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

<p>IN THE MATTER OF:</p> <p>DJW INVESTMENTS, LLC, DAREN DENNIS WHITE,</p> <p>Respondents.</p>	<p>OPPOSITION TO RESPONDENTS' MOTION TO SET ASIDE DEFAULT ORDER</p> <p>Docket No. SD 08-0064 Docket No. SD 08-0065</p>
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The Utah Securities Division (Division), through its counsel, hereby responds to, and opposes, the Respondents' request to set aside the Order on Motion for Default (Order) entered by the Utah Securities Commission (Commission) on October 29, 2012.

MATERIAL FACTS

1. A formal adjudicative proceeding was initiated against Respondents by the Division's Order to Show Cause (OSC) dated June 6, 2008.

2. A Notice of Agency Action (Notice) accompanying the OSC advised them to file an answer within thirty days of the mailing date of the Notice and appear at a scheduling hearing set for July 1, 2008. The Notice further advised Respondents that failure to comply with either of these requirements could result in a default order, including fines and other sanctions, being entered against them.
3. The OSC and Notice were sent by certified mail on June 9, 2008. On June 16, 2008, the OSC and Notice were returned to the Division citing that the address did not exist.
4. On June 27, 2008, an employee of the Division hand-delivered the OSC and Notice to Daren Dennis White (White) at the Third District Court located at 450 South State Street, Salt Lake City, Utah. Exhibit A.
5. As set forth in the Commission's October 29, 2012 Order, a prehearing conference was held on August 4, 2008.¹ Respondent White appeared on behalf of both Respondents and requested additional time to obtain legal counsel and certain records before being required to file a response to the OSC.
6. As further set forth in the Commission's Order, the Division stipulated to a deadline of September 9, 2008, for the Respondents to respond to the OSC.

¹The Order mistakenly cites the date as August 4, 2009, but it is clear from the context and the other dates referenced in the order that the prehearing conference was held on August 4, 2008.

7. The Respondents did not file an answer or response to the OSC by September 9, 2008, and did not file an answer or response prior to the Commission entering the Order on October 29, 2012.
8. On May 1, 2008, a criminal case was filed against White for related conduct in Third Judicial District Court, case number 081903394, alleging one count of attempted securities fraud, a second degree felony. On July 13, 2010, White pleaded guilty to an amended third degree felony charge. He is currently serving a sentence of up to five years in the Utah State Prison in Draper.
9. After receiving the Commission's October 29, 2012 Order, White sent a letter to the Administrative Law Judge assigned to this case, dated November 20, 2012. He complained about the entry of the default order, claimed to have relevant documents regarding the case, and invited inspection of the documents at the State Prison, but stated that he could not and would not provide copies of them, nor allow the documents to leave his possession.
10. The Administrative Law Judge responded by letter dated December 10, 2012, advising Mr. White that although his letter did not request that the default order be set aside, he had until December 28, 2012, to confirm in writing that he wanted his November 20, 2012 letter to be considered as a motion to set aside the default order.

11. By letter dated December 18, 2012, Mr. White responded “yes, consider my letter dated November 20th 2012 should be for the intent to set aside the default.” The letter further stated that he had evidence he believed would resolve the matter, but the prison would not allow him to make copies, and he invited the Administrative Law Judge to come to the prison to view the documents.
12. On January 28, 2013, the Administrative Law Judge sent a letter to Mr. White stating that the Division would be proposing settlement terms to him and that he had until February 18, 2013 to respond to the Division's proposed terms. The letter also advised Mr. White that if he could not reach an agreement with the Division, he would need to send the Administrative Law Judge a letter explaining in detail why he did not file an answer to the OSC and Notice, and why he did not participate in any pre-hearing proceedings.
13. By letter dated February 1, 2013, Mr. White rejected the Division's settlement terms, and stated that he did not file an answer because the Division sent the June 6, 2008 Notice and OSC to incorrect addresses.

ARGUMENT

A. White was personally served with the Notice and OSC.

Despite Mr. White's claim that the Notice and OSC were mailed to incorrect addresses, he fails to address or acknowledge that he was personally served on June 27, 2008 with the Notice and OSC by Jennifer Korb, then an employee of the Division, at the courthouse located at 450 South State Street, in Salt Lake City, Utah. Exhibit A. Because he was personally served, Mr. White is without excuse for failing to file an answer or response to the OSC.

B. White appeared at the prehearing conference on August 4, 2008.

In response to receiving the Notice and OSC, Mr. White appeared at a pre-hearing conference on August 4, 2008, representing both Respondents, and requested additional time to obtain legal counsel and file a response to the OSC. See, Recommended Order on Motion for Default, dated July 26, 2012. Despite being given additional time to file a response/answer to the OSC, Mr. White never did so.

C. Respondents failed to respond to the OSC or otherwise participate in the proceeding prior to the default Order being entered.

Despite being advised in the Notice that a default judgment could be entered if no response to the OSC was filed, and despite being given an extension of time to file a response or answer to the OSC, Respondents did not file a response in the time allotted, and did not file a

response to the OSC prior to the entry of the default Order. Mr. White has offered no valid explanation for failing to respond to the OSC.

D. Respondents' failure to participate in these proceedings was not reasonable or excusable.

Nothing in the letters submitted by Mr. White demonstrates or alleges that his failure to file and answer to the OSC and/or participate in these proceedings prior to default being entered was reasonable or excusable. A review of the related criminal case in the Utah State Courts' database reveals that Mr. White was arrested and released on June 17, 2008, ten days prior to being personally served with the Notice and OSC. It appears from the same court documents that Mr. White remained out of custody until he was sentenced on September 13, 2010. Mr. White was physically and otherwise able to file a response to the OSC, and has provided no valid explanation as to why he failed to do so. Further, Mr. White did not request a stay of this proceeding pending resolution of his criminal case, even though he could have done so at the same time.

Because no valid, reasonable or excusable reason exists as to why Respondents failed to answer or respond to the OSC or otherwise participate in this administrative proceeding prior to the default being entered, there is no basis to set it aside.

There is no valid basis upon which the Commission's October 29, 2012 Order on Motion for Default should be set aside. The Division respectfully requests that Respondents' motion to set aside the default order be denied.

Respectfully submitted this 6th day of March, 2013.



D. Scott Davis
Assistant Attorney General

CERTIFICATE OF MAILING

I certify that on the 6th day of March, 2013, I mailed a true and correct copy of the

Response to Respondents' "Motion" to Set Aside Default Order to:

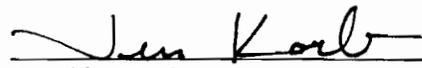
DAREN WHITE
INMATE # 197997
INMATE HOUSING WASATCH B BLOCK 107
UTAH STATE PRISON
P.O. BOX 250
DRAPER UTAH 84020-0250

J. Scott Davis

EXHIBIT A

Service of Process

On the 27th day of June, 2008, I hand delivered a true and correct copy of the Order to Show Cause and Notice of Agency Action to Daren Dennis White, and DJW Investments, LLC at 450 S. State, Salt Lake City, Utah (3rd District Court).



Jennifer Korb
Securities Analyst
Utah Division of Securities

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