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**BEFORE THE DIVISION OF SECURITIES (Petitioner)  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH** Utah Department of Commerce  
Division of Securities

IN THE MATTER OF:

DAVID STERLING JENSEN,  
CRD#11095958

Respondent.

)  
) **MOTION TO DISMISS OR, IN THE**  
) **ALTERNATIVE, FOR**  
) **SUMMARY JUDGMENT**  
)  
) Docket No. SD-09-0040  
)  
) Judge J. Steven Eklund  
)

**DAVID JENSEN’S MOTION TO DISMISS ORDER TO SHOW CAUSE AND NOTICE  
OF AGENCY ACTION OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT  
EQUAL PROTECTION**

**Preliminary Statement**

Division in this case allege respondent, made a handful of trades for a single sophisticated securities client for just over a month, receiving no compensation. Respondent has never received and compensation, had access to one client’s account for one month with \$30,000 of complainant’s money in the account.

The state complaint alleges the foregoing arrangement requires Respondent to be a licensed investment adviser in Utah.

There are several companies in the United States that allow an arrangement as respondent had with petitioner, except they allow more capital to invest with and pay a much higher percentage of the gains to the trader.

Respondent has contacted two of these firms explained in the preceding paragraph. Velez Capital Management (hereinafter called Velez) and Keystone Trading Group (hereinafter called

Keystone). Both of these firms have contacted lawyers and regulators. Both of these firms say NO securities licenses are required to trade their moneys. They also told respondent they had several traders with their firms who reside in Utah.

Respondent is not being treated equally with other residents of Utah or other citizens of the United States, by Utah Division's arbitrary abuse of discretion in conflict with the United States' and Utah's Constitutions.

#### **STATEMENT OF FACTS**

1. David Jensen traded for just over a month from September and October 2006 with the knowledge, approval, approval and consent of Cal Jones, complainant, in his account with \$30,000 of Jones' moneys.

2. Respondent, was solicited by complainant to trade his account.

3. Complainant was very bearish and wanted respondent to trade bearishly and speculatively.

4. Respondent was to receive 15% of gains and none of the losses on a cumulative basis with renewals of the starting point to the balance in the account at year end, if losses exceeded gains for the prior year.

5. Respondent had heard of Velez and Keystone and their trading, which allows approximately \$50,000 of their capital traded by a trader. The arrangement was trader (respondent) would get 80% (as high as 90% with Velez) of the gains and both Velez and

Keystone, absorb all losses.

6. Both Velez and Keystone tell me and everyone else on the internet I need NO securities licenses to trade their moneys in their account from my home. (Here are their website, if the Court wants to verify what I am saying about Velez or Keystone. I am also attaching, Exhibit 1, a question and answer from Keystone, special note to page 2, "Do I need trading licenses to trade for Keystone?, the answer is no". I also will attach several emails, I received from both Keystone (Exhibit 2) and Velez (Exhibit 3), where they tell me I need NO securities licences to trade their moneys in their account from my home). Velez Website is

<http://www.vcmtrading.com/index.html#> Keystone Website is

<http://www.keystonetradinggroup.com/>

7. It is not required for one to be an Investment Adviser or information of required of an investment adviser if the information required as shown on Ameritrade's Trading Authorization Agreement.

8. Respondent David Jensen, contacted Attorney, Wallace Boyack, regarding his relationship with complainant. Jensen was told as long as he traded in no more than 5 other's accounts, no one, including respondent, need to be licensed as an investment adviser with the state of Utah.

9. Complainant also met with Jensen's attorney Wallace Boyack and received a contract from Mr. Boyack.

10. Complainant was told and received communications, on several occasions Jensen was not licensed with any State or Federal agencies and didn't need to be, which complainant agreed with.

11. Respondent was billed \$1,000 for the above agreement given to complainant and consultation by Attorney Boyack.

12. Wallace Boyack for the the Court and petitioner's reference, worked for the U.S. Securities and Exchange Commission for approximately a decade (I know first hand, I worked with him personally). Mr.Boyack was an Assistant U.S. Attorney in Utah and worked on numerous Securities actions (again, I worked first hand with Mr. Boyack on several such actions) and how now been in private practice for about 25 years working on numerous Securities matters. He not only has his law degree, but also has his Bachelors Degree from the University of Utah in Accounting, his MBA from the University of Utah and his Masters Degree in Economics. He has been an officer, director and affiliate in numerous public companies too.

## LEGAL AUTHORITY

United States Constitution  
Bill of Rights  
Article. XIV.

Section. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; ***nor deny to any person within its jurisdiction the equal protection of the laws*** (emphasis added).

Constitution of Utah  
ARTICLE I  
DECLARATION OF RIGHTS

“Sec. 2. [All political power inherent in the people.] ***All political power is inherent in the people*** (emphasis added); and all free governments are founded on their authority ***for their equal protection*** (emphasis added) and benefit, and they have the right to alter or reform their government as the public welfare may require.”

## **ARGUMENT**

Velez and Keystone aren't bring in thousands of traders throughout the United States and several from Utah to trade their money and advertising such openly on the internet and telling everyone (see Exhibits) no securities licenses are needed without discussing such with legal counsel and being billed \$1,000 for such advise. If what Velez and Keystone are advertising is actionable, like they are doing with Respondent, why doesn't Division go find some big fish to fry and provide equal protection to citizens of Utah. Obviously these firms would have lawyers and the money to take the Division to task and I'm sure they have discussed this issue clearly with their attorneys . Respondent has no such luxury of substantial funds and being singled out, for some unknown reason, other than prosecutorial abuse of discretion.

Not only is prosecutorial abuse of discretion involved from Division, maybe a better word to describe this case would be selective prosecution against Respondent.

## **CONCLUSION**

For the foregoing reasons, Division's claims should be dismissed, with Prejudice, for failure to state any claim upon which relief can be granted. In the alternative, because Division's own admissions and the undisputed, relevant facts plainly demonstrate that Division's claims have no merit as a matter of law, the Court should grant summary judgement to David Jensen.

Mr. Jensen did his due diligence by contacting several major firms, that allow people to trade their capital from my home with no licenses and I sough Legal Advise from a reputable Securities attorney. All of the above said, Respondent needed NO licenses.

Both Velez and Keystone told me they had people in Utah who were doing trading of their moneys. I don't see the State of Utah pursuing actions against these people nor the firms,

Velez and Keystone, or my Lawyer. Why not, after all wouldn't they be aiders and abettors?

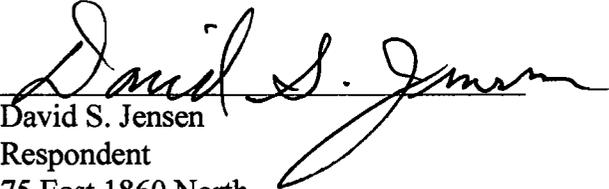
Yet here stands Respondent before this Court for not only a frivolous lawsuit, but a meritless, non-factual and lacking any cause of action and selective form of prosecution.

**PRAYER**

Wherefore, it is respectfully 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  
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(801)755-8777

Date 10/31/2009

A copy of this was mailed (or emailed) to Charles M. Lyons  
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