

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> 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**

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**IN THE MATTER OF:**

**DOUGLAS WAYNE MERRITT  
GREGORY KENT HOWELL**

Respondents.

**AFFIDAVIT OF SERVICE AND NON  
RESPONSE**

**Docket No. SD 08-0001  
Docket No. SD 08-0002**

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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 January 9, 2008, I served an Order to Show Cause (OSC) upon Douglas Wayne Merritt along with a Notice of Agency Action (Notice) by mailing a copy by certified mail to 500 W. 290 North #112, Bountiful, UT 84010, advising him 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.

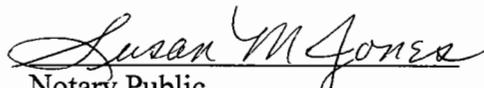
4. The documents were returned as unclaimed on February 11, 2008, and showed three attempts at delivery by the United States Postal Service: January 11, 2007, January 26, 2008 and January 31, 2008.
5. On March 5, 2008, the Division issued another Notice of Agency Action with a new hearing date. The hearing was set for Tuesday April 1, 2008.
6. I re-served the new Notice and OSC upon Douglas Wayne Merritt at the Bountiful address by regular mail.
7. The documents were not returned.
8. As of the date of this Affidavit, the Division has not received a response from Douglas Wayne Merritt.

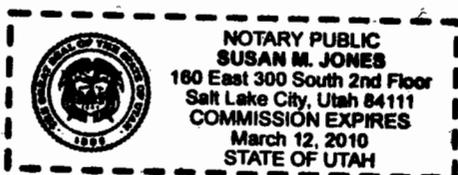
DATED this 28th day of April, 2008.

  
PAM RADZINSKI  
Executive Secretary

SALT LAKE COUNTY     )  
  ) ss  
STATE OF UTAH         )

Signed and subscribed to before me this 28th day of April, 2008.

  
Notary Public



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**IN THE MATTER OF:**

**DOUGLAS WAYNE MERRITT  
GREGORY KENT HOWELL**

Respondents.

**NOTICE OF ENTRY OF DEFAULT  
AND ORDER**

**Docket No. SD 08-0001  
Docket No. SD 08-0002**

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**I. BACKGROUND**

The Division of Securities (Division) initiated a formal adjudicative proceeding against Douglas Wayne Merritt (Merritt) and Gregory Kent Howell (Howell) by issuing an Order to Show Cause and Notice of Agency Action on January 9, 2008. An administrative hearing on the OSC was convened on April 1, 2008. Merritt failed to appear or file a written response. A hearing officer for the Division entered default against Merritt. The Division's action against Howell is still pending.

**II. FINDINGS OF FACT**

1. Douglas Wayne Merritt (Merritt) resides in Davis County, Utah.

2. Gregory Kent Howell (Howell) resides in Salt Lake County, Utah.

#### **GENERAL ALLEGATIONS**

3. From June 2006 to May 2007, Merritt collected at least \$1,218,750 from at least eight investors from Utah, California, Colorado, Florida, and Nevada. The investments made by four of the eleven investors are described below in more detail.
4. Howell assisted Merritt in collecting \$568,750 of the \$1,218,750. In return for Howell's assistance, Howell received commissions totaling \$210,000 from Merritt.

#### The Investment Opportunity: Purchase Options

5. Merritt told investors, if they invested money with him, he would use the money to buy options to purchase high-end homes (Purchase Option) from homeowners who were struggling to sell their homes, and who were willing to sell Merritt a 90-day Purchase Option on their homes.
6. Merritt told investors they would make a profit if he found a buyer for the property. Merritt and the investor would then receive a percentage of the profit.
7. If Merritt did not find a buyer within the 90-days, Merritt told investors they would receive a refund of their principal investment.
8. Investors received a three-page contract outlining the terms of the investment, which included a copy of the Purchase Option with the purported property owners. The contract was between Doug Merritt, GKH Real Estate (Howell's company), and the investor.

9. Investors lost all or most of their money.

Investor TF

10. In early 2006, TF was first introduced to the investment opportunity in Merritt's Purchase Options from Howell, who was TF's investment coach. TF was living in Florida at the time.
11. During several telephone conversations, Merritt, through his agent, told TF the following regarding the investment opportunity:
  - a. TF could invest in Merritt's Purchase Options and earn a profit;
  - b. Merritt had done similar deals in the past;
  - c. TF's money would be used to purchase options on property; and
  - d. The investment had no risk and was "basically fool-proof."
12. On June 2, 2006, TF invested \$50,000 in two of Merritt's Purchase Options (\$25,000 per Purchase Option), by sending the money, via wire transfer, to Merritt's bank account at Golden West Credit Union. The two options covered properties purportedly located in Las Vegas.
13. After making this first investment, TF communicated exclusively with Merritt regarding the investment opportunities.
14. In July 2006, TF received a facsimile from Merritt stating that one of the Las Vegas properties sold, and that TF should roll the profit over into a new Purchase Option on property located in Idaho. Merritt also stated, "With your share from the sale on the

other property \$56,250 you will need to transfer the amount of \$23,750 to reach your total Initial Contribution on the new contract.”

15. On or about August 29, 2006, TF sent \$23,750, via wire transfer, to Merritt’s account at Goldenwest Credit Union, for an investment in a Purchase Option on the Idaho property.
16. On November 2, 2006, Merritt sent TF \$30,000 (\$25,000 principal, \$5,000 profit) from the sale of the second Las Vegas property.
17. On or about November 6, 2006, TF received wire instructions from Merritt, via facsimile, for investment in two new Purchase Options on properties located on Mercer Island, Washington.
18. On November 7, 2006, TF sent \$85,000, via wire transfer, to Merritt’s account at US Bank, to invest in the two Purchase Options on Washington properties.
19. In July 2007, several months after the two Washington Purchase Options had expired (February 1, 2007), TF contacted Merritt to ask for the return of his investment. For several more months, Merritt gave TF excuses as to why he could not pay TF, such as: the IRS froze Merritt’s funds; Merritt had to identify the body of a friend who had died in a fire; and that Merritt’s daughter had been in a car accident and may have to have her leg amputated.
20. Bank records reveal that Merritt used some of TF’s money to pay personal expenses, such as \$12,500 in attorney fees and \$800 to his home owners association. Merritt also withdrew a total of \$50,000 in cash at ATM machines and from bank tellers.

21. Other than the one payment of \$30,000, TF received nothing from his investments in Merritt's Option Contracts, and is still owed \$128,750 in principal alone.

Investor CB

22. In August or September 2006, Merritt, through his agent, introduced investor CB to the investment opportunity with Merritt.
23. The agent told CB that Howell had transacted successful real estate deals with Merritt over the past three years and "everyone had been paid."
24. The agent told CB he would make a high return on his investment if he partnered with Merritt, and then the agent gave CB Merritt's telephone number in Utah.
25. In early September 2006, CB telephoned Merritt to discuss the investment opportunity in more detail.
26. Merritt told CB the following regarding the investment in Purchase Options:
  - a. Merritt had been "doing this stuff for years;"
  - b. Merritt had a land option deal in Banning, California in which CB could invest;
  - c. Merritt and CB could each invest \$150,000 to obtain an option on 65 acres in California;
  - d. When Merritt and CB secured the option, they would annex the land to the city of Banning and then sell the land to a developer;
  - e. Merritt already had a purchaser (KB Homes) interested in buying the property for the purpose of building single family homes;

- f. Once the property sold, Merritt would split the profits less expenses with CB;
  - g. Merritt and CB would each make \$400,000 on the deal;
  - h. The investment was secured by the land; and
  - i. At most it would take eight or nine months to sell the property.
27. On or about September 11, 2006, CB received, via facsimile, a copy of the Purchase Option contract from Merritt through his agent.
28. According to the Purchase Option contract, 50% of the profits would go to Merritt, 15% to the agent's company GKH Real Estate, and 35% to CB.
29. The contract also states that "All funds will be held in [the] escrow account of Douglas W. Merritt until such time that the option is sold or the parties agree to withdraw from the option to purchase agreement. The option is expected to be sold within 6 to 8 months after execution of this contract."
30. On September 21, 2006, CB invested \$150,000 with Merritt, via wire transfer to Merritt's account at US Bank in Bountiful, Utah.
31. When the 6 to 8 months had expired, Merritt gave CB excuses as to why CB had not been paid.
32. In July 2007, after Merritt broke several promises to repay CB, CB's attorney researched Merritt, and found that Merritt had a history of securities fraud.
33. Bank records reveal that between September 21 and October 25, 2006, Merritt withdrew \$110,549 of CB's money from the bank in cash, Merritt withdrew \$4,201.29 at ATM

machines, and he paid miscellaneous personal expenses totaling \$1,757.48.

34. Merritt still owes CB \$150,000 in principal alone.

#### Investor DC

35. In August or September, 2006, investor DC first heard about the investment opportunity with Doug Merritt during a telephone conversation with the agent. DC was at his home office in Utah County and Howell was in Salt Lake County.

36. Merritt, through his agent, told DC the following regarding the investment opportunity:

- a. Merritt had exercised Purchase Options in the past with positive results;
- b. Each Purchase Option period was 90-days in length;
- c. At the end of the Purchase Option period, for each Purchase Option exercised, DC would receive his principal investment plus \$25,000 profit;
- d. If the Purchase Option was not exercised, DC would still receive his principal;  
and
- e. Merritt and his agent would be paid from the profits when the property sold.

37. On October 26, 2006, DC invested \$100,000 in two of Merritt's Purchase Options. DC sent the money, via wire transfer, to Merritt's bank account.

38. Prior to investing, DC told the agent that DC invested using money borrowed against his home.

39. After investing, DC received two Purchase Option contracts, via facsimile, from Merritt's agent.

40. Between October 26 and November 6, 2006, Merritt used some of DC's money to pay prior investors, and some he withdrew in cash.
41. In late April 2007, DC contacted Merritt's agent by telephone to get an update on his investment, and the agent said that Merritt was experiencing some delays, that the parties involved had funds "tied up" with the IRS, and that Merritt was in jail.
42. DC received nothing from his investment in Merritt's Purchase Options, and is still owed \$100,000 in principal alone.

Investor LO

43. In August or September 2006, Merritt's agent first introduced investor LO to the investment opportunity with Merritt.
44. The agent told LO that the agent had known Merritt for about five years, had invested with Merritt in the past, and that he trusted Merritt.
45. Shortly thereafter, LO spoke to Merritt by telephone, while she was in California and Merritt was in Utah.
46. Merritt told LO the following about the investment opportunity:
  - a. Merritt had completed similar investments in the past and made lots of money;
  - b. Merritt had worked for major foreign companies;
  - c. Merritt knew of properties listed for sale in Washington State through real estate agents, and that the agents were unable to sell the properties;
  - d. Merritt knew of property that was under renovation in which LO could invest;

- e. Merritt had an option on the property and he had buyers lined-up;
  - f. Merritt makes money on the spread between the option price and the sale price of the property;
  - g. The minimum investment is \$25,000;
  - h. Invested funds are placed in Merritt's private account so the property owner can verify the funds;
  - i. The property owner is paid for the option only if Merritt sells the property;
  - j. If Merritt does not sell the property the investors money is returned;
  - k. There is no risk of losing invested funds; and
  - l. Merritt had four or five more properties into which LO could invest.
47. On September 14, 2006, LO invested \$50,000 with Merritt, via wire transfer, to Merritt's bank account.
48. Merritt told LO to expect a profit of approximately \$30,000 on her investment by December 8, 2006.
49. On or about September 13, 2006, LO received a copy of the Purchase Option contract, via facsimile, from the agent.
50. The contract stated that the Purchase Option was on a home located in Shoreline, Washington, purportedly owned by a Tom Arvil.
51. After investing, LO was not able to recover any of her money from Merritt, and she is still owed \$50,000 in principal alone.

52. Bank records reveal that Merritt withdrew \$11,000 of LO's money in cash, and paid his attorney \$37,500.
53. The true owner of the Shoreline, Washington home is a Jimmy Victoria, who has owned the home since 2002 and has never heard of Tom Arvil or Merritt.

### **III. CONCLUSIONS OF LAW**

54. The service of the OSC and the Notice initiating these proceedings upon Merritt is valid.
55. Because Merritt failed to file a written response failed to appear at the hearing on April 1, 2008, he is in default.
56. The purchase options and contracts offered and sold by Merritt are investment contracts and, therefore, are securities under § 61-1-13 of the Utah Uniform Securities Act (the Act).
57. In connection with the offer and sale of securities, Merritt misrepresented material facts to investors and failed to disclose material information which was necessary to make the statements made not misleading in violation of § 61-1-1(2) of the Act.
58. Merritt engaged in acts, practices, or courses of business that operate or would operate as a fraud or deceit on an investor in violation of § 61-1-1(3) of the Act.
59. Merritt is not licensed to sell securities in the State of Utah in violation of § 61-1-3 of the Act.
60. Merritt employed unlicensed agents to sell the securities in violation of § 61-1-3.
61. The security is not registered in violation of § 61-1-7.

#### **IV. ORDER**

Based on the above, the Director hereby:

1. Declares Douglas Wayne Merritt in default for failing to file a written response to the OSC of January 9 , 2008 and for failing to appear at the April 1, 2008 initial 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 Douglas Wayne Merritt violated the Utah Uniform Securities Act by misrepresenting material facts in connection with the offer and sale of a security in or from Utah in violation of § 61-1-1(2).
5. Finds that Douglas Wayne Merritt violated the Utah Uniform Securities Act by omitting to disclose material information in connection with the offer and sale of a security in or from Utah in violation of § 61-1-1(2).
6. Finds that Douglas Wayne Merritt violated the Utah Uniform Securities Act by engaging in acts, practices, or courses of business that operate or would operate as a fraud or deceit on an investor in violation of § 61-1-1(3).
7. Finds that Douglas Wayne Merritt is not licensed to sell securities in the State of Utah and employed unlicensed agents in violation of § 61-1-1(3).
8. Finds that Douglas Wayne Merritt offered or sold unregistered securities in the State of Utah in violation of § 61-1-7.
9. Orders Douglas Wayne Merritt to permanently CEASE and DESIST from any violations

of the Act.

10. Orders Douglas Wayne Merritt to pay a fine of \$1,718,750 to the Division by June 30, 2008.

DATED this 29<sup>th</sup> day of April 2008.

  
THAD LEVAR  
Acting 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 30th day of April 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:**

Douglas Wayne Merritt  
500 West 290 North #112  
Bountiful, UT 84010

CERTIFIED MAIL: 7004 1160 0003 0195 6665



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Pam Radzinski  
Executive Secretary