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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

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IN THE MATTER OF:	)	
	)	<b>MOTION TO DISMISS OR, IN THE</b>
	)	<b>ALTERNATIVE, FOR</b>
	)	<b>SUMMARY JUDGMENT</b>
	)	
DAVID STERLING JENSEN, CRD#11095958	)	Docket No. SD-09-0040
	)	
Respondent.	)	Judge J. Steven Eklund
	)	

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**DAVID JENSEN'S MOTION TO DISMISS ORDER TO SHOW CAUSE AND NOTICE  
OF AGENCY ACTION OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT  
LACK OF JURISDICTION**

**Preliminary Statement**

Division in this case allege respondent, made a handful of trades for a single sophisticated securities client for just over a month and receive no compensation, while respondent was an accountant. Division of Securities Order to Show Cause, fails for the most fundamental of reasons. Accountants are exempt, under Utah's Securities Laws from having to licensed as an Investment Advisor.

**FACTS**

1. Petitioner in their own facts, show respondent was a Certified Public Accountant in Utah through August of 1992. (Petitioner's Order to Show Cause, Facts page 2).
2. David Jensen, respondent, has been an accountant from 1967, through and including the end of December 2006, when the alleges occurred.
3. Respondent has never received any moneys, not one penny, for being an investment

advisor or for any giving investment advise.

4. Respondent from 1971 through and including 1992 has been an active Certified Public Account in the States of Colorado, Utah or Nevada. (See petitioner's order to show cause, showing Jensen being licensed in Utah through 1992)

5. Respondent has never had one single complaint filed in any of his professional career, whether active or inactive as a Certified Public Accountant.

6. Respondent told complainant that Jensen was (past tense) a CPA as Division's Order to Show Cause in the general allegations, Unlicensed Investment Advisor, page 2.

7. Respondent started his accounting career working part time for Kansas City Life Insurance in 1967 and had that job for about a decade.

8. While working part time for Kansas City Life Insurance as an Accountant, Respondent got a full time Job with American Oil as an Accountant and I had that job for approximately 2 years.

9. Jensen left American Oil and got an internship with Certified Public Accounting firm Coopers and Lybrand. I worked full time as an accountant during tax season and the remainder of the year part time. I had that job 2 years, until I graduated from the University of Utah in Accounting.

10. Respondent David Jensen, graduated from the University of Utah with a Bachelor's Degree in Accounting and a 3.5 Grade Point Average in Accounting subjects.

11. Respondent, worked for the Certified Public Accounting Firm Cooper and Lybrand for two years.

12. Respondent worked for the following Government Agencies as an Accountant.

- a. United States General Accounting Office during 1 year
- b. United States Internal Revenue Service during 8 years
- c. United States Securities and Exchange Commission during 2 years

13. Respondent, while pursuing his Masters in Business Administration (with an emphasis in Accounting, all accounting classes were As) at the University of Utah, Jensen had a teaching fellowship and taught Accounting taxes at the University of Utah for 2 years.

14. Respondent graduated from the University of Utah with his Masters in Business Administration (with most electives being in accounting and a 4.0 grade point average in the Accounting classes) and a 3.35 overall grade point average.

15. Respondent was the accountant/Controller of Scott Machinery Company a major Western United States John Deere, Industrial Equipment Company for approximately 2 years.

16. David Jensen, had his own Certified Public Accounting Firm and also had several partners on and off throughout the years. Respondent was in the Certified Public Accounting business for approximately 15 years.

17. Respondent has been a Treasurer, accountant, controller of Chief Financial officer in several corporations.

18. Respondent has been deemed as an expert witness on numerous occasions as an accountant testified regarding accounting matters in Federal Court, Tax Court, State Courts and arbitration matters.

19. In summary Respondent has been an accountant for over 4 decades.

20. I have never held myself out as an investment advisor, nor have I ever received any moneys for such services.

21. When one's Certified Public Accounting License expires, they don't lose it, it just becomes inactive or one can put it in retired status.

22. Upon the completion of professional development classes and paying all the dues Certified Public Accountants like to charge their members, my Certified Public Accounting license could be renewed and be valid again.

23. Division in their statement of facts never allege as Jensen having ever receiving one penny of compensation from anyone for investment advise regarding securities.

24. Jensen's involvement with complainant was incidental, in one account, with a handful of trades, for just over a month and no compensation received from anybody.

25. Respondent attests under penalties of perjury that the above facts regarding Jensen are true and correct.

#### **LEGAL AUTHORITY**

1. Utah Securities Law 61-1-13 **Definitions.**

(iii) "Investment advisor" does not include;

(C) a lawyer, accountant (emphasis added), engineer, or teacher whose performance of these services is solely incidental to the practice of the profession;”

#### **ARGUMENT IN SUPPORT OF MOTION REQUESTING MOTION TO DISMISS**

##### **LACK OF JURISDICTION**

David Jensen from 1967, through and including the end of 2006 was an accountant and am still an accountant. I pursuant to Certified Public Accountant's am considered an inactive/retired Certified Public Accountant (CPA-inactive). Most of that time, from 1967 through and including the end of 2006 (complainant's allegations) Jensen was a Certified Public

Accountant, but I have always been and still am an accountant. I in my lifetime made over a million dollars and held myself out in the field of accounting. I have never made any money being an Investment Advisor nor have I held myself out as being an Investment Advisor.

By Utah Statute, if one is an accountant and incidentally performs investment advisory services, they are exempt. And one does not need be an active Certified Public Accountant to be considered a accountant.

Complainant nor anyone else has ever paid one penny of remuneration to respondent for any investment advise, thus clearly showing Jensen's involvement of being an investment advisor, can't come even close to incidentally.

Division in this case allege respondent, made a handful of trades for one sophisticated securities client for just over a month and receive no compensation, while respondent was an accountant. If one sophisticated client, regarding a handful of trades, over just one month with no compensation being received isn't incidental to being an accountant, I don't know what is.

### **CONCLUSION**

For the foregoing reasons, Division's claims should be dismissed with Prejudice, for failure to provide facts to support the claim made by respondent and the fact that respondent is exempt from Investment Advisor provisions. And in the alternative, because of Division's own admissions and undisputed facts, the relevant facts clearly demonstrate that Division's claims have no merit as a matter of law, the Court should grant summary judgment to David Jensen.

### **PRAYER**

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

### **SIDEBAR**

