

Division of Securities
Utah Department of Commerce
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:

**ADVANCED TRADING SOLUTIONS, LLC,
DARIN LAYNE KRACL,**

Respondents.

**STIPULATION AND CONSENT
ORDER:**

**Docket No. SD-08-0018
Docket No. SD-08-0019**

The Utah Division of Securities (Division), by and through its Director of Enforcement, Michael Hines, and Advanced Trading Solutions, LLC (ATS) and Darin Layne Kracl (Kracl), hereby stipulate and agree as follows:

1. Respondents were the subject of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. In connection with that investigation, the Division issued an Order to Show Cause against Respondents on February 5, 2008, alleging securities fraud. Criminal charges were also filed

against Kracl in connection with the investigation.¹

3. Respondents waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.
4. Respondents also acknowledge that this stipulation and consent order does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
5. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

6. Advanced Trading Solutions, LLC (ATS) is a Utah limited liability company in good standing. ATS filed its articles of organization on September 27, 2006, and its current corporate status is "active." Darin Layne Kracl is a member of ATS.
7. Darin Layne Kracl (Kracl) resides in Salt Lake County, Utah.

GENERAL ALLEGATIONS

8.

From January through May 2007, Kracl collected approximately \$6.9 million in investment funds

¹*State of Utah v. Darin Layne Kracl*, Case No. 081901383, Third Judicial District Court of Utah (2008). Kracl later pleaded guilty to one count of securities fraud, a second degree felony. Kracl agreed to a restitution judgment of \$4,680,548 on June 22, 2009.

from two Utah investors.

9. Starting in February 2007, investors JC and LR raised money from other investors through a registered securities offering.
10. JC and LR planned to use their own personal funds, along with the money raised from their securities offering, to invest in foreign exchange (forex) trading.
11. JC and LR were introduced by a third party to Kracl, as someone who could arrange the forex trading.
12. From December 2006 through January 2007, JC and LR met with Kracl multiple times at Kracl's office in Salt Lake County, to discuss an investment opportunity in ATS.
13. During their meetings, Kracl told JC and LR the following regarding the investment opportunity:
 - a. Kracl learned to trade forex from "a group in Vancouver," and Kracl had been trading since August 2004;
 - b. Kracl worked with the group in Vancouver to develop a proprietary trading platform in which Kracl could trade up to ten accounts at the same time;
 - c. Kracl spent \$250,000 to develop the platform, but it was worth over \$1 million;
 - d. JC and LR would occupy account number seven out of an available ten spots;
 - e. Kracl's other six clients were his only other clients;
 - f. There was approximately \$12 million under management in the other six

accounts;

- g. Kracl did not want to have additional clients, so JC and LR should consider themselves lucky to be working with Kracl;
 - h. Kracl made an average monthly return of 47.5% for trading accounts during the prior twelve months;
 - i. Kracl used FX Solutions, LLC (FX Solutions) as his broker, and JC's and LR's trading account would be with FX Solutions;
 - j. Kracl traded accounts for celebrities such as Charles Barkley, Evander Holyfield, and Richie McDonald.
 - k. A previous investor gave Kracl \$5 million to trade, and Kracl made that investor \$3 million in profit;
 - l. Kracl had never had a losing month while trading;
 - m. The investment funds could be liquidated at any time;
 - n. The minimum investment amount was \$250,000;
 - o. Kracl would take a trading fee of 12% if there was less than a 50% gain for the month, and 24% if the account had 50% or more in gains for the month; and
 - p. Kracl had no licenses, since forex trading is not regulated by the SEC.
14. Kracl showed JC and LR statements on one unknown individual's account, which showed a 200% return on the investment. The statements were on FX Solutions

letterhead.

15. What Kracl failed to tell JC and LR, among other things, is that in January 1992, in Utah County's Fourth District Court, Kracl was charged with theft, a third degree felony, which was later amended to a class A misdemeanor when Kracl entered his guilty plea.
16. On or about December 26, 2006, Kracl gave JC a document on FX Solutions letterhead entitled "Discretionary Trading Authorization/Power of Attorney" (Trading Agreement).
17. The Trading Agreement stated that ATS was authorized to engage in forex trading for JC and his company in one or more account with FX Solutions. The Trading Agreement also provided that ATS would earn 12-24% in management fees.
18. Kracl and JC signed the Trading Agreement while at Kracl's office in Draper, Utah.
19. On or about January 17, 2007, JC and LR invested \$175,000 with Kracl and ATS, via wire transfer, to ATS's Wells Fargo Bank account.
20. After investing, Kracl told JC and LR that Kracl set up an account for them at FX Solutions on Kracl's trading platform.
21. On or about January 22, 2007, the Director of Enforcement with the Utah Division of Securities, Michael Hines (Hines), contacted Kracl about a complaint received by the Division.
22. Kracl told Hines that Kracl only traded his own funds in his personal account. Hines told Kracl, if he traded other people's money, it could be an investment contract, and he

- would need to be licensed with the Division. Kracl told Hines that he understood.
23. On or about February 27, 2007, JC and LR contacted Kracl, and asked about the status of their account. The same day, JC and LR received an account statement from Kracl, via facsimile.
 24. The statement showed that JC's and LR's account had grown 21.6% between January 9 and February 27, 2007. The statement appeared to have been created on a word processing program, and did not appear to be from FX Solutions.
 25. JC and LR asked Kracl to provide them with daily updates on their account, in addition to account statements from FX Solutions. Kracl ignored their requests.
 26. In February or March 2007, Kracl told JC and LR he was working on getting an account from someone in Phoenix, and the account would bring \$200 million to ATS.
 27. From January 17 to May 25, 2007, JC and LR invested approximately \$6,770,000 with Kracl and ATS, via wire transfer to Kracl's bank account.
 28. From January through April 2007, Kracl and ATS paid JC and LR \$1.7 million in profit payments purportedly from forex trading. The payment amount varied from month to month.
 29. In mid-June 2007, Kracl told JC and LR that their forex trading account was down, and no profit check would be sent for the month of June 2007.
 30. JC and LR told Kracl that some of their clients wanted their investment funds back. On

or about June 28, 2007, JC sent an e-mail to Kracl requesting the return of all of JC's and LR's invested funds.

31. In late June or early July 2007, Kracl told JC and LR that he could not get their invested funds back. Kracl said JC's and LR's funds were pooled with funds from other investors, and were being used to leverage the other investors' funds. Kracl said removing JC's and LR's funds would cause his other clients to lose money.
32. On or about July 27, 2007, JC and LR again told Kracl they wanted their invested funds returned.
33. Kracl told JC and LR that Kracl would close out their forex trading positions, and give JC and LR back the remaining principal, which was \$6,495,000 minus \$382,000 in trading losses. Kracl said he would have the money to JC and LR by August 6, 2007.
34. On August 3, 2007, JC sent a text-message to Kracl asking for an update on the return of the investment funds.
35. In late-August 2007, Kracl responded by sending a text-message to JC which said Kracl was having trouble getting the investment funds.
36. On or about September 7, 2007, Kracl met with JC and LR at a restaurant in Brigham City, Utah.
37. Kracl told JC and LR he would try to return their funds. Kracl said he had not been truthful with JC and LR and had actually lost approximately \$1.4 million in trades by July

27, 2007. Kracl said JC's and LR's account was down \$2 million as of September 7, 2007.

38. Kracl agreed to start paying JC and LR \$65,000 a month in order to pay back their principal, and gave them a check for \$64,950 the same day. The check cleared the bank.
39. On or about September 28, 2007, Kracl gave JC and LR liens on real property Kracl owns in South Jordan, Utah, and St. George, Utah.
40. Kracl and ATS still owe JC and LR approximately \$6,880,050 in principal.

Use of Investor Funds

41. Kracl moved JC's and LR's funds between three bank accounts. Two accounts were with Wells Fargo Bank (a personal account and a business account for ATS), and the third account was a personal account with Zions Bank.
42. With JC's and LR's money, Kracl paid a title company \$395,437; purchased \$869,600 worth of automobiles and other vehicles/trailers; withdrew \$288,000 in cash; purchased a minor league baseball team for \$327,000; paid \$2.1 million to other unknown individuals/companies; and made payments of approximately \$1.7 million to JC and LR.
43. Kracl also used JC's and LR's funds to pay cell/telephone bills; make insurance, mortgage, utility, and credit card payments; purchase groceries and gasoline; pay for

entertainment, travel, jewelry, sports memorabilia, clothing; and to make charitable donations to Kracl's church.

44. Between February 1 and April 20, 2007, Kracl moved \$1,175,000 of JC's and LR's funds to FX Solutions for forex trading. In June 2007, however, Kracl moved \$1,140,000 of JC's and LR's funds back to Kracl's personal account at Wells Fargo Bank where it was used by Kracl to pay personal expenses such as those mentioned above.

CAUSES OF ACTION

Securities Fraud under § 61-1-1(2) of the Act

45. In connection with the offer and sale of a security to the investors, Respondents directly or indirectly, made false statements to the investors, including but not limited to, the following:
- a. Kracl would use JC's and LR's investment funds for forex trading, when in fact, Kracl used the majority of their funds for personal use;
 - b. Forex trading is not overseen by the SEC, and because of this, Kracl needed no license, when in fact, an agreement to trade another individual's account is a security, and Kracl needed a license to sell securities;
 - c. Kracl had never lost money in forex trading, when in fact, Kracl had lost approximately \$226,685 between November 6, 2006 and January 6, 2007, in forex

trading;

- d. Kracl spent \$250,000 to develop a trading platform, but it was worth over \$1 million;
 - e. Kracl made an average monthly return of 47.5% for trading accounts during the prior twelve months;
 - f. Kracl traded accounts for celebrities such as Charles Barkley, Evander Holyfield, and Richie McDonald; and
 - g. The investment funds could be liquidated at any time.
46. In connection with the offer and sale of a security, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements not misleading:
- a. In January 1992, in Utah County's Fourth District Court, Kracl was charged with theft, a third degree felony, which was later amended to a class A misdemeanor when Kracl entered his guilty plea;
 - b. The Director of Enforcement at the Division of Securities had contacted Kracl and told him that if he traded funds for anyone other than himself, he was required to be licensed with the Division; and
 - c. Some or all of the information typically provided in an offering circular or prospectus regarding ATS, such as:

- i. Financial statements for ATS;
- ii. The nature of the competition for ATS' service(s); and
- iii. Risk factors for investors.

Fraudulent Practices under § 61-1-1(3) of the Act

47. Respondents engaged in acts, practices, or courses of business that operate or would operate as a fraud or deceit on JC and LR including, but not limited to, the following:
- a. Supplying JC and LR with a false account statement showing that they were making a profit, in order to obtain more money or delay suspicion; and
 - b. Requiring JC to execute the FX Solutions Trading Agreement authorizing ATS and Kracl to do forex trading on behalf of JC and LR, despite the fact that FX Solutions would not have allowed ATS and Kracl to trade on behalf of a third party, in order to add create the appearance of legitimacy.

II. THE DIVISION'S CONCLUSIONS OF LAW

47. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act;
 - b. Respondents violated § 61-1-1(2) of the Act by misstating and omitting to state material facts in connection with the offer and sale of a security;

- c. Respondents violated § 61-1-1(3) of the Act by engaging in acts, practices, or courses of business that operated as a fraud or deceit.

III. REMEDIAL ACTIONS/SANCTIONS

48. Respondents admit the Division's findings and conclusions and consent to the sanctions below being imposed by the Division.
49. Respondents represent that any information they provided to the Division as part of the Division's investigation of this matter is accurate.
50. Respondents agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.
51. Kracl agrees to be barred from (i) associating² with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.
52. Respondents agree to cooperate with the Division, the State of Utah, and the Federal

²“Associating” includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. “Associating” does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationship or business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah.

Government in any future investigations and/or prosecutions relevant to the matter herein.

IV. FINAL RESOLUTION

53. Respondents acknowledge that this Order, upon approval by the Securities Commission shall be the final compromise and settlement of this matter.
54. Respondents further acknowledge that if the Securities Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
55. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them rising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein.
56. The Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Order in any way.
57. Violation of this Order is a third degree felony pursuant to § 61-1-21(1) of the Act.
58. Respondents have read this Consent Order, understand its contents, and enter into this Stipulation voluntarily.

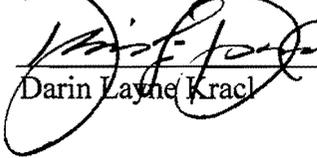
Utah Division of Securities

Date: 11/3/11

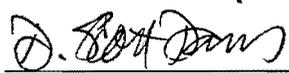
By: 
Michael Hines
Director of Enforcement

Respondent Kracl

Date: AUG. 22, 2011

By: 
Darin Layne Kracl

Approved:


~~Jeff Buckner~~ D. Scott Davis
Assistant Attorney General
J.N.

ORDER

IT IS HEREBY ORDERED THAT:

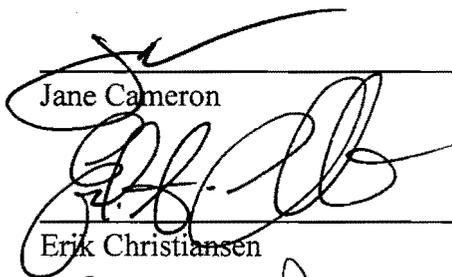
1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondents cease and desist from violating the Utah Uniform Securities Act.
3. Kracl agrees to be barred from the securities.
4. Respondents cooperate with the Division in any future investigations.

BY THE UTAH SECURITIES COMMISSION:

DATED this 26 day of February, 2017.

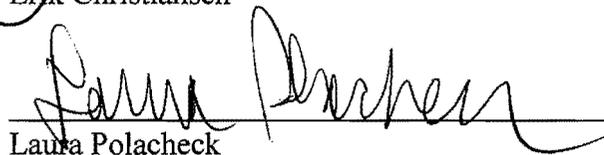


Tim Bangerter



Jane Cameron

Erik Christiansen



Laura Polacheck

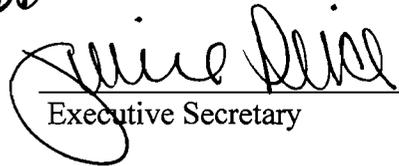
Jan Graham

Certificate of Mailing

I certify that on the 20th day of January, ~~2011~~²⁰¹², I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Darin Layne Kracl
c/o Attorney Rebecca Skordas
Skordas, Caston, & Hyde
341 S. Main St. #303
Salt Lake City, Utah 84111

Certified Mailing # 7007 0220 0001 0002 5050



Executive Secretary