

D. Scott Davis, #8934
Assistant Attorney General
MARK L. SHURTLEFF, #4666
Utah Attorney General
160 East 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
Telephone: (801) 366-0310
Attorneys for Plaintiff/Petitioner

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

IN THE MATTER OF:

AARON GRAHAM, CRD#3167246

Respondent.

**MEMORANDUM IN RESPONSE TO
RESPONDENT'S MOTION FOR
ISSUANCE OF NON-PARTY
SUBPOENAS**

Docket No. SD-07-0084

The Utah Division of Securities (the Division), through undersigned counsel, hereby responds to the Respondent's motion for issuance of "non-party"¹ subpoenas. The Respondent, Aaron Graham (Graham), seeks "non-party" subpoenas for 1) Manulife Financial Corporation (now John Hancock Life Insurance Company; 2) Raymond James and Associates, Inc.; 3) Merrill Lynch; 4) Morgan Stanley; 5) Jackson National Life; 6) Nielsen Financial Service; 7) AIG Financial Advisers, Inc.; 8) SunAmerica Securities; 9) Cambridge Investment Research, Inc.; 10) UBS Financial Services, Inc.; 11) United Planners Financial Services of America; and 12) Webex Communications, Inc.

¹There is nothing in Utah securities statutes or rules that refer to "non-party" subpoenas.

DIVISION'S RESPONSE

A. Response to Graham's "Background"

The Division opposes and requests this tribunal to strike portions of Graham's "Background" section which deny the allegations in the Division's petition (see paragraph 2 under "Background" page 1, lines 24-26). Graham has already submitted a response denying the substantive allegations of the Division's petition, and denying those allegations again in his motion is unnecessary, self-serving, and irrelevant to the request for "non-party" subpoenas.

Similarly, the Division requests that this tribunal strike page 2, lines 1-10 of Graham's motion. Here Graham makes assertions that are irrelevant, self-serving and irrelevant to his motion, and are wholly unsupported by any evidence. These unsupported assertions are unnecessary in determining whether Graham's motion for issuance of "non-party" subpoenas should be granted or denied in whole or in part.

B. Unopposed "non-party" subpoena requests.

The Division does not oppose Graham's request for "non-party" subpoenas for 1) Manulife Financial Corporation/John Hancock Life Insurance Company; 2) Raymond James & Associates, Inc.; 5) Jackson National Life Insurance Company; 10) UBS Financial Services, Inc.; and 11) United Planners Financial Services of America, Inc. The Division agrees that these entities have information relevant to the issues raised by the Division's petition. The Division has produced all of the information it has received from these entities to Graham, and does not contest Graham's right to see if other additional relevant information/evidence is available from these entities.

C. Opposed non-party subpoena requests.

The Division opposes all of Graham's other requests for "non-party" subpoenas for the reasons that they are irrelevant and immaterial to the issues raised in the pending petition.

ARGUMENT

A. Applicable Authority

Graham's motion is governed by the State of Utah, Department of Commerce, Administrative Procedures Act Rules, R151-46b-9. Nothing in the rule provides for a "motion for issuance of "non-party" subpoenas." Why Graham submitted a motion not provided for by statute or rule is unclear.

Nevertheless, if subpoenas were to be issued to the companies listed in Graham's motion, the Division would move to quash the subpoenas requested for Merrill Lynch, Morgan Stanley, Nielsen Financial Services, AIG Financial Advisers, Inc., SunAmerica Securities, Cambridge Investment Research, and Webex Communications, Inc., because they would be irrelevant to the issues raised in the Division's petition.

B. Relevance

R151-46b-9(1)(a) provides, in part, that "[p]arties may obtain discovery regarding any matter . . . which is relevant to the subject matter . . . " of the proceeding. The subject matter of this proceeding is whether Graham violated Utah securities laws, and committed fraud, by forging investors' signatures on investment or other documents, misrepresented or omitted material facts/information, and/or engaged in unethical or dishonest practices under Utah's securities act. See Petition to Revoke Licenses, Bar Licensee and Impose a Fine, on file with this

tribunal.

Graham asserts, based on the petition's allegations, the Division has made, "without limitation," the investors' "investment histories and experience, risk-tolerance, and purported expressed investment strategy disputed facts of consequence." Graham Motion, page 4. The Division respectfully, and strongly, disagrees.

Graham fails to explain how the investors' histories, experience, risk-tolerance, or investment strategy have anything to do with the causes of action raised in the Division's petition. An investor's investment history, etc., has nothing whatsoever to do with whether Graham violated Utah's securities laws and/or committed fraud, or forged any documents.

Indeed, the only issue to which such information could be relevant is the Division's Third Cause of Action, which includes claims that variable annuities were unsuitable investments for Mrs. Metos and Dr. Bland. In the context of a suitability determination, the degree of relevance of information such as investor history, experience, etc., is delineated based upon information provided to the broker at the time the broker makes the recommendation in question. Accordingly, information not provided to or known by Graham about an investor is completely irrelevant. See FINRA Rule 2310(a) ("In recommending to a customer the purchase, sale, or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."); Utah Admin Code Rule R164-6-1g(C)(3) (suitability determination dependent on whether recommendation "is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, and any other relevant

information known...) (emphasis added). Any discovery pertaining to the suitability claims must be limited in scope to information Mrs. Metos and Dr. Bland provided Graham in the time period preceding the annuity purchases. For this reason, the information sought, to which the Division objects, is irrelevant.

Finally, Graham's assertions of relevance are vague and confusing, and certainly fail to carry his burden of proving relevance.

C. Specific objections to requested subpoenas

1. Merrill Lynch

There is no evidence that Merrill Lynch funds were used to purchase the variable annuities at issue in this case, or that any information from Merrill Lynch is relevant. Monies contained in Mrs. Metos' UBS account were used to purchase the annuities. It may be possible that some funds from Merrill Lynch were transferred into George Metos' account at some point, but when the divorce decree entered, the securities transferred to Mrs. Metos were placed in the UBS account. Graham has been provided the documentation it received from UBS, and the Division does not oppose his request for a subpoena to UBS. Graham provides nothing in support of his bald assertion that information from Merrill Lynch is relevant to the Division's claims, or his defenses. As argued above, an investor's history, etc., is irrelevant to whether Graham violated securities laws and/or committed fraud.

2. Morgan Stanley

Same response as in number 1 above. There is no evidence that any Morgan Stanley funds are at issue in this case, Graham provides nothing in support of his bald assertion that information from Morgan Stanley is relevant to the Division's claims, or his defenses, and an

investor's history, etc., is irrelevant to whether Graham violated securities laws and/or committed fraud. Likewise, whether Athena Metos-Bland and/or Jeff Bland are in anyway connected with Wiley Bland's complaints that Graham forged documents is irrelevant to whether Graham actually forged the documents or not. Moreover, Graham was never an agent of Morgan Stanley, so any information regarding Morgan Stanley's responses to complaints is irrelevant.

3. Nielsen Financial Services

It is irrelevant to the allegations that Graham violated Utah securities laws that Nielsen Financial Services advised an investor that variable annuities could be canceled within 30 days of purchase, or whether she took that advice. The issue is whether Graham so advised her, or otherwise violated securities laws in selling the annuities to the investor.

4. AIG Financial Advisers, Inc.

Graham does not allege when the investors established accounts with AIG. According to Graham, the investors established the AIG accounts after the events raised in the petition occurred, so any investments with AIG are irrelevant to whether Graham violated securities laws during the times alleged in the petition. It is unclear why Graham believes AIG (and SunAmerica Securities, Inc.) have "information related to the purchase and termination of annuity policies, which are the epicenter of this dispute."

5. SunAmerica Securities, Inc.

Same response as number 4. Graham does not allege that any information SunAmerica has is connected with the annuities sold by Graham. Even if SunAmerica has information related to the annuities sold by Graham at issue in this case, the information is irrelevant to whether Graham violated securities laws.

6. Cambridge Investment Research, Inc.

Any information from Cambridge, as Graham notes, would be limited to information after the sale of the annuities at issue in the petition, therefore it is irrelevant.

7. Webex Communications, Inc.

Again, this information post-dates the allegations in the petition and is, therefore, irrelevant. It has nothing to do with whether Graham violated securities laws as alleged in the petition.

CONCLUSION

There is no authority for Graham's motion for issuance of "non-party" subpoenas. Nevertheless, to the extent the motion seeks the issuance of subpoenas for irrelevant information, the Division requests those subpoenas be denied.

RESPECTFULLY SUBMITTED this 29th day of July, 2008.



D. Scott Davis
Assistant Attorney General
Attorney for the Utah Division of Securities

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I personally served a true and correct copy of the foregoing on this 29th day of July, 2008, to the following:

Roshka, DeWulf & Patten, PLC. Attorneys for Respondent One Arizona Center 400 East Van Buren St., Ste. 800 Phoenix, Arizona 85004	Sent via: <input type="checkbox"/> Hand-Delivery <input checked="" type="checkbox"/> Facsimile: (602) 256-6800 <input type="checkbox"/> Mailed (U.S. Mail, postage prepaid) <input type="checkbox"/> Other _____
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