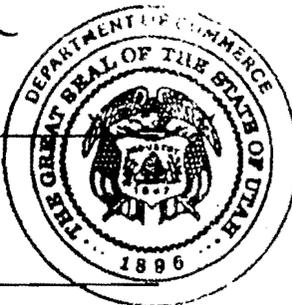


Kevin Woodwell



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

IN THE MATTER OF THE REQUEST
FOR AGENCY REVIEW OF

Roger Bryce Rowley, CRD#2367495,

PETITIONER

**FINDINGS FACT,
CONCLUSIONS OF LAW, and
ORDER ON REVIEW**

Case No. SD-09-0013

INTRODUCTION

This matter came before the Department of Commerce ("Department") upon a request for agency review filed by Roger Bryce Rowley ("Petitioner") seeking to appeal an adverse action by the Division of Securities ("Division").

STATUTES OR RULES PERMITTING OR REQUIRING REVIEW

Agency review of the Division's decision is conducted pursuant to Utah Code Annotated, Section 63G-4-301, and Utah Administrative Code, R151-46b-12.

ISSUES REVIEWED

Whether Petitioner failed to establish that the Division made any error in denying his application for a securities license.

FINDINGS OF FACT

1. Between 1993 and 2003, Petitioner was licensed in Utah as a broker-dealer agent. However, he was not licensed at all times pertinent to this matter.
2. On March 22, 2005, charges were filed against Petitioner in the Fourth Judicial District in Case No. 051401347 for the sale of unregistered securities, a third

degree felony. On June 22, 2009, Petitioner pled no contest and entered into a Plea in Abeyance Agreement.

3. On August 1, 2005, Petitioner consented to the entry of a Stipulation and Consent Order (hereafter, "Stipulation") against him by the Division. In entering into the Stipulation, Petitioner waived the right to a hearing to challenge the Division's evidence and the right to present evidence in his own behalf, and he admitted "the substance of the Division's investigative conclusions." Stipulation, ¶¶ 4, 10.¹ The Stipulation recited various investigative findings and conclusions as follows:

- From approximately June through October of 2003, [Petitioner] offered and sold [securities] to 21 Utah residents and collected a total of \$1,393,121.46.
- [Issuer] paid [Petitioner] \$161,932 in commissions for his work.
- The [securities] offered and sold by [Petitioner] were not registered with the Division, nor federally covered securities for which a notice filing has been made, and they do not appear to qualify for an exemption under § 61-1-4 of the Act.
- [Petitioner] therefore violated the Act by selling unregistered, non-exempt securities in Utah.

Id., ¶¶ 5c-d, 7-9. Petitioner also affirmed as follows:

[Petitioner] has read this Stipulation, understands its contents, and enters into this Stipulation voluntarily. No promises or threats have been made by the Division, nor by any member, officer, agent, or representative of the Division to induce [Petitioner] to enter into this Stipulation.

Id., ¶ 14.

4. On August 19, 2008, upon completion of the terms of the plea abeyance, the criminal charges against Petitioner were dismissed.

¹ <http://www.securities.utah.gov/dockets/05003801.pdf>.

5. On December 15, 2008, Petitioner submitted an application to the Division for licensure as a broker-dealer.

6. The Division denied Petitioner's application by an Order dated February 18, 2009.

7. On March 17, 2009, Petitioner submitted a letter to the Division stating that he wished to appeal the denial. The letter indicated merely that "[m]any statements in the denial letter are inaccurate and need to be addressed."

8. The Division properly forwarded Petitioner's letter to the Executive Director who gave Petitioner an opportunity to submit a supplemental filing in support of his request for agency review.

9. On March 30, 2009, Petitioner submitted his supplemental filing. The Division filed its Memorandum in Response to Request for Agency Review, and Request for Dismissal. Petitioner has filed no reply memorandum.

CONCLUSIONS OF LAW

1. The standards for agency review within the Department of Commerce correspond to those established by the Utah Administrative Procedures Act, Utah Code Annotated Section 63G-4-403(4). Utah Admin. Code R151-46b-12(7).

2. The duty to protect the public is of paramount concern for this Department and its various Divisions. Utah Code Ann. § 13-1-1. Accordingly, under the Utah Uniform Securities Act ("Act"), the Division is expressly authorized to determine whether a license applicant has met the requirements for licensure and may deny a license application in various circumstances as follows:

- (2) (a)(ii) with respect to the applicant or licensee . . .that the person:
- (A) has filed an application for a license that, as of the effective date of the application or as of any date after filing in the case of an order denying effectiveness:
 - (I) was incomplete in a material respect; or
 - (II) contained a statement that was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;
 - (B) has willfully violated or willfully failed to comply with this chapter or a predecessor act or a rule or order under this chapter or a predecessor act;
 - (C) was convicted of, or entered a plea of guilty, a plea of no contest, a plea in abeyance, or a similar plea of guilty to:
 - (I) a misdemeanor involving:
 - (Aa) fraud or dishonesty; or
 - (Bb) a security or any aspect of the securities business; or
 - (II) a felony; . . .

Utah Code Ann. Section 61-1-6(1)(b) and (2) (emphasis added).

4. Because of the Division's explicit discretion, its decision that Petitioner failed to meet the fitness requirement for licensure is reviewed under a reasonableness standard. *Barnard v. Motor Vehicle Div.*, 905 P.2d 317, 320 (Utah 1992). Whether the Division considered the proper factors in making the determination and the weight given each factor are also reviewed for reasonableness. *WWC Holding Co., Inc. v. Public Service Common*, 2002 UT 23, ¶ 8, 44 P.3d 714. Accordingly, the Executive Director will not upset the Division's decision unless it exceeds the bounds of reasonableness and rationality.

5. In determining Petitioner's fitness for licensure, the Division considered Petitioner's sale of unregistered securities in violation of the Act,² the Stipulation he executed with the Division, and the plea in abeyance resulting from felony criminal charges. The Division recognized that the criminal matter is now dismissed, but found Petitioner's conduct in selling unregistered securities egregious. The Division considered

² It is unlawful for any person to offer or sell any unexempted unregistered securities. Subsection 61-6-7.

it an aggravating circumstance that Petitioner had previously been licensed for 10 years to sell securities and should have been aware of the securities registration and licensing requirements.

6. A party requesting agency review bears the burden of setting forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to the hearing record and to appropriate legal authority. Section R151-46b-12(3)(b).

7. In this matter, Petitioner has failed to properly challenge the Division's decision to deny his application. He has failed to cite to any of the Division record or any legal authority in support of his arguments. His supplemental filing indicates he disagrees with some of the facts relied upon by the Division in denying his application. See ¶ 2 in the Findings of Fact section above. He also states that he was not violating the law and sold those securities in an exempt capacity. Again, Petitioner does not cite to any part of the Division record. Importantly, he fails to note that these facts on which the Division now relies were part of the Stipulation. Petitioner cannot now challenge the Stipulation which he voluntarily signed, in which he admitted "the substance of the Division's investigative conclusions" and expressly waived his right to a hearing. Stipulation, ¶¶ 4-10.

8. Petitioner argues that the criminal matter against him has been dismissed but fails to provide any legal authority for his position that the dismissal prevents the Division from considering the criminal matter. See Subsection R151-46b-12(3)(b) (A petitioner must cite to appropriate legal authority); *Kramer v. State Retirement Board*, 2008 UT App 351, ¶ 22, 195 P.3d 295 (Issues not adequately briefed need not be

addressed). Here, the Stipulation and the Plea in Abeyance Agreement were proper factors for the Division to consider in determining Petitioner's fitness for licensure under *WWC Holding Co.* As the Division has noted, the Form U4 application requires disclosure of a no contest plea whether or not the matter has resulted in the dismissal of criminal charges.

9. Petitioner states that he did not understand the implications of signing the Stipulation and thought he could be licensed once the criminal charges were dismissed. However, the Stipulation expressly stated that Petitioner understood the contents, and no promises were made by the Division or its representatives. Stipulation, ¶ 14.

10. The Division recognized Petitioner's sale of unregistered securities in violation of the law, the resulting administrative Stipulation and criminal Plea in Abeyance Agreement, and the aggravating circumstance that Petitioner should have been aware of licensing requirements having been previously licensed himself. The Division found that it was in the public interest to deny Petitioner's application. The Division Order did not address the lapse of time since Petitioner's conduct and how that factor affected Petitioner's fitness for licensure. Despite that omission, however, the decision to deny Petitioner's application in the circumstances of this case was not unreasonable.

11. In sum, Petitioner has not shown that the Division's decision to deny his application was unreasonable. Therefore, the Executive Director must affirm the denial of Petitioner's renewal application. *Barnard*, at p. 320; *WWC Holding Co.*, at ¶ 11.

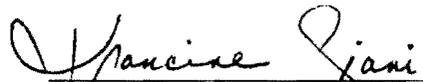
ORDER

For the foregoing reasons, the Division's Order Denying Application of License is hereby affirmed.

NOTICE OF RIGHT TO APPEAL

Judicial Review of this Order may be obtained by filing a Petition for Review with the District Court within 30 days after the issuance of this Order. Any Petition for Review must comply with the requirements of Sections 63G-4-401 and 63G-4-402, Utah Code Annotated. In the alternative, but not required in order to exhaust administrative remedies, reconsideration may be requested pursuant to *Bourgeois v. Department of Commerce, et al.*, 981 P.2d 414 (Utah App. 1999) within 20 days after the date of this Order pursuant to Section 63G-4-302.

Dated this 23rd of June, 2009.


Francine Giani, Executive Director
Utah Department of Commerce

CERTIFICATE OF MAILING

I certify that on the 23 day of June, 2009, the undersigned mailed a true and correct copy of the foregoing Findings of Fact, Conclusions of Law and Order on Review by certified and first class mail to:

Roger Bryce Rowley
3366 E. Sweetwater Springs Dr.
Washington, UT 84780

and caused a copy to be hand-delivered to:

Keith Woodwell, Director
Utah Division of Securities
Box 146760
Salt Lake City, UT 84114-6760

D. Scott Davis, Assistant Attorney General
Office of the Attorney General
Box 140872
Salt Lake City, UT 84114-0872



Rebekah Conner
Administrative Assistant