an enforceable obligation which contemplated the flow of funds. *See* United States v. Austin, 462 F.2d 724, 736 (10th Cir. 1972).

63. The lending program offered and sold by Canrose and Ostler to all investors is also an investment contract, and therefore a security, 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).

64. Canrose and Ostler violated Utah Code Ann. § 61-1-1(2) by offering or selling the advance-fee "lending program."

65. In connection with the offer or sale of a security, Canrose and Ostler misrepresented material facts to investors.

66. In connection with the offer or sale of a security, Canrose and Ostler failed to disclose material information to investors which was necessary to make the statements made not misleading.

67. By this conduct, Canrose and Ostler violated Utah Code Ann. § 61-1-1(2).

68. Canrose and Ostler engaged in acts, practices, or courses of business that operate or would operate as a fraud or deceit on investors in violation of Utah Code Ann. § 61-1-1(3), including, but not limited to, (a) representing to investor JS that her decision to participate in the lending program a second time was time-sensitive, to force her to make an unnecessarily quick decision; and (b) promising investors larger Letters of Credit from larger advance-fees.

69. By this conduct, Canrose and Ostler violated Utah Code Ann. § 61-1-1(3).

## IV. ORDER

Based on the above, the Director hereby:

1. DECLARES Respondent Canrose Refining of Arizona, Inc., and Michael D. Ostler in default for failure to file the required response to the Order to Show Cause by January 15, 2007.

2. ENTERS, as its own findings, the Findings of Fact described in Section II above.

3. ENTERS, as it own conclusions, the Conclusions of Law in Section III above.

4. FINDS that Canrose Refining of Arizona, Inc. and Michael D. Ostler violated the Utah Uniform Securities Act by:

a. Making material misrepresentations in connection with the offer or sale of securities in the State of Utah in violation of Utah Code Ann. § 61-1-1(2);

b. Omitting to disclose material information in connection with the offer and sale of securities in the State of Utah in violation of Utah Code Ann. § 61-1-1(2); and

c. Engaging in acts, practices, or courses of business that operate or would operate as a fraud or deceit on investors in violation of Utah Code Ann. § 61-1-1(3).

5. ORDERS Canrose Refining of Arizona, Inc., and Michael D. Ostler to permanently CEASE and DESIST from any violations of the Act.

6. ORDERS Canrose Refining of Arizona, Inc., to pay a fine of $250,000 within thirty (30) days of the date of this Order.

7. ORDERS Michael D. Ostler to pay a fine of $250,000 within thirty (30) days of the date of this Order.

DATED this 13TH day of February, 2008.

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 hereby certify that on the 13th day of February 2008, I mailed, by certified mail, a true and correct copy of the forgoing **Affidavit of Service and Non-Response and Notice of Entry of Default and Order** to:

Canrose Refining of Arizona, Inc.
1683 North 400 West
Orem, UT 84057

CERTIFIED MAIL: 7007 0710 0003 0208 1860

Michael D. Ostler
4352 Aspen Cove
Cedar Hills, UT 84062

CERTIFIED MAIL: 7007 0710 0003 0208 1877

Pam Radzinski
Executive Secretary