

Division of Securities  
Utah Department of Commerce  
160 East 300 South  
P.O. Box 146760  
Salt Lake City, Utah 84114-6760  
Telephone: 801 530-6600  
Facsimile: 801 530-6980

---

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

---

**IN THE MATTER OF:**

**MICHAEL ROBERT SPENCER,  
CRD#1516478;  
M. R. SPENCER ASSET  
MANAGEMENT, IARD#145822**

**Respondents.**

**ORDER DENYING APPLICATION  
FOR LICENSE**

Docket No. SD-08-0104

Docket No. SD-08-0105

---

On March 7, 2008, Michael Robert Spencer (“Spencer”), CRD#1516478, initiated this proceeding by filing with the Utah Division of Securities (“Division”) an SEC Form ADV–Uniform Application for Investment Adviser Registration (“Form ADV”) requesting that Spencer be licensed in Utah as a sole proprietor investment adviser doing business as M. R. Spencer Asset Management (“MRSAM”). Rule R164-18-6(D)(3) of the Utah Administrative Code designates submission of the Form ADV as a request for agency action. In response to the request for agency action, the Director of the Division (“Director”) hereby issues this Order Denying the Application, pursuant to the authority of Section 61-1-6 of the Utah Uniform

Securities Act (“Act”) and Section 63G-4-201(3)(d)(ii) of the Utah Administrative Procedures Act.

## **I. FINDINGS**

1. In January 2008, Spencer contacted the Division to inquire about the licensing process for an investment adviser. After discussing the process with the Division, Spencer e-mailed a scanned copy of Form ADV<sup>1</sup> Part II for review by the Division prior to formally filing the application through the Investment Adviser Registration Depository (“IARD”)<sup>2</sup>. Thereafter, the Division commented on the application by telephone.
2. On January 18, 2008, Spencer e-mailed another scanned copy of Form ADV Part II that had been revised based upon the Division’s initial comments. The Division informed Spencer that the application needed to be filed online on IARD to proceed further.

---

<sup>1</sup>Form ADV is used by investment advisers to register with the United States Securities and Exchange Commission (“SEC”) or with state securities regulators. Section 203 of the Investment Advisers Act of 1940 requires investment advisers to furnish each advisory client and prospective advisory clients with a written disclosure statement which may be either a copy of Part II of its Form ADV or a written document or brochure that contains at least the information required by Part II of Form ADV. The license application requirements for investment adviser in Utah Admin. Code Rule R164-4-2(C) require that an investment adviser file a copy of the ADV Part II with the Division.

<sup>2</sup>IARD is an electronic filing system that facilitates investment adviser registration, regulatory review, and the public disclosure information of investment adviser firms. The Financial Industry Regulatory Authority (“FINRA”) is the developer and operator of the IARD system. The system has been developed according to the requirements of its two sponsors, the SEC and the North American Securities Administrators Association (“NASAA”), along with those of an Industry Advisory Council representing investment adviser firms.

3. On March 7, 2008, Spencer filed Form ADV Parts 1 and II through IARD. The Form ADV identified Spencer and MRSAM's office address as 767 E. 200 S., Bountiful, UT 84010 and provided telephone, fax, and e-mail contact information.
4. On March 28, 2008, the Division sent an initial letter to Spencer indicating that the application was incomplete. The letter specified additional information required to complete the application. The Division also requested that Spencer waive the Act's automatic-effective provision contained in Section 61-1-4(1)(e)(i) of the Act.
5. On April 2, 2008, Spencer faxed to the Division:
  - a) a waiver of automatic effectiveness;
  - b) Spencer's statement identifying himself as MRSAM's designated official;
  - c) Spencer's representations that MRSAM would operate without custody, but with discretionary authority; and
  - d) proof of a \$10,000 bond to meet the minimum financial requirements for an investment adviser with discretion.
6. The Division's review of the application revealed deficiencies, discrepancies, and items that raised questions and concerns. On April 17, 2008 the Division mailed a Comment Letter ("April Comment Letter") itemizing its questions and concerns by certified mail, for which the return receipt was signed April 18, 2008.

7. The April Comment Letter specified a response due date of May 2, 2008 for Spencer to file: a) a revised Form ADV through IARD and b) a written response to the Division.
8. Spencer did not respond by May 2, 2008. To date, the Division has received no response to the April Comment Letter.
9. On December 9, 2008, the Division sent a Final Notice Letter by certified mail and e-mail requesting that Spencer either respond to the Comment Letter or withdraw his investment adviser application by December 18, 2008. The Division indicated that if no action was taken, the Division intended to deny the application. The certified return receipt was signed on December 18, 2008.
10. On December 18, 2008, the Division contacted Spencer by telephone. Spencer stated he had assumed the Division had already denied the application based upon his failure to respond by the May 2 deadline. The Division again provided Spencer the option to withdraw the application or respond to the April Comment Letter, but indicated that he must do so by the following day, December 19, 2008, and that the Division would deny the application if no action was taken.
11. The Division further explained that a denial order would be reported on Spencer's IARD and CRD records. Spencer indicated that he would withdraw the application by filing a Form ADV-W through the IARD system by December 19, 2008.

12. To date, Spencer has not filed the Form ADV-W. His failure to respond to the Division's April Comment Letter or file a withdrawal leaves the application materially incomplete.

## **II. GROUNDS FOR DENIAL**

13. Section 61-1-6(2)(a) of the Act provides that the Division may deny a license if the Director finds that an applicant "has filed an application for a license that . . . was incomplete in any material respect."
14. Spencer's application is materially incomplete. His failure to respond to the Division's April Comment Letter and December 9 Final Notice Letter demonstrates, as he stated in the December 18 telephone call, that he abandoned his application for an investment adviser license.
15. The Director finds that it is in the public interest that Spencer's application for licensure as a sole proprietor investment adviser doing business as MRSAM be denied.

## **III. ORDER**

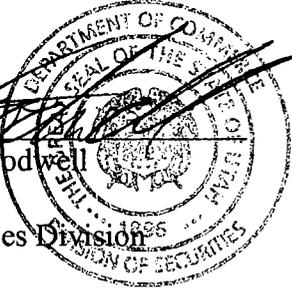
16. The Director, pursuant to Section 61-1-6 of the Act, hereby ORDERS that Spencer's application for licensure as an investment adviser in Utah is DENIED.

You have a right to appeal this denial under Utah Code Ann. § 63G-4-301. The procedures for requesting agency review are described in Utah Admin. Code Rule R151-46b-12. Any appeal should be sent to Francine A. Giani, Executive Director of the Department of

Commerce, Box 146701, Salt Lake City, UT 84114-6701. An appeal must be filed within 30 days of the issuance of this Order.

DATED this 23<sup>rd</sup> day of December, 2008.

  
Keith M. Woodwell  
Director  
Utah Securities Division



**Certificate of Mailing**

I certify that on the 24<sup>th</sup> day of DECEMBER, 2008, I mailed, by certified mail, a true and correct copy of the Order Denying Application for License to:

Michael Robert Spencer  
M.R. Spencer Asset Management  
767 E. 200 S.  
Bountiful, UT 84010

Certified Mail # 7004 1160 0003 0196 3793

RAMALA RADZINSK  
Executive Secretary