

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

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

IN THE MATTER OF:

**DAVID STERLING JENSEN,
CRD#1109598**

Respondent.

ORDER TO SHOW CAUSE

Docket No. SD -09-0040

It appears to the Director ("Director") of the Utah Division of Securities ("Division") that Respondent David Sterling Jensen ("Jensen") may have engaged in acts and practices that violate the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.* Those acts and practices are more fully described herein. Based upon the Division's investigation into this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF FACTS

The Respondent

1. Jensen resides in Tooele, Utah.
2. Between 1983 and 1986, Jensen was employed by several broker-dealer firms. During that time period, he passed the Series 22 Direct Participation Limited Representative Examination, and the Series 63 Uniform Securities Agent State Law examination. He

failed the Series 7 General Securities Representative Licensing Examination and the Series 39 Direct Participation Program Principal Examination.

3. Since 1986, Jensen has not been licensed in the securities industry in any capacity.

General Allegations

Unlicensed Investment Adviser

4. On or about September 1, 2006, C.J. gave Jensen permission and access to trade in C.J.'s wife's TD Ameritrade online account ("the account"). C.J. held a valid full trade authorization on the account at that time.
5. According to C.J., Jensen represented that he was a Certified Public Accountant (CPA)¹ and had successfully traded accounts for himself and other people. Jensen also told C.J. that Jensen could trade in up to 10 accounts without having to be licensed. Jensen also informed C.J. that Jensen could make higher returns trading in the account than the 15% annual return C.J. was then earning in a hedge fund.
6. Both parties understood and intended that Jensen would employ a day-trading options investment strategy in the account. C.J. is a former licensed securities broker-dealer agent and principal, and the two had discussed various options strategies in the period leading up to the conduct at issue in this matter.
7. C.J. provided to the Division an unsigned copy of a contract he said was agreed to by C.J. and Jensen. Jensen confirmed to the Division that the terms of the contract were verbally agreed to by the parties. The contract contained the following terms, among others:

¹According to records contained in the Utah Department of Occupational and Professional Licensing ("DOPL"), Jensen's CPA license expired in 1992.

[C.J.] hereby employs Jensen to manage and direct the investment and reinvestment of certain assets of a third party². . . .

Jensen accepts such employment for the compensation provided herein. . . .

Jensen shall:

(a) conduct investment research evaluate market conditions and financial data.

(b) have responsibility and discretion to invest any funds in the Account as Jensen determines in his discretion to be proper.

(c) provide reports and other information regarding the Account from time to time as requested by [C.J.].

(d) use all trading strategies to invest the funds including, but not limited to, the purchase of any type of investment, purchase or sale of options including "puts" and "calls", taking short positions in securities, using margin, and short-term trading. The Account shall be a "Pattern Day Trader Account."

[C.J.] shall execute or cause to be executed any and all documents required by the brokerage firm or house to allow Jensen to trade with full discretion in the Account³. . . .

Compensation to Jensen. As compensation for his services [C.J.] shall pay to Jensen monthly a fee computed by determining the profits in the account during the month and paying Jensen ten per cent⁴ of the gain in the account. . . .

8. On or about September 5, 2006, C.J. deposited \$30,000.00 into the account. Thereafter, Jensen made numerous options transactions in the account.
9. E-mail correspondence provided to the Division demonstrates frequent communication

²The third party was not named, nor was specific account information referenced, in the copy of the contract provided to the Division.

³ These documents were never executed according to C.J. and TD Ameritrade. Instead, C.J. provided Jensen with the account number and password to log in and make trades on the internet.

⁴C.J. and Jensen both stated to the Division that despite this provision, the parties verbally agreed that Jensen would actually receive 15% of the profits in the account.

between Jensen and C.J. as Jensen traded the account from his computer.

10. By November 2006, the account had experienced significant losses totaling approximately \$25,000. C.J. told Jensen to stop trading the account at that time.

FIRST CAUSE OF ACTION
Unlicensed Activities Under § 61-1-3 of the Act

11. By holding himself out and/or transacting business in Utah as an investment adviser and/or investment adviser representative, Jensen violated Section 61-1-3(3) of the Act, which provides that it is unlawful to conduct business in Utah as an investment adviser or investment adviser representative unless a person is licensed.

SECOND CAUSE OF ACTION
Unlawful Acts of Investment Adviser Under § 61-1-2 of the Act

12. By entering into a performance-based contract with a client who did not meet the criteria for such contract under Rule R164-2-1(D), Jensen violated Section 61-1-2(2)(a)(i) of the Act.

REQUEST FOR RELIEF

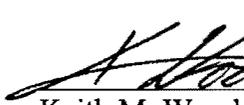
The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders the Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202 and 63G-4-204 through -209, and held before the Division. As set forth in the Notice of Agency Action accompanying this Order, Respondent is required to file a written response with the Division, and an initial hearing on this matter has been scheduled for September 22, 2009 at 9am. The initial hearing will take place at the Division of Securities, 2nd floor, 160 East 300 South, Salt Lake City, Utah. The purpose of the initial hearing is to establish a scheduling order and

address any preliminary matters. If Respondent fails to file a written response or appear at the initial hearing, findings may be entered, a permanent Order to Cease and Desist may be issued, and a fine may be imposed against Respondent, as provided by Utah Code Ann. §§ 63G-4-206 or -209.

At the Order to Show Cause hearing, Respondent may show cause, if any he has:

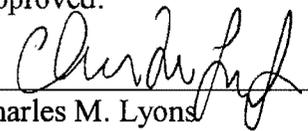
1. Why Respondent should not be found to have engaged in the violations of the Act alleged by the Division in this Order to Show Cause;
2. Why Respondent should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-2, -3 or any other section of the Act;
3. Why Respondent should not be ordered to pay a fine to the Division in the amount of \$5,000.

Dated this 5th day of August, 2009


Keith M. Woodwell
Director, Utah Division of Securities



Approved:


Charles M. Lyons
Utah Division of Securities

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
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NOTICE OF AGENCY ACTION

Docket No. SD-09-0040

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through 209; see also Utah Admin. Code R151-46b-1, *et seq.* The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-46b-6.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding, your version of the

facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
c/o Pam Radzinski
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

Charles M. Lyons
Securities Analyst
Utah Division of Securities
160 East 300 South, 2nd Floor
Salt Lake City, UT 84114-6760
(801) 530-6940

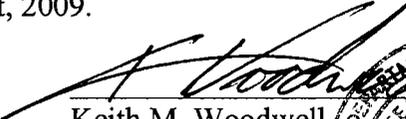
An initial hearing in this matter has been set for September 22, 2009 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9am.

If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-46b-10(11). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4); Utah Admin. Code R151-46b-10(11)(b). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. This adjudicative proceeding will be heard by Mr. Eklund and the Utah Securities Commission. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Securities Division. Questions regarding the Order to Show Cause should be directed to Charles M. Lyons, Securities Analyst, 160 E. 300 South, Second Floor, Box 146760, Salt Lake City, UT 84114-0872, Tel. No. (801) 530-6940.

Dated this 5th day of August, 2009.


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 5th day of August, 2009, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

David Sterling Jensen
75 East 1860 North
Tooele, Utah 84074-8022
Certified Mail # 7604 1160 0003 0197 1569

PAMALA RADDINSK

Executive Secretary