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**BEFORE THE DIVISION OF SECURITIES (Petitioner)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

SEP 12 2009

Utah Department of Commerce
Division of Securities

IN THE MATTER OF:)	REPLY TO RESPONDENT’S MEMORANDUM
)	
)	
DAVID STERLING JENSEN, CRD#11095958)	Docket No. SD-09-0040
)	
Respondent.)	Judge J. Steven Eklund

Respondent, David Jensen, files his Reply to Petitioner’s Memorandum, Regarding Motion to Dismiss on or before October 8th, 2009 pursuant to the Order of Judge Eklund at the initial hearing on September 22, 2009.

Respondent will Reply to each of Petitioner’s Arguments as shown in their memorandum and then present Respondent’s own Arguments. Might I remind the Court, the burden of proof rests with Petitioner.

RESPONDENT’S REPLY TO PETITIONER’S ARGUMENT I.

First of all, in Petitioner’s Notice of Agency Action, notifies Respondent 30 days to file an answer. Also included in their Notice of Agency Action, they ask for Respondent to “state affirmative defenses”. Respondent did both on or before 30 days. Did Petitioner tell Respondent, he had to file motions before his Answer? No they did not. In fact one definitely gets the impression they are to be filed with Respondent’s Answer.

Secondly in the Initial hearing of September 22, 2009, which three of Petitioner’s agents attended, not one single agent (and there were 3 agents present) from the Division of Securities (hereinafter called Division) objected to Respondent’s Motion to Dismiss, even though admitting to the

Court they had received such Motion.

Third, during the initial hearing on September 22, 2009, Judge Eklund, clearly gave Respondent leave from the Court, by Ordering Petitioner to file Petitioner's Response on or before September 28th, 2009 to Jensen's Motion to Dismiss. The Court also gave Respondent until October 8th, 2009 to Reply to the Division. Again, not one of the 3 agents from Division objected to the Judge's ruling.

Fourth, the Court also gave Respondent Leave until the end of October 2009 to file his remaining Motions to dismiss. Not one single of the 3 agents from Division objected to such Order from the Court.

In summary, Petitioner's first argument shown is frivolous and without merit and actually appears out of place.

Wherefore, it is prayed Petitioner's Argument I. be ruled against Petitioner and for Respondent as already ordered by the Court.

RESPONDENT'S REPLY TO PETITIONER'S'S ARGUMENT II.

Petitioner meanders around and claims petitioner needs to somehow find a statute which applies specifically to actions by Division. Sorry, Division the Burden of proof is on you, petitioner, not me respondent. Utah Code Section 78B, Chapter 2, Section 115, entitled "**Action by state or other governmental entity**", just as clear as can be said in plain English that;

"Except for the provisions of Sections 78B-2-116 (asbestos damages) the limitations to 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".

Also note in the preceding paragraph, the Utah legislature, made an exception as to the statute for asbestos actions. The very fact they made an exception, goes to show the legislature thought about extending statutes, which they did NOT do regarding Securities matters.

The Utah Division of Securities is a State of Utah Agency or other governmental agency. The Statute of limitations for private parties in Securities Utah Code 61-1-22(7)(a) is two years from the date of discovery by the parties. Division, has never once contested the facts laid out by Respondent that not only did complainant, Jones, not know all of the facts, but such information was also shared with the Division the facts as early as November 2006.

In *Company C vs The Utah State Tax Commission* (Appeal No. 97-0030), where the State of Utah was arguing a shorter statute of limitations (3 years) shown in Utah Code Section 78 applied in an administrative Tax hearing. Despite the fact that the Utah Tax Code even though vague and not specifically identifying the issue at question allowed petitioners the general 4 years statute shown in the Utah Tax Code. The Appeals Court held, "There was no specific statute of limitations codified to recover illegally assessed and collected funds from the plaintiff. In that case the Court held that the general four-year statute of limitations applied".

Division, then tries to argue an Administrative Action, isn't an action at all. First of all, the Title of Division's own documents filed with the Courts in this matter is a *Notice of Agency Action* (emphasis added). And shown within the Notice to Show Cause are two headings with say, First Cause of *Action* (emphasis added) and Second Cause of *Action* (emphasis added). On August 5th, 2009, I received an Email from Dave Hermansen, from the Utah Division of Securities, stating, "the Division, will be issuing to you (Jensen) via mail an (sic) Notice if Agency Action.." (Exhibit 2). Despite all of the above shown in Division's own documents, they now try and argue that this action is not an action?

Respondent has attached hereto an Exhibit from the Law Dictionary (Exhibit 1). Action as defined the Law Dictionary is;

"an act or decision by an executive or legislative body of government (as an administrative agency)..."

If the very definition of the Law Dictionary should convince the court that by it's very definition an administrative action is just exactly that an action.

Utah Code Title 25 regarding fraud, Uniform Fraudulent Transfer Act, Section 14 regarding the restricting transfers of trust interests, 25-6-14(2)(c)(I) defines an action as;

“...a judicial, arbitration, mediation or ***administrative proceeding*** (emphasis added) commenced prior to or within three years (statute of limitations for this Utah Code Title) after the trust is created”.

Thus from the foregoing paragraph the Utah Code and the legislature have defined an administrative proceeding as an action under Utah Law, regarding the Statute of Limitations of that Division's/Agency's own specific statute of limitations.

Petitioner states, “Most significant, however and fatal to his (respondent's) claim, is the definition of “action” set forth in Section 78B-2-101(1):

The word action is used in this chapter includes counterclaims and cross-complaints and all other civil actions which affirmative relief is sought.

Division the law you cite above says “includes” counterclaims and cross-complaints. I saw nothing regarding administrative matters being excluded as an “action”. Inclusion of some things, doesn't mean the exclusion of something not shown. You might want to re-examine Utah Code 25-6-14(2)(c)(I) which specifically shows an action as being an administrative action.

Again, I find Division with lack of facts regarding this matter, non-conclusive as to their argument and difficult, if not impossible to follow their logic and such should be deemed irrelevant.

RESPONDENT'S REPLY TO PETITIONER'S ARGUMENT III.

The case petitioner references is regarding an administrative disciplinary hearing against someone who was in a specific profession. Respondent by Division's own admission\Order to Show

Cause, has never had any securities licenses since 1986, thus Division has no jurisdiction as to a disciplinary hearing. In fact petitioner call this matter an “Agency Action”.

The theory of Division, is to drag petitioner under their jurisdiction, because one person, yes one, who aided and assisted in his trading came complaining to the Utah Securities Division, because Respondent wouldn't be extorted with constant threats of law suits against Petitioner and going to a “ruthless” (complainant's words not mine) Division of Securities. This matter is NOT an administrative disciplinary hearing, thus the Court must conclude that the above referenced case which no one can find is inapplicable.

The Court also needs to look above at the Administrative Utah State Tax Commission, Company C, vs Utah State Tax Commission, Appeal No. 97-0030 (attached as Exhibit 3). The Utah Tax Commission, though against the interests, of the State of Utah, ruled that the Utah Tax Statute of Limitations took precedent over the General Rule of actions brought against the State of Utah. The Court ruled were there is no specific statute of limitations (like Division Agency Actions), that the specific statute of limitations regarding Securities is what the Court must look to in actions. Complainant in the matter was fully aware of the facts in this case (which petitioner does not argue otherwise) in late 2006. This “Agency Action” was filed approximately 8 months after the Utah Securities Statute had expired.

Other sections of the Utah Code define what actions are limited by the Statute of limitations. Utah Code 25-6-14(2)(c)(i) limits an action, “from a judicial, arbitration, mediation, or administrative proceeding.”. If the proceeding Utah Code section doesn't allow administrative proceedings, why would the Utah Securities Section be treated differently for an administrative proceeding?

The argument of petitioner doesn't match the facts of this case and is illogical, thus in my

opinion irrelevant.

FACTS

1. Division received the written complaint on August 27, 2008 (See Petitioner's Memorandum in Opposition to Motion to Dismiss, page 4, footnote 5).

2. Complainant contacted Division numerous times from November of 2006, through and including early January of 2007 and explain the fact of this matter to Division. (See Facts in Motion to Dismiss, Statute of Limitations).

3. This proceeding is not a disciplinary action. (See Notice of Agency Action and Order to Show Cause, filed by Division)

4. Petitioner has not denied one fact or allegation made shown in respondent's Motion to Dismiss, Statute of limitations, filed by Respondent on or about September 15, 2009. (Petitioner's Memorandum).

5. Once all facts are known by complainant the two year Statute of Limitations starts regarding actions regarding Securities. (See Legal Authority below and Petitioner doesn't argue other wise in Respondent's Motion to Dismiss, Statute of Limitations).

6. Respondent's access to Complainant's account was terminated on or about October 18, 2006. (Facts, Motion to Dismiss, Statute of Limitations).

7. The Law Dictionary defines an actions as;

an act or decision by an executive or legislative body of a government (as an administrative agency) (Exhibit 1)

8. The Utah Division of Securities is part of the executive body state of Utah (Judicial Notice)

9. The Court ordered Respondent had until October 8, 2009 to file his Reply to Petitioner's

Memorandum, regarding Motion to Dismiss, State of Limitations. (Recorded initial hearing, September 22, 2009)

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.

3. Utah Code Title 25-6-14(2)(c)(i), Fraud, Uniform Fraudulent Transfer Act, Restricting Transfers of Interest the claim is a judgement, order, decree, or other legally enforceable decision or ruling resulting from a judicial, arbitration, mediation, or *administrative proceeding* (emphasis added) commenced prior to or within three years (statute of limitations for this Title) after the trust was created.

ARGUMENTS IN SUPPORT OF MOTION REQUESTING MOTION TO DISMISS

STATUTE OF LIMITATIONS

In addition to Respondent's original arguments in his Motion to Dismiss Statute of Limitations and after reading Petitioner's Memorandum and finally receiving some evidence and facts in this case,

Respondent would like to start by concluding, each of Petitioner's Arguments.

Petitioner's Argument I.

During the initial hearing, dated September 22, 2009, the Court clearly granted leave and ordered respondent and petitioner time to make their responses and counter responses, with no verbal objections with 3 people from Division attending the initial hearing. Thus Petitioner's first argument is frivolous.

Petitioner's Argument II. A. First of all, petitioner argues, that because "action" which petitioner found in the count is inclusive (includes) counterclaims and cross-complaints, that somehow, it excludes administrative is an interesting theory. To bad other sections of the Utah code and the Law Dictionary disagree with Divisions logic.

Secondly, Division brings up administrative disciplinary hearings as exempt from the state of limitations. This matter is not a disciplinary hearing. Thus their facts and logic again aren't reality.

Petitioner's Argument II. B. Petitioner argues that "An action may not be maintained to enforce liability under this Section" and they petitioner underlines to enforce liability under this section. If petitioner doesn't think being unilaterally targeted and put into government hearing and asking for \$5,000 isn't a liability? I'd sure hate to think what isn't a liability if the preceding paragraph is not. Petitioner than underlines the word plaintiff and somehow infers that only someone categorized as a plaintiff falls into that category. Why doesn't Division look at Utah's Subpoenas (Exhibit 4). You will see the District Judges of Utah and use the term Plaintiff/Petitioner as one in the same. Not all lawsuits are plenary *actions* (emphasis added) involving a full trial on the merits of the case. There are also simplified procedures, often called proceedings, in which the parties are termed petitioner instead of plaintiff, and respondent instead of defendant. Thus an action is an action, liability is a liability and

Petitioner's play with words, is just that a play with words and should accordingly not be considered credible.

Petitioner's Argument III. Looks like petitioner just can't cite the Roger Case, disciplinary hearing enough. This matter is not a disciplinary action. What petitioner is trying to do, is circumvent the true spirit and meaning of the law and use disciplinary hearings against people in a profession from those of people who are not in the profession. Thus petitioner again is trying to be mis-state the facts, thus lacking credibility.

CONCLUSION

There are several rationale for having statutes of limitation:

Fairness; Over time, memories fade, evidence is lost or disappears, and people want to get on with their lives without legal interference from the past.

The diminishing value of evidence; After an event takes place, over time, memories fade and important evidence may be lost or disappear. The best time to bring a lawsuit is as close to the event as possible so as to have the best evidence available to prove an action (and to defend an action).

Diligence on the part of the injured party (person, entity or law enforcement agency) in bringing the action; The injured party should be required to pursue an action diligently with speed and efficiency, both because of the diminishing value of evidence and because of the importance of closure for all parties.

Respondent in this matter, executed a handful of trades in the account of one person who solicited Respondent, and Respondent had access to the account for just over one month. Complainant had full custody, control, knowledge and access to the account in question. Complainant could have terminated this relationship at any time. All trades were made with the knowledge and consent of

complainant. Respondent never received one penny of money or value from this arrangement.

Complainant in this matter as early as November of 2006 (over a month after respondent had been terminated from trading the account), communicated to respondent he knew all the facts and that he was going to pursue legal action and that he had contacted the Utah Division of Securities on numerous occasions. Complainant also said he'd like to pursue binding arbitration. Respondent agreed to binding arbitration and told Complainant to go find an arbitrator, but later complainant changed his mind, because he said he couldn't find anybody to arbitrate this matter (that means he couldn't find anyone to agree with him). Complainant continued this same drumbeat of lawsuits and going to the "ruthless" (complainant's word) Utah Securities Division for approximately 1.5 years, including having people tape a threatening letter on Respondent's front door, by some sort of private investigator or whatever it was at 10:00 P.M. at night.

For whatever reason, Complainant never pursued legal action (despite numerous threats) against Jensen and Division claims they received a complaint from complainant on August 27, 2008. Division therefore on August 27, 2008 had probably 2 to 3 (possibly arguably 4 plus months) to file an action against Respondent in this matter. Instead Division dragged their feet on this matter and nothing was filed out for almost a year after receiving the complaint. Complainant said, that as early as November of 2006 he had talked to Division on numerous occasions and several securities lawyers. Thus Respondent has high suspicion Division was aware of this matter earlier, then August 27, 2008. Regardless, the statue starts to run, when the Complainant is aware of the facts of an alleged wrongdoing. Since Respondent was excluded from Complainant's account by Complainant, the statute probably started to run on or about October 20, 2006.

Well, it wasn't me, but it was the legislature of Utah who put Statute of Limitations on

Securities matters for 2 years from when the facts were known. Complainant in this matter, is a highly sophisticated securities person, holding numerous securities licenses, being in the business for decades and being an expert and summary witness regarding the trades which were made in his account. He knew exactly what had happened, despite never threatening (or perhaps extorting is a better word), until November of 2006.

The Division now comes along and tries find away around the Statute of Limitations like it doesn't exist for "them" and administrative hearings. In fact as far as they are concerned, there is no statute of limitations for disciplinary hearings. To bad, this matter isn't a disciplinary matter. Respondent hold no securities licenses and never wanted to, since 1986. So Division, can't disciplinary hearing against me, because I'm not under their jurisdiction.

I find Division's arguments non-factual to the matters of this case, illogical and non-conclusive. And let's not forget, the burden of proof rests upon Petitioner not Respondent, which burden they have not met.

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 (Division's) place of business doesn't seem or appear very impartial to me.


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Respondent
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Date 10/8/2009

A copy of the above writings were emailed to Charles M. Lyons (thus saving Respondent additional expenses) I mailed an extra set of exhibits to the Administrative Court Clerk for Mr. Lyons.

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