

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

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

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**IN THE MATTER OF:**

**ROGER BRYCE ROWLEY,  
CRD#2367495**

**Respondent.**

**ORDER DENYING APPLICATION  
FOR LICENSE**

Docket No. SD-09.0013

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Roger Bryce Rowley (“Rowley”), CRD #2367495, initiated this proceeding on December 15, 2008 by filing with the Utah Division of Securities (“Division”) a FINRA Form U4—Uniform Application for Securities Industry Registration or Transfer (“application”) through the Central Registration Depository (“CRD”). Rule R164-18-6(D)(2) of the Utah Administrative Code designates submission of the license application 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 Rowley’s application pursuant to the authority of § 61-1-6 of the Utah Uniform Securities Act (“Act”), and § 63G-4-201(3)(d)(ii) of the Utah Administrative Procedures Act (“UAPA”).

## FINDINGS

1. Rowley is currently employed by Brookstone Securities, Inc. (“Brookstone”), CRD#13366, as a broker-dealer agent.
2. Between 1993 and 2003, Rowley was previously licensed in Utah as a broker-dealer agent with several broker-dealer firms.
3. On December 15, 2008, Rowley filed an application to be licensed as a broker-dealer agent in Utah.
4. The Division reviewed the application, including Rowley’s past disciplinary history as reported on the Central Registration Depository<sup>1</sup> (“CRD”) and in Division records.
5. Rowley’s disciplinary history contains two reportable disclosures pertaining to securities transactions effected by Rowley in Utah.
6. CRD records indicate that on June 22, 2005, Rowley entered a plea of no contest through a plea in abeyance to one felony criminal count of sale of an unregistered security under Section 61-1-7 of the Act. Rowley complied with the terms of his plea in abeyance and the charges were dismissed on August 19, 2008.

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<sup>1</sup>CRD is a computerized database maintained by the Financial Industry Regulatory Authority (“FINRA”). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

7. CRD and Division records further indicate that on August 1, 2005, Rowley consented to the entry of an administrative order<sup>2</sup> against him (“Consent Order”) by the Division. In the Consent Order, the Division made findings which included the following:
  - a. From approximately June through October of 2003, Rowley offered and sold [securities] to 21 Utah residents and collected a total of \$1,393,121.46.
  - b. [Issuer] paid Rowley \$161,932 in commissions for his work.
  - c. The securities offered and sold by Rowley were not registered with the Division, nor federal covered securities for which a notice filing has been made, and they do not appear to qualify for an exemption under § 61-1-14 of the Act.
  - d. Rowley therefore violated the Act by selling unregistered, non-exempt securities in Utah.
8. Rowley admitted the Division’s findings in the Consent Order.
9. The Consent Order required that Rowley cease and desist from:
  - a. selling or offering unregistered securities in Utah;
  - b. transacting securities business in Utah while unlicensed;
  - c. employing any device, scheme, or artifice to defraud;

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<sup>2</sup><http://www.securities.utah.gov/dockets/05003801.pdf>

- d. making any untrue statement of material fact, or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;
  - e. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
  - f. aiding, abetting, counseling, inducing, or causing any other person to engage in any of the types of the conduct [proscribed above].
10. The Consent Order also required that Rowley disclose the existence of the Consent Order when engaged in or in connection with the offer, sale, or purchase of any security.
11. On December 18, 2008, the Division sent a letter to Brookstone indicating that based upon Rowley's CRD disclosures of securities law violations, it intended to deny the application. The Division stated that alternatively, it would permit Brookstone to withdraw the application by January 7, 2009.
12. On January 6, 2009 and January 13, 2009 Brookstone submitted by fax waivers<sup>3</sup> of the Act's automatic-effective provision contained in Section 61-1-4(1)(e)(i) of the Act.
13. By letter dated January 12, 2009, Brookstone's Director of Legal and Regulatory Affairs, Brian P. Sweeney, responded to the Division's letter by providing documents relating to the prior criminal matter and stating that because Rowley's felony conviction had been

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<sup>3</sup>The initial waiver was signed on behalf of Brookstone, but did not contain Rowley's signature. The later waiver was signed by Rowley.

dismissed, the Division could not deny Rowley's application based upon his prior activities, and that "Mr. Rowley has committed no action that permits denial of his application under Utah Code § 61-1-6."

14. On January 22, 2009, the Division sent a letter to Brookstone indicating again that it intended to deny Rowley's application, but permitting Brookstone until January 31, 2009 to withdraw the application.
15. Brookstone did not withdraw the application.

## **II. GROUNDS FOR DENIAL**

16. Section 61-1-6(2)(b) of the Act provides that the Division may deny a license if the Director finds that an applicant "has willfully<sup>4</sup> violated or willfully failed to comply with any provision of this chapter. . ."
17. Section 61-1-7 of the Act provides:

It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter, the security or transaction is exempted under Section 61-1-14, or the security is a federal covered security for which a notice filing has been made pursuant to the provisions of Section 61-1-15.5.

(emphasis added).

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<sup>4</sup>To act willfully in this context means to act deliberately and purposefully, as distinguished from merely accidentally or inadvertently. Willful, when applied to the intent with which an act is done or omitted, implies a willingness to commit the act, and does not require an intent to violate the law or to injure another or acquire any advantage.

18. As indicated in CRD records and as described in paragraphs 5 through 8 above, Rowley willfully violated the registration requirements of Section 61-1-7 of the Act.
19. The Division's findings of such violations are documented in the Consent Order, which conduct was admitted by Rowley.
20. The Division further notes that while Rowley's prior criminal plea in abeyance may have resulted in the criminal matter being dismissed, FINRA Form U4 still requires disclosure and complete explanation of the no contest plea to felony charges.
21. Under the heading "Criminal Disclosure", Form U4 Question 14A(1) requires an affirmative or negative response to the following:

Have you ever:

(a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony*?

(b) been *charged* with any *felony*?

(emphasis in original).

22. Rowley's Form U4 answers both (a) and (b) in the affirmative, as required by the Form's definitions of the terms contained in Question 14A(1). The Form's instructions provide that for any affirmative response, "complete details of all events or proceedings" is required on the Form's Disclosure Reporting Pages.

23. Furthermore, Rowley's Amended Form U4 entered November 13, 2008, item 5, "Comment", acknowledges the mandatory reporting requirement despite the dismissal of the criminal action:

**THE CASE WAS DISMISSED. DISMISSAL IS THE ANTITHESIS OF A CONVICTION. 14A(1)(A) ANSWERED IN THE AFFIRMATIVE ON FINRA'S ORDER.**

(emphasis added).

24. Under the heading "Regulatory Action Disclosure", Form U4 Question 14D(1) requires an affirmative or negative response to the following:

Has... any state regulatory agency... ever:

(b) *found* you to have been *involved* in a violation of *investment-related* regulation(s) or statute(s)?

(d) entered an *order* against you in connection with an *investment-related* activity?

(emphasis in original).

25. Rowley's Form U4 answers both (b) and (d) in the affirmative, as required by the Form's definitions of the terms contained in Question 14D(1)<sup>5</sup>. The Form's instructions provide that for any affirmative response, "complete details of all events or proceedings" is

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<sup>5</sup>It is apparent from Form U4's reporting requirements that whether a court has dismissed criminal charges is not determinative of a securities agency's review of a subsequent license application. Rather, Form U4 requires that complete explanation be provided irrespective of a dismissal.

required on the Form's Disclosure Reporting Pages. Moreover, Rowley admitted the Division's findings of his securities law violations as described in the Consent Order.

26. Regardless of the ultimate dismissal of the criminal charges, Rowley's conduct was sufficiently egregious to justify the filing of criminal charges by the Utah County Attorney's Office, for willful violation of the Act, as well as the Division taking administrative action against Rowley and others<sup>6</sup>. Both actions are required to be reported on CRD.

27. In addition, the Division notes that Rowley was not licensed as a securities agent<sup>7</sup> at the time he sold the unregistered securities to 21 Utah investors. Section 61-1-3(3) states:

It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

(emphasis added).

28. Rowley willfully violated the licensing requirements of the Act by acting as an unlicensed securities agent in offering and selling securities to numerous investors in violation of Section 61-1-3 of the Act.

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<sup>6</sup>A total of \$19 Million was collected from Utah investors in a fraud scheme. For more information, see <http://www.securities.utah.gov/dockets/05001001.pdf>

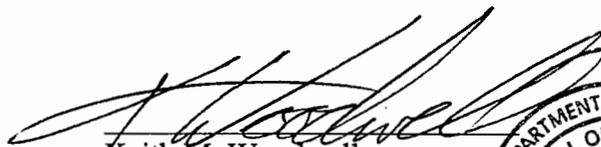
<sup>7</sup>Rowley was licensed as a broker-dealer agent in Utah until June 19, 2003 – the beginning of the time period in which he began selling the unregistered securities.

29. At the time Rowley began the activities which gave rise to both the criminal and administrative matters, he had worked as a licensed agent in the securities industry for ten years. In addition, he also held a Series 26, Investment Company Products / Variable Contracts Limited Principal license. The Division presumes agents with such experience have the required skill and knowledge to understand and comply with securities registration and licensing requirements.
30. The Director finds that it is in the public interest that Rowley's application for broker-dealer agent license be denied.

**ORDER**

The Director, pursuant to § 61-1-6 of the Act, hereby ORDERS that Rowley's application for licensure as a broker-dealer agent in Utah is DENIED.

DATED this 18<sup>th</sup> day of February, 2009



Keith M. Woodwell  
Director  
Utah Securities Division



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.

**Certificate of Mailing**

I certify that on the 23RD day of February, 2009, I mailed, by certified mail, a true and correct copy of the Order Denying Application for License to:

Roger B. Rowley  
329 Damascus Drive  
St. George, UT 84790

CERTIFIED MAIL: 7004 1160 0003 0195 8713

Brookstone Securities, Inc.  
Attn: David W. Locy  
520 South Florida Avenue  
Lakeland, FL 33801

CERTIFIED MAIL: 7004 1160 0003 0195 8720

PAM RADZINSKI

Executive Secretary