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

IN THE MATTER OF: **DOUGLAS WAYNE MERRITT** **GREGORY KENT HOWELL** **Respondents.**	**ORDER TO SHOW CAUSE** **Docket No.** SD-08-0001 **Docket No.** SD-08-0002

It appears to the Director of the Utah Division of Securities (Director) that Douglas Wayne Merritt and Gregory Kent Howell (Respondents) may have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over the Respondents and the subject matter is appropriate because the Division alleges that Respondents violated §§ 61-1-1 (securities fraud / fraudulent

practices), 61-1-3 (sale by unlicensed agent / employing unlicensed agent), and 61-1-7 (sale of unregistered securities) of the Act while engaged in the offer and sale of securities in Utah.

STATEMENT OF FACTS

THE RESPONDENTS

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

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

GENERAL ALLEGATIONS

4. 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.

5. 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

6. Merritt and Howell told investors, if they invested money with Merritt, Merritt 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.

7. Merritt and Howell told investors they would make a profit if Merritt found a buyer for the property. Merritt, Howell, and the investor would then receive a percentage of the

profit.

8. If Merritt did not find a buyer within the 90-days, Merritt and Howell told investors they would receive a refund of their principal investment.

9. 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.

10. Investors lost all or most of their money.

Investor TF

11. 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, and Howell was in Utah.

12. During several telephone conversations, Howell 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."

13. 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.

14. After making this first investment, TF communicated exclusively with Merritt regarding the investment opportunities.

15. 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."

16. 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.

17. On November 2, 2006, Merritt sent TF $30,000 ($25,000 principal, $5,000 profit) from the sale of the second Las Vegas property.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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

23. In August or September 2006, Howell introduced investor CB to the investment opportunity with Merritt.

24. Howell told CB that Howell had transacted successful real estate deals with Merritt over the past three years and "everyone had been paid."

25. Howell told CB he would make a high return on his investment if he partnered with Merritt, and then Howell gave CB Merritt's telephone number in Utah.

26. In early September 2006, CB telephoned Merritt to discuss the investment opportunity in more detail.

27. 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.

28. On or about September 11, 2006, CB received, via facsimile, a copy of the Purchase Option contract from Howell, who had received it from Merritt.

29. According to the Purchase Option contract, 50% of the profits would go to Merritt, 15% to Howell's company GKH Real Estate, and 35% to CB.

30. 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."

31. On September 21, 2006, CB invested $150,000 with Merritt, via wire transfer to Merritt's

account at US Bank in Bountiful, Utah.

32. When the 6 to 8 months had expired, Merritt gave CB excuses as to why CB had not been paid.

33. 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.

34. 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.

35. Merritt and Howell still owe CB $150,000 in principal alone.

Investor DC

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

37. Howell 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. Howell and Merritt would be paid from the profits when the property sold.

38. 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.

39. Prior to investing, DC told Howell that DC invested using money borrowed against his home.

40. After investing, DC received two Purchase Option contracts, via facsimile, from Howell.

41. Between October 26 and November 6, 2006, Merritt used some of DC's money to pay prior investors, and some he withdrew in cash.

42. In late April 2007, DC contacted Howell by telephone to get un update on his investment, and Howell said that Merritt was experiencing some delays, that the parties involved had funds "tied up" with the IRS, and that Merritt was in jail.

43. DC received nothing from his investment in Merritt's Purchase Options, and is still owed $100,000 in principal alone.

Investor LO

44. In August or September 2006, Howell first introduced investor LO to the investment opportunity with Merritt.

45. Howell told LO that Howell had known Merritt for about five years, had invested with Merritt in the past, and that he trusted Merritt.

46. Shortly thereafter, LO spoke to Merritt by telephone, while she was in California and Merritt was in Utah.

47. 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.

48. On September 14, 2006, LO invested $50,000 with Merritt, via wire transfer, to Merritt's bank account.

49. Merritt told LO to expect a profit of approximately $30,000 on her investment by December 8, 2006.

50. On or about September 13, 2006, LO received a copy of the Purchase Option contract, via facsimile, from Howell.

51. The contract stated that the Purchase Option was on a home located in Shoreline, Washington, purportedly owned by a Tom Arvil.

52. After investing, LO was not able to recover any of her money from Merritt, and she is still owed $50,000 in principal alone.

53. Bank records reveal that Merritt withdrew $11,000 of LO's money in cash, and paid his attorney $37,500.

54. 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.

CAUSES OF ACTION

COUNT I
Securities Fraud under § 61-1-1 of the Act
(Douglas Wayne Merritt and Gregory Kent Howell)

55. The Division incorporates and re-alleges paragraphs 1 through 54.

56. The Purchase Options offered and sold to investors by Merritt and Howell are investment contracts, and therefore 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; or . . . any investment by which . . . an offeree furnishes initial value to an offerer; . . . a portion of this initial value is subjected to the risks of the enterprise; . . . the

> furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and . . . the offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.

UTAH ADMIN. CODE R164-13-1(B)(1)(a) and 1(b).

57. In connection with the offer and sale of securities to investors, Merritt and Howell, directly or indirectly, made false statements, including, but not limited to, the following:

a. Investor money would be used to buy Purchase Options, when, in fact, investor money was used to pay Merritt's personal expenses, to pay commissions to Howell, and to pay prior investors;

b. Purchase Options were purchased from home owners who were having difficulty selling, when in fact, Merritt fabricated the names of the sellers listed on the Purchase Options, because in reality there were none;

c. If the property did not sell, Merritt would return the principal investment to the investors;

d. Merritt told investor CB and LO that Merritt already had a purchaser interested in buying the subject property;

e. Merritt told CB that if the property sold, Merritt and CB would each make $400,000 in profits;

f. Merritt told CB that his investment was secured by the property;

g. Merritt told DC that he would make a profit of $25,000 from the sale of each property; and

h. Merritt told TF and LO the investment had no risk.

58. In connection with the offer and sale of securities to investors, Merritt and Howell, 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 Merritt had an extensive history of civil litigation which produced several unpaid civil judgments including a 1996 judgment for $5,300,000 and a 1997 judgment for $399,782;

b. That in 2004, Merritt was charged with three counts of securities fraud, one count of selling as an unlicensed agent, and one count of selling an unregistered security, and these charges were pending when investors placed money in Merritt's Purchase Options; and

c. That in 1997 Merritt was charged criminally with securities fraud, which resulted in Merritt being committed to prison and ordered to pay restitution, after entering into a plea agreement.

59. Based upon the foregoing, Douglas Wayne Merritt and Gregory Kent Howell violated § 61-1-1 of the Act.

COUNT II
Fraudulent Practices under § 61-1-1(3) of the Act
(Douglas Wayne Merritt)

60. The Division incorporates and re-alleges paragraphs 1 through 54.

61. Douglas Wayne Merritt 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, signing Purchase Options on behalf of fictional sellers of property, and then providing those Purchase Options to investors as evidence that Merritt had entered into an agreement with a seller which may result in a profit to the investor.

62. Based upon the foregoing, Douglas Wayne Merritt violated § 61-1-1 of the Act.

COUNT III
Employing an Unlicensed Agent under § 61-1-3 of the Act
(Douglas Wayne Merritt)

63. The Division incorporates and re-alleges paragraphs 1 through 54.

64. Merritt employed or engaged unlicensed agent, Howell, to offer and sell securities in Utah.

65. Based upon the foregoing, Douglas Wayne Merritt violated § 61-1-3 of the Act.

COUNT IV
Sale by Unlicensed Agent under § 61-1-3 of the Act
(Gregory Kent Howell)

66. The Division incorporates and re-alleges paragraphs 1 through 54.

67. Howell offered or sold securities in or from Utah.

68. When offering and selling these securities on behalf of Merritt, Howell was acting as an

agent of an issuer.

69. Howell has never been licensed to sell securities in Utah as an agent of this issuer, or any other issuer.

70. Based upon the foregoing, Gregory Kent Howell violated § 61-1-3 of the Act.

COUNT V
Sale of Unregistered Securities § 61-1-7 of the Act
(Douglas Wayne Merritt and Gregory Kent Howell)

71. The Division incorporates and re-alleges paragraphs 1 through 54.

72. Merritt and Howell offered and sold securities in or from this state.

73. The securities offered and sold by Merritt and Howell were not registered under the Act, and Respondents did not file any claim of exemption relating to the securities.

74. Based upon the foregoing, Douglas Wayne Merritt and Gregory Kent Howell violated § 61-1-7 of the Act.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders the Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur on Monday, February 25, 2008, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If the Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold

Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63-46b-11. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, the Respondents may show cause, if any they have:

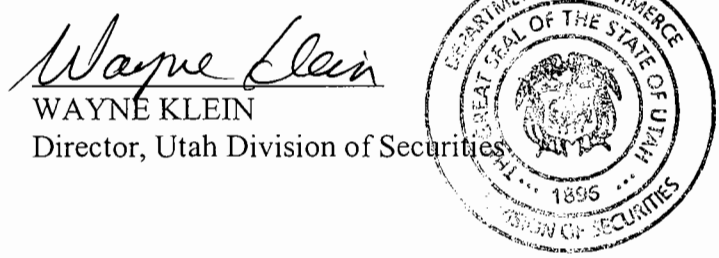
a. Why Douglas Wayne Merritt and Gregory Kent Howell should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;

b. Why Douglas Wayne Merritt and Gregory Kent Howell should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act;

c. Why Douglas Wayne Merritt should not be ordered to pay a fine of $1,718,750 to the Division, which may be reduced by restitution paid to the victims; and

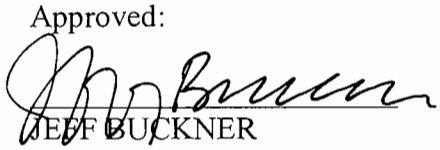
d. Why Gregory Kent Howell should not be ordered to pay a fine of $593,750 to the Division, which may be reduced by restitution paid to the victims.

DATED this 9th day of January, 2008.



WAYNE KLEIN
Director, Utah Division of Securities

Approved:



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D. P.

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

IN THE MATTER OF: **DOUGLAS WAYNE MERRITT** **GREGORY KENT HOWELL** **Respondents.**	**NOTICE OF AGENCY ACTION** **Docket No.** SD-08-0001 **Docket No.** SD-08-0002

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of the Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the mailing date of this notice, you are required to file an Answer with the Division. The Answer must include the information required by Utah Code § 63-46b-6 (1). In addition, you are required by § 63-46b-6 (3) to state: a) by paragraph, whether

you admit or deny each allegation contained in the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission; b) any additional facts or documents which you assert are relevant in light of the allegations made; and c) any affirmative defenses (including exemptions or exceptions contained within the Utah Uniform Securities Act) which you assert are applicable. To the extent that factual allegations or allegations of violations contained in the Order to Show Cause are not disputed in your Answer, they will be deemed admitted.

Your Answer, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:	A copy to:
Administrative Court Clerk c/o Pam Radzinski Division of Securities 160 E. 300 S., Second Floor Box 146760 Salt Lake City, UT 84114-6760 (801) 530-6600	Jeff Buckner Assistant Attorney General 160 E. 300 S., Fifth Floor Box 140872 Salt Lake City, UT 84114-0872 (801) 366-0310

A hearing date has been set for Monday, February 25, 2008, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah.

If you fail to file an Answer, as set forth herein, or fail to appear at the hearing, the Division of Securities may hold you in default, and a fine and other sanctions may be imposed

against you in accordance with Utah Code Ann. § 63-46b-11, without the necessity of providing you with any further notice. In lieu of default, the Division may decide to proceed with the hearing under § 63-46b-10. At the hearing, you may appear and be heard and present evidence on your behalf. You may be represented by counsel during these proceedings.

The presiding officer in this case is Wayne Klein, Director, Division of Securities. Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to the Division's attorney, Jeff Buckner, at (801) 366-0310.

DATED this 9th day of January, 2008.

WAYNE KLEIN
Director, Utah Division of Securities

Certificate of Mailing

I certify that on the 10TH day of January, 2008, I mailed, by certified mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

Douglas Wayne Merritt
500 W. 290 N. #112
Bountiful, UT 84010

Certified Mail # 70070710 0003 02081624

Gregory Kent Howell
9545 South Stornoway
South Jordan, Utah 84095

Certified Mail # 70070710 0003 02081631

PAMALA PADZINSKI
Executive Secretary