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

Utah Department of Commerce
Division of Securities

IN THE MATTER OF:)	
)	MOTION TO DISMISS
)	
DAVID STERLING JENSEN,)	Docket No. SD-09-0040
CRD#11095958)	
)	Judge J. Steven Eklund
Respondent.)	

**MOTION TO DISMISS
STATUTE OF LIMITATIONS**

FACTS

1. Calvin Jones (hereinafter called C.J.) is known in and around Utah's Securities markets as a

securities guru (Exhibit 1). He had or has all of the following;

- a. M.B.A. (Exhibit 2)
- b. B.A. from the University of Utah (Exhibit 2)
- c. He has held or holds, including but not limited to securities licenses 7, 24, 63 and 65 (Exhibit 2).
- d. Been in the securities business for 4 decades. (Exhibit 1)
- e. Has been a principal in brokerage firms. (Exhibit 1, Exhibit 2)
- f. Has been an agent for several brokerage firms. (Exhibit 1)
- g. Has testified on several occasions as an expert and summary witness in securities matters including but not limited to options trading. (Exhibit 1).

2. Cal Jones authorized David Jensen access to the account on September 1, 2006 (Exhibit 3) and unilaterally terminated such access to the account on or about October 20, 2006

(Exhibit 1). Both of the above acts, show C.J. who had control and knowledge and access of the facts in the account.

3. Cal Jones was aware of losses in the account as early as October 12, 2006, when he stated, “..my account, had already lost a third,..” (Exhibit 4).

4. Cal Jones unilaterally changed the password to the account on or about October 20, 2006 (Exhibit 1), when C.J. “pulled the plug” (Exhibit 6, paragraph 4).

5. Cal Jones in a letter to Respondent dated November 29 (Exhibit 5), 2006 states;

a. “I have discussed this situation with state regulators...who asked me to file a formal complaint and they will pursue action..”,(Exhibit 5, page 2, paragraph 4.)

b. “I have discussed this situation with two attorneys. The attorneys told me to contact regulators and file a formal complaint..” (Exhibit 5, page 2, paragraph 4.).

6. Cal Jones said in his letter dated November 29,2006, that he wasn't going to take a \$30,000 hit in his account in sixty days and not do anything about it.” (Exhibit 5, page 3, paragraph 2.).

7. On January 8, 2007, David Jensen received the following email from C.J., which states;

a. “The state would give you more than a slap on the hands..for toasting my account. They (Utah Securities Division) are pretty ruthless these days.” (Exhibit 6, paragraph 5).

b. “..the attorneys, three of them securities attorneys), I have talked to told me this is a open and shut case against you...” (Exhibit 6, paragraph 5).

8. Cal Jones, had complete, custody, control, knowledge and access to facts of the account, his moneys and all trades. (Read the State's own facts, Exhibit 3, Exhibit 1., Exhibit 5,

Exhibit 6.).

9. State of Utah Securities Division, filed their action against respondent on August 5, 2009 (Motion to Show Cause, page 5. and Notice of Agency Action, pages 3 and 4).

LEGAL AUTHORITY

1. Utah Code Title 78B, Chapter 2, Section 115. **Action by state or other governmental entity.**

“Except for the provisions of Section 78B-2-116 (asbestos damages), the limitations in this chapter apply to actions brought in the name of or for the benefit of the state or other governmental entity the same as to the actions by private parties.”

2. Utah Code, Securities 61-1-22(7)(a) An action may not be maintained to enforce liability under this section unless brought before the earlier of;

(i) the expiration of five years after the act or transaction constituting the violation; or

(ii) the expiration of two years after the discovery by the plaintiff of the facts constituting the violation.

ARGUMENT IN SUPPORT OF MOTION REQUESTING MOTION TO DISMISS

STATUTE OF LIMITATIONS

C.J. is a sophisticated person in securities and options trading and laws relating to securities and options. He has also been an expert and summary witness in options and securities matters.

C.J. knew as early as October 12, 2006, was aware of the facts and that his account was

losing approximately one third of his money. By November 29, 2006 in a letter to Respondent, C.J. again talked about the facts and situation, consulting with attorneys and contacting the Utah State Division of Securities, constituting alleged violations and how he was not going to take a hit for \$30,000 without doing anything about it.

Cal Jones continued to threaten or extort Jensen with lawsuits, complaints with the Utah State Securities Commission after November 29, 2006. Again on January 8, 2007, Jones in another letter to Jensen, explained in great detail and about the 3 securities attorneys he had talked to, how he had talked with the Utah Division of Securities regarding all the facts of this alleged matter. C.J. made it very clear, Jensen better settle up for \$7,000 or else. In fact he might send Tony Soprano over (Exhibit 6, paragraph 3).

C.J. had complete, custody, control, knowledge and access to the account and knew exactly what was going on in the account. He could make trades, cancel trades or reverse trades. C.J. at any time could remove the money from his account or change the password, thus not allowing Respondent access to the account, which he eventually did on or about October 20, 2006.

Giving, C.J. the benefit of the doubt, the absolutely latest one could argue, C. J. not knowing all the facts would be January 8, 2007, after he had talked numerous times with the State of Utah and at least 3 securities attorneys on numerous occasions and threatening Jensen, time and time again of the losses.

Two years after January 8, 2007 is January 8, 2009.

The Utah Securities Division didn't file their action against Respondent until August 5, 2009.

CONCLUSION

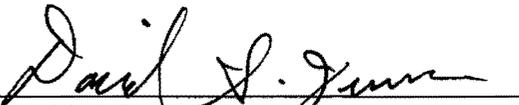
Based on the foregoing, this Court should find, the Utah Securities Division is barred by the applicable statute of limitations from their actions (Order to Show Cause and the Notice of Agency Action)both must be dismissed because they were not commenced before two years after the discovery by the complainant of the facts constituting the alleged violations.

PRAYER

Wherefore, it is prayed that this matter be dismissed with prejudice.

SIDEBAR

David Jensen, respondent, is requesting this motion be decided with written materials provided to the Court. If the court deems oral arguments are required, Jensen prays he be allowed to talk telephonically during oral arguments, thus saving respondent extensive time, expense, inconvenience, since I live in Tooele, Utah (about 90 miles round trip, plus parking costs) and attending a hearing at adversary's place of business doesn't seem or appear very impartial to me.



David S. Jensen
Respondent
75 East 1860 North
Tooele, Utah 84074

Date 9/15/09

A copy of this was mailed to Charles M. Lyons
Securities Analyst
Utah Securities Division
160 East 300 South 2nd Floor
Salt Lake City, Utah 84114-6760

DECLARATION OF DAVID S. JENSEN

I, David S. Jensen, declares under penalty of perjury:

1. I am the respondent in Administrative Hearing CRD # 11095958, Docket Number SD-09-0040 before the Division of Securities of the State of Utah and I am acting as my own attorney.

2. In the summer of 2003, when I first met, Cal Jones, he told me face to face he had been in the Securities Business for 4 decades. He also told me, he was considered a Securities guru by many in the securities business. He also explained how he, had been a principal in several brokerage firms and had been employed by numerous brokerage firms, including but not limited to Main Street Securities.

3. In the summer of 2003, face to face and on or about November 30, 2006 over the telephone, Cal Jones, told me, he had been an expert witness on several cases regarding options trading and securities matters.

4. On the telephone, on or about November 30, 2006, Cal Jones told me he had spoken with several people at the Utah State Securities Division regarding all the facts in this case.

5. On the telephone, on or about November 30, 2006, Cal Jones told me, he had spoken with several attorneys regarding the facts in this case.

6. On or about October 20, 2006, Cal Jones, changed the password to his brokerage account and Jensen no longer had access to the account. I became aware of this by trying to access the account and by communications with Cal Jones.

7. Cal Jones over the telephone with Respondent and through his actions, had total

custody, control, knowledge and access to the account at issue in this case. He could make, cancel or reverse any and all trades. He could change the password, he could withdraw his money, he could add money.

I declare under the penalties of perjury that the foregoing is true and correct.

Date: September 15, 2009

Signed:


David S. Jensen, Respondent

Exhibit 2

more than 25 years and was a founder and director of a national bank holding company. He has served as an officer and director of several NYSE, AMEX, and NASDAQ companies, including positions as Executive Vice President and Chief Operating Officer, Chief Financial Officer, Chief Administrative Officer and General Counsel. Mr. Hipple has served as an Associate Professor of Law and Director of the Graduate Tax Law Program at Emory University Law School and is widely published in the law profession, including having co-authored a multi-volume bankruptcy law treatise. He received his MBA in Business/Finance at Emory University, his LL.M. in Taxation at Georgetown University, his JD with a Business emphasis at Georgetown Law School and his BA in Economics at Wesleyan University.

Nicholas M. Calapa, Director. (See earlier biography)

Rodney B. Read, Director, Vice President and Chief Operating Officer. Rod Read has over 30 years of experience in all aspects of business operations. He served as the Chief Operating Officer for I.R.A.D., an internet service provider, and was responsible for sales, marketing, product development, and the daily operations for the company. He has an extensive background in marketing, advertising, and operations, having served as Vice-President of Marketing and Franchise Development for several national restaurant chains. Additionally, he served as President and CEO of Remark Company, an advertising display company that designed and manufactured display products for clients including Proctor & Gamble and Marriott Hotels. Rod received his BS degree from Indiana University and MBA from Loyola University in Chicago.

Drew Roberts, Vice President and Chief Financial Officer. Drew Roberts has 16 years experience in all facets of financial management and has outstanding educational credentials and broad business experience. Most recently, he served as Vice President of First Security Bank's Trust Systems and Accounting where he was responsible for \$17 billion in trust assets and also functioned as the Trust Compliance Officer. In addition, he served as CFO of H.R. Enterprises with responsibility for all financial services. Drew received both his BA degree in Finance and his MBA from the University of Utah.

Aaron Nilsen, Secretary and Corporate Counsel. Aaron Nilsen earned his BA degree in Editorial Journalism from the University of Washington and obtained his JD from the University of Utah College of Law, where he earned recognition as a Leary Scholar (awarded to the top 20%) and served as Senior Staff on the Law Review.

Boyce F. Lowery, President, Concilium Insurance Services, Inc. Boyce Lowery has nearly 25 years of diverse experience in the insurance and financial services industry. Most recently, he served as Executive Vice-President and Chief Operating Officer for an insurance agency and a broker-dealer, each of which focused on bank channel marketing. Boyce is also co-founder of PIE Technologies, Inc., a financial services software development firm located in Midlothian, VA, and continues to serve on its board of directors. He received his BS in Management from

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Bob Jones University and his Chartered Life Underwriter and Chartered Financial Consultant designations from the American College in Bryn Mawr, PA.

Bradford K. Parkin, President, Concilium Real Estate and Mortgage Services, Inc. Brad Parkin brings a broad range of experience in brokerage, acquisition, financing, and syndication marketing of commercial and residential real estate and securities. His activities have included marketing large private placement real estate offerings of a prominent Boston based syndication and management firm to high net worth clients, including the prized NYC portfolio of the MacArthur Foundation. He served for several years as a Vice President of Sales for both Shearson Lehman and Smith Barney in Los Angeles before forming and operating a California mortgage company that quickly dominated its market. Brad earned his BS in Finance at Brigham Young University.

Dell Gailey, Vice-President, Concilium Planning Group, Inc. Dell Gailey has more than 30 years management experience encompassing operations, business development, marketing, and finance. He has served as CFO, Controller, Director of Operations, and Vice President for various businesses including Fortis Financial, Great Western, Inc., and Otten Management. Dell has been instrumental in developing many financial products, programs, and strategies for these companies addressing the challenges faced by the highly compensated and affluent. He received his MBA with honors from the University of Utah with emphasis in Operations and Logistics.

* Calvin K. Jones, President, Concilium Merchant Capital Group, Inc. Cal Jones has served as the managing director of Securities American, Inc., where he handled approximately 150 client portfolio accounts and was a top-producing broker in equity sales among 1,000 brokers nationwide. He subsequently started his own business, Calvin K. Jones Stockbroker Inc., and in a twelve-month period took the company from zero clients and sales to over 350 clients and \$750,000 in sales. Cal received his MBA from Westminster College and BA degree in Speech Communications from the University of Utah. He holds Series 7, 24, 63 and 65 licenses.

ITEM 8. COMPENSATION OF DIRECTORS AND EXECUTIVE OFFICERS

Nicholas M. Calapa and Bruce Keller have served as our only directors and officers. No compensation has been paid to any officer or director of the Company in 1999, 2000, or 2001.

Exhibit 3

Dave Jensen

From: Calvin Jones [dansk9@mstarmetro.net]
Sent: Friday, September 01, 2006 9:13 PM
To: Dave Jensen
Subject: Re: FW: I smell strong reversal in markets today.

ok, the money is in. Account # 160-361622. username Dansk999 password lexuses300 let's start with 15k if you think that is enough and move up to 30k shortly. Rock and roll baby! thanks Cal

----- Original Message -----

From: "Dave Jensen"
To: "Calvin Jones"
Subject: FW: I smell strong reversal in markets today.
Date: Fri, 1 Sep 2006 12:52:18 -0600

Actually I meant login information. I just remembered with Ameritrade they assign one or you assign yourself a UserID or Account Number, plus a password. That's the info I need.

DJ

From: Dave Jensen [mailto:dsj7@wirelessbeehive.com]
Sent: Friday, September 01, 2006 11:38 AM
To: 'Calvin Jones'
Subject: RE: I smell strong reversal in markets today.

Account number & password and how much you want me to start investing with.

DJ

From: Calvin Jones [mailto:dansk9@mstarmetro.net]
Sent: Friday, September 01, 2006 11:33 AM
To: Dave Jensen
Subject: RE: I smell strong reversal in markets today.

the money will be in my account today, ready for Tuesday, let me know what you need

----- Original Message -----

From: "Dave Jensen"
To: "Calvin Jones"
Subject: RE: I smell strong reversal in markets today.
Date: Fri, 1 Sep 2006 11:27:29 -0600

Yup. Half way through the trading day and the equity markets quickly reversed.

From: Calvin Jones [mailto:dansk9@mstarmetro.net]
Sent: Friday, September 01, 2006 10:24 AM
To: Dave Jensen
Subject: RE: I smell strong reversal in markets today.

Dave Jensen

From: Calvin Jones [dansk9@mstarmetro.net]
Sent: Thursday, October 12, 2006 12:34 PM
To: Dave Jensen
Subject: RE:

this has gone up steadily every day since we went short on sept 1, I am not going to have an account left at the rate this is going, especially with what's left of my account all in expiring oct. options. I don't want to lose the whole account, already lost a third, any thoughts?

> ----- Original Message -----

> From: "Dave Jensen" <dsj7@wirelessbeehive.com>
 > To: "'Calvin Jones'" <dansk9@mstarmetro.net>
 > Subject: RE:
 > Date: Thu, 12 Oct 2006 10:41:46 -0600

> Covered the shorts, last week. Bought options.

> Beige book will be out at Noon. Will be a market mover.

> AMAT and many other hardware techs not doing well, thus I consensus is, Beige Book won't look that good.

> See the trade Deficit today? Last month (September) largest in US History. \$70 Billion. Deficit with China 22 Billion also a record high.

> DJ

> -----Original Message-----

> From: Calvin Jones [mailto:dansk9@mstarmetro.net]
 > Sent: Thursday, October 12, 2006 10:11 AM
 > To: Dave Jensen
 > Subject: RE:

> didn't we sell the actual shares short? I am confused

> > ----- Original Message -----

> > From: "Dave Jensen" <dsj7@wirelessbeehive.com>
 > > To: "'Calvin Jones'" <dansk9@mstarmetro.net>
 > > Subject: RE: Date: Thu, 12 Oct 2006 10:04:37 -0600

> > How do you get a margin call on options? Nothing is margined.

> > DJ

> > -----Original Message-----

> > From: Calvin Jones [mailto:dansk9@mstarmetro.net]
 > > Sent: Thursday, October 12, 2006 9:57 AM
 > > To: Dave Jensen
 > > Subject:

> > Am I going to get a margin call?

Dave Jensen

From: Calvin Jones [dansk9@mstarmetro.net]
Sent: Wednesday, November 29, 2006 4:22 PM
To: Dave Jensen
Cc: Dansk9@mstarmetro.net
Subject: see attached file



Dave.doc (27 KB)

Dave,

The result of my following your advice to "be patient" and "hold on" is the almost total loss of my account. I trusted you to manage this account due to my own time constraints and you represented to me that you could make money and control risk and loss to at least some extent. I have reviewed the account along with instructions I gave you to get me out at the 20,000 valuation level. (this didn't happen because you waited until the last minute before entering a limit order above the market). You were supposed to get 15% of the profits, my question for you is; what do I get when you toast my whole account?

In my original discussion with you I told you I wanted to play this close to the vest using collars, straddles, and other less risky strategies that would limit losses. I made it clear to you over and over that I didn't want short term options expiring in days rather than months. You totally ignored my instructions and piled one loss in short term options on top of the other until my account value was cut in half and then in thirds and then down to zero. I told you over and over that I couldn't bear the total loss of this account, it apparently fell on deaf ears as you essentially took my money and did the equivalent of gamble it on one number on the roulette wheel.

(You sold short and bought puts on the NASDAQ index in my account in the biggest bull market of the last ten years, starting at 38.74 on an index that has since been up to almost 45.00. With the exception of one or two minor down days it has gone straight up. That isn't bad judgment, it is gross incompetence.)

I have discussed this situation with two attorneys and state regulators without disclosing any names. The attorneys told me to contact regulators who asked me to file a formal complaint and they said they will pursue action to recover all my losses and levy substantial fines, penalties, etc. on top of it unless you can prove that you are licensed with a broker dealer. They say there is no exemption from licensing requirements whatsoever for anyone.

This is absolutely not what I want. I would prefer to settle this with you. I am willing to bear a loss of 10,000, but I will not lose the whole amount which is basically where it's at right now. If you want to settle this for \$20,000 I will do so, if not I will turn it over to the state and let them handle it from here on out and seek the return of the whole amount. I am amenable to working it out almost any way you want to. If you don't want to do that then you can deal with the state from this point on and we'll see where it goes.

I am truly sorry it has come to this, I really am, but I am absolutely not going to take a \$30,000 hit in sixty days and not do anything about it. This is totally ridiculous, I have been very patient and given you the benefit of the doubt but I am done screwing around. If nothing else you have a fiduciary responsibility as a CPA to have handled this better. Please communicate with me in writing only from here on out, via email or through the mail at the following:

Dansk9@mstarmetro.net

Or home address :

5524 Chaparral Dr.
Murray, Utah
84123

Cal Jones

DJ

From: Calvin Jones [dansk9@mstarmetro.net]
Sent: Monday, January 08, 2007 4:23 PM
To: DJ
Subject: RE:

Now that I have some time I will respond:

1- the loss was 25k with 5 left, this is indisputable, will show you the confirmations. Your advice was always the same (I reviewed the emails) and that was "have patience, sell-off coming, market way overvalued" etc.

2- I don't care if it is 13k or 15k, willing to split the difference with you on that as well and call it 14k / 2 = 7k.

3- By not "put the screws to you" I mean I wouldn't send Tony Soprano to get you if you were having a tough month. I would be willing to simply settle it for 14 payments of \$500.00 and call it over with. If your rec's are as good as you say then you do them and make an extra \$500.00 to send me, if you have an awful month just communicate that to me and I will not yell and scream about it. I have a hard time jumping into new rec's as the last ones were disastrous and not even close to what I told you I you to do in the account. I do want to see it done over say an 18 month period however, allowing for the skipping of a month here and there. You agree to never miss more than one payment at a time so that months don't go by with nothing from you.

4- As far as new recommendations go, I am willing to listen and maybe try them if I have a comfort level with them. I have funded my account again and done some short in and out trading on my own and done pretty well so far. If you give me one THAT I ACTUALLY DO, I would reduce by that amount. What I don't want is to get an email saying "if you had done x this morning you would have made y and so therefore it's reduced by that amount". It only counts if I am comfortable with it and really do it, then I would reduce by that amount. I have been royally hosed on your past rec's so I don't have a big confidence level which you can understand without being insulted I believe. It is what it is, you can't deny that you made huge errors in my account which you assured me over and over were soon going to all be rectified and never were. All the emails you are so fond of quoting are based on my response to your continued reassurances that all would soon be well and that my account was going to return to even soon. If I hadn't pulled the plug there wouldn't have anything. I also don't want you to simply say "someday I will give you a recommendation that works" and not send me anything. Before I do anything I am going to see how the new rec's work out for a while then do something, in the meantime I think I should see something from you. I will let you look at account statements to verify whether I did anything you suggested or not. This also raises another question which is, what happens if I take them and lose again? A very real possibility.

5- The bottom line is that this results in you taking at least some responsibility for giving me the worst advice in history and toasting my account in about 60 days when I asked you to play it close to the vest and not take big risks. It saves you legal fees, fines, etc. Neither of us gets what he wants but we both get something. FYI, the state would give you way more than a slap on the hand, it's up to a 50k fine per incident, and they can make you disclose all the accounts like mine you have ever handled. The fact that you have not received compensation is irrelevant, your emails are proof that you were functioning FOR compensation and is in itself, according to them, the only issue, whether you actually got money or not doesn't matter. There have been articles in the paper about this in the past few days. They are pretty ruthless these days. As far as them caring about me, they don't, everyone they go after tries to blame the victim, they don't buy it. I haven't done anything illegal, I lost money you know, that isn't a crime and neither is anything else I have done in my career. You also can't get out of the fines with a BK, so I think this is reasonable. Bear in mind that I made you 15k, a fact you ignore with regularity, my reward for that was a 25k loss for trusting your judgement. I am not interested in an outside arbitration as the attorneys I have talked to told me not to as then give up all other legal rights. By the way three of them (securities attorney's) are unanimous in saying that I have an open and shut case against you as a CPA and an unregistered investment adviser they say emails from me aside, you would lose and I would recover everything I lost. If handled correctly, they say it couldn't be discharged in a F either. That's really what I should do, but at this point I would rather settle it as per