Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

BEFORE THE DIVISION OF SECURITIES

OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

| IN THE MATTER OF: | AFFIDAVIT OF SERVICE AND NON-RESPONSE |
|---|---|
| DOUGLAS WAYNE MERRITT<br>**GREGORY KENT HOWELL**<br><br>Respondents. | Docket No. SD-08-0001<br>**Docket No. SD-08-0002** |

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, the Division mailed, by certified mail, an Order to Show Cause (OSC) to Gregory Kent Howell, along with a Notice of Agency Action (Notice) advising 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. On January 16, 2008, the Division received notice from the United States Postal Service that Howell received, and signed for, the OSC and Notice.

5. As of today's date, the Division has not received a response from Howell.

DATED this 10TH day of March, 2008.

PAM RADZINSKI
Executive Secretary

SALT LAKE COUNTY )
) ss
STATE OF UTAH )

Signed and subscribed to before me this 3rd day of March, 2008.

Notary Public

NOTARY PUBLIC
CHRISHEL JAMES
160 East 300 South 2nd Floor
Salt Lake City, UT 84114-6760
COMMISSION EXPIRES
September 9, 2010
STATE OF UTAH

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH

| IN THE MATTER OF: | DEFAULT ORDER |
|---|---|
| DOUGLAS WAYNE MERRITT<br>**GREGORY KENT HOWELL**<br><br>Respondents. | Docket No. SD-08-0001<br>**Docket No. SD-08-0002** |

## I. BACKGROUND

A formal adjudicative proceeding was initiated by the Division's Order to Show Cause (OSC) and Notice of Agency Action (Notice) dated January 9, 2008, against Douglas Wayne Merritt and Gregory Kent Howell. At a hearing on February 25, 2008, the presiding officer found Gregory Kent Howell in default for failing to file a response to the OSC, and for failing to appear at the hearing. The administrative action against Douglas Wayne Merritt is currently pending.

## II. FINDINGS OF FACT

1. On January 9, 2008, the Division mailed, by certified mail, an Order to Show Cause (OSC) to Gregory Kent Howell (Howell), along with a Notice of Agency Action (Notice) advising 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.

2. On January 16, 2008, the Division received notice from the United States Postal Service that Howell received, and signed for, the OSC and Notice.

3. As of today's date, Howell has not filed a written response or answer to the OSC.

4. Howell resides in Salt Lake County, Utah.

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

6. From June 2006 to May 2007, Howell assisted Merritt in collecting $568,750 from at least four investors from Utah, California, and Florida. In return for Howell's assistance, Howell received commissions totaling $210,000 from Merritt.

The Investment Opportunity: Purchase Options

7. 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.

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

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

10. 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.

11. Investors lost all or most of their money.

Investor TF

12. In early 2006, TF was first introduced to the investment opportunity in Merritt's Purchase Options by Howell, who was TF's investment coach. TF was living in Florida at the time, and Howell was in Utah.

13. 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."

14. 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.

15. After making this first investment, TF communicated exclusively with Merritt regarding the investment opportunities, and invested an additional $108,750.

16. 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.

17. 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

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

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

20. 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.

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

22. 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.

23. 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.

24. 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."

25. On September 21, 2006, CB invested $150,000 with Merritt, via wire transfer to Merritt's account at US Bank in Bountiful, Utah.

26. 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.

27. 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.

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

Investor DC

29. 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.

30. 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.

31. 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.

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

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

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

35. 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.

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

Investor LO

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

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

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

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

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

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

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

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

45. 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

46. The service of the OSC and the Notice of Agency Action initiating these proceedings is valid upon Howell.

47. Because Howell did not file an answer, written response, or otherwise appear, he is in default.

48. The Purchase Options offered and sold to investors by Howell are investment contracts, and therefore securities, under § 61-1-13 of the Act.

49. In connection with the offer and sale of securities, Howell made untrue statements of material fact to the investors.

50. By this conduct, Howell violated § 61-1-1(2) of the Act.

51. In connection with the offer and sale of securities, Howell omitted to state to the investors various material facts which were necessary to make the statements made not misleading.

52. By this conduct, Howell violated § 61-1-1(2) of the Act.

53. Howell offered or sold securities in or from Utah on behalf of Merritt. Howell has never been licensed to sell securities in Utah.

54. By this conduct, Howell violated § 61-1-3 of the Act.

55. Howell offered and sold securities in or from this state that were not registered under the Act, and Howell did not file any claim of exemption relating to the securities.

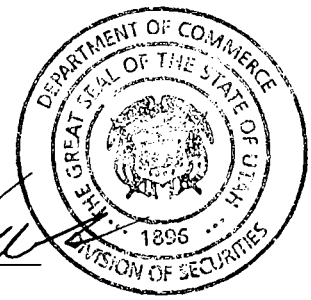
56. By this conduct, Howell violated § 61-1-7 of the Act.

## IV. ORDER

Based on the above, the Director hereby:

1. Declares Howell in default for failing to respond to the OSC and Notice issued January 9, 2008.
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 describe in Section III above.
4. Finds that Howell violated the Utah Uniform Securities Act by:
   a. Making material misrepresentations in connection with the offer and sale of a security in Utah in violation of § 61-1-1(2);
   b. Omitting material information in connection with the offer and sale of a security in Utah in violation of § 61-1-1(2);
   c. Selling securities in or from Utah without a license in violation of § 61-1-3; and
   d. Selling unregistered securities in or from Utah in violation of § 61-1-7.
5. Orders Howell to permanently CEASE and DESIST from any violations of the Act.
6. Orders Howell to pay a fine of five hundred ninety three thousand seven hundred fifty dollars ($593,750) to the Division.

DATED this 12TH day of March, 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 13th day of March 2008, I mailed, by certified mail, a true and correct copy of the forgoing **Affidavit of Service and Non-Response and Default Order** to:

Gregory K Howell
9545 S Stornoway
South Jordan UT 84095

CERTIFIED MAIL: 7004 1160 0003 0195 6382

Pam Radzinski
Executive Secretary