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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
ASSUMPTION OF RISK**

Preliminary Statement

Division in this case allege respondent, made a handful of trades for a single sophisticated securities client and his sophisticated wife for just over a month and receiving no compensation.

Risk is fundamental to profit. The terms risk and profit are inseparable, opposite sides of the same coin. So the profit potential of any given financial opportunity can only be assessed in the context of its attendant risks. Joneses both know of the risks involved and accepted those risks. Both Joneses met the suitability requirement for trading options. Both Joneses had the knowledge and financial ability to sustain the risks of loss. Yet, after losing less than half their moneys they put in their account, went crying the "Ruthless" Utah Securities Division, after repeated extortion attempts to pay up or else.

Joneses assumption of risk in moving forward with the arrangement with Jensen, and both Joneses having full control, knowledge, access and approval of the trades being made, now come along with the "Ruthless" Division of Securities and try to get a meritless and frivolous

action pursued against Respondent without assuming any responsibility and having no facts to support this matter.

STATEMENT OF FACTS

1. David Jensen traded put equity options for just over a month from September and October 2006 with the knowledge, approval, approval and consent of Cal Jones (hereinafter referred to as C.J.) in his account.

2. Complainant, has been in the securities business for approximately decades.

3. Complainant has had approximately 4 Securities licenses.

4. The securities licenses complainant allowed him to trades options.

5. Complainant has testified as an expert witness in options.

6. The account in this case is the accountant of Complainant's wife.

7. Complainant's wife's account was approved for margin.

8. Complainant's wife's account was cleared for options trading.

9. Complainant's wife's account was authorized to trade up to \$50,000 in options.

10. Complainant's wife had been trading stocks and options for approximately 14 years, when respondent was allowed to trade her account.

11. Complainant's wife had done approximately 140 stock or options trades when respondent was allowed to trade her account.

12. Complainant's wife's suitability she wanted was for growth and speculation.

13. Complainant's wife did not check the box conservation of capital or other. And nothing was written next to other, where one could write in whatever they want, like "close to the vest" (complainant alleges) investing.

14. Complainant's wife want to be able to trade;

a. Write Covered calls

b. Purchase Options

c. Create Spreads

d. Write Uncovered Options (\$50,000 minimum equity required for index options).

15. By Complainant's wife checking every box in the Option Account Agreement, she was asking for the highest rating of options trading, requiring extensive experience, knowledge and risk.

16. Complainant's wife acknowledged under by her signature that, she represents and she is aware of the inherent risks of options trading and that she is financially able to bear such risks (she makes \$200,000 per year) and withstand option trading losses. She hereby applied for an option account. She acknowledges receiving and reading the Terms and Conditions that will govern her account and agree to be bound by them as currently in effect and as amended from time to time.

17. Securities Firm, TD Ameritrade, certified they mailed to Complainant's wife Options Disclosure Document.

14. Complainant executed a full trading authorization of his wife's account. This authorization gave complainant full access and right to trade securities and options and with the same risks and as his wife.

15. In considering whether to trade in the high risk options markets where there exists a substantial degree of price volatility and financial leverage, you should understand and seriously

consider all of the following real risk factors which you are certain to encounter. Following are the risks in trading options as put out by the regulatory agencies and markets listing options (Judicial Notice), which were discussed several times with complainant and complainant's wife acknowledged receiving such information by her Brokerage Firm Ameritrade.

a. Trading in options involves an extremely high degree of risk of loss. Investors can and do lose all or part of the money they deposit. Because of the volatile nature of trading in options, the market price and, consequently, the value of your account can rise and fall sharply without notice. The use of leverage and/or options can substantially increase your risk of loss. Deposit only risk capital, in other words, money you can afford to lose.

b. As the result of an adverse price movement, or other factors, you may sustain a total loss of your initial deposit (including commissions paid) and any additional funds that you deposit. You may also be subject to losses that exceed the amount deposited in your account when trading in futures and short (opening sell) options. The use of leverage generally causes the value of your market position to change at a greater rate than that of the underlying asset, substantially increasing the risk of loss.

c. An option is an extremely complicated trading vehicle, which carries substantial risks that are not inherent to the trading of the underlying asset.

For example, options lose value with the passage of time (time-decay); options are generally not fully responsive to the price movement of the underlying asset (delta). Option profitability is substantially dependent on the exercise (strike) price of the option relative to the underlying market price. An option with a strike price that is "deep out-of-the-money" is has only a remote chance of ever becoming profitable. Long (opening buy) options have risk that is

limited to the amount of the option premium plus the commission, however, short (opening sell) options have unlimited risk. You should familiarize yourself with the specific and systematic risks, terminology, and workings of long and short, call and put options before depositing money for options trading.

d. No trading system has ever been devised that can consistently produce profits or predict the market. It is only the assumption of risk of loss that gives rise to the opportunity to profit. Some academics theorize that at any given time the current market price of any commodity or stock (or other liquid asset) reflects all known information about that market, and any future price movement is an absolute uncertainty, completely random in nature (i.e., Random Walk Theory). Past price performance is not necessarily predictive of future results. The trade recommendations of bro-brokers, traders, advisors, and analysts represent only their opinions and are normally insignificant in the face of the overall market.

e. Placing certain types of orders, such as stop-loss or stop limit orders, which may be intended to limit the amount of loss, may not be effective because price movement or market conditions can make it impossible to execute such orders. Strategies utilizing spreads and/or straddles may have as much risk as simple long or short positions. It may be difficult or impossible to execute orders and offset or liquidate open market positions due to market liquidity and/or operations.

f. Commissions, bid/ask spreads, and other transaction costs can have a substantial adverse effect on your market positions' ability to break even, and, therefore, your ultimate profitability or loss. In order for you to achieve a net profit on any transaction, the price received upon the sale of the market position must exceed the purchase price by at least the amount of any

commissions paid and other trans-action costs.

Trading options may involve frequent purchase and sale transactions, resulting in significant commissions and costs. Commission charges and other such cost increase the risk of loss and can account for all or part of trading losses. Generally, to calculate your breakeven price, total all commissions and fees, divide by the unit quantity involved in the transaction, and then add the result to the buy price or subtract it from the sell price.

g. There is always a risk associated with the solvency of the exchange, the clearing firm and the counter-party to your transactions. There is no governmental or private institution or party that can truly "guarantee" performance on open positions in the any market, nor is the brokerage or clearing firm insured against default or insolvency.

h. Any transactions that are made in international over-the-counter markets outside of the jurisdiction of the United States government are not subject to US government regulation. Foreign markets may have regulations that differ significantly from those in the US, and may afford substantially less customer protection. While some off-exchange markets are highly liquid, such transactions may involve greater risk than trading in the US counterparts because there is no exchange on which to close out open positions.

I. Significant conflicts of interest exist between you and the brokerage firm, the clearing firm and the exchanges. A conflict exists because the brokerage firm and clearing firm stand to gain from increased trading activity in your account, which generates increased brokerage commissions and/or clearing fees. Both the brokerage and clearing firms are free to engage in any futures or option transaction, capacity or activity that either deems appropriate, despite whether it may present an apparent, potential or actual conflict of interest with your account.

j. Trading on an electronic trading system (ETS) may differ significantly from non-electronic trading environments. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system, including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instruction or is not executed at all.

k. The risks brief shown above cannot identify all of the risks and other significant aspects of trading in options. You should, therefore, carefully study and understand the CFTC required Risk Disclosure Statement (see facts above as to risks) and all aspects of the account, the market, and the trading vehicle, prior to depositing any money for trading. If you do not understand any part of the Risk Disclosure Statement, seek the advice of someone who does know.

16. One should have sufficient knowledge and experience in financial and investment matters as to be capable of understanding and evaluating the risks and merits of trading in options. If you lack such knowledge and experience, or do not understand options, you should seek the advice of a qualified attorney or trained financial advisor before depositing any money for trading purposes.

17. Complaint, while trying to extort Respondent for losses, communicated in an email he was going to the “Ruthless” Utah Division of Securities and filing a complaint if Jensen didn’t pay him.

LEGAL AUTHORITY

Assumption of risk is a defense in the law of torts, which bars a petitioner/plaintiff from recovery against a negligent tortfeasor if the respondent can demonstrate that the plaintiff voluntarily

and knowingly assumed the risks at issue inherent to the dangerous activity in which he was participating at the time of his injury.

ARGUMENT

Complainant and complainant's wife know about risk. Look at his background and her questionnaire regarding options and the options brochure sent to her, where options risks are stated very clearly.

Risk has two aspects: 1) The probability that a loss will occur, and 2) the amount of money that is at risk if the loss does occur. In other words, the probability and magnitude of the potential loss. To illustrate, on the extreme ends of the risk spectrum are a lottery ticket and a US Treasury bond. The lottery ticket has an extremely high probability of a loss occurring, but a very small amount of money at risk. On the other hand, the Treasury bond has a very small chance of loss, but, if a loss does occur, a much greater amount of money would be lost.

Between these two extremes on the spectrum of risk lie virtually all financial investments, speculations and gambles. The risk evaluation process must weigh and consider both aspects of risk to be effective.

Options are anticipatory price discovery mechanisms. The options price constantly changes placing premiums and discounts to reflect future expectations of market participants. Some academics theorize that at any given time the current market price of any stock reflects all known information about that market, and any future price movement is an absolute uncertainty, completely ran-dom in nature.

The mental picture of all market participants divided into two equal groups captures this concept. Half think the market will go up, the other half think it will go down. When one market participant changes his or her mind and moves to the other side, the market price will change until

all market participants are again divided into two equal groups.

Theoretically and practically, no one knows which way the market will move. Not your broker, not the principals of the firm, not the exchanges, not market-makers, not even the government, Federal Reserve Board Chairman or the President of the United States himself. We emphasize this point because it should always be kept in the forefront of one's mind while viewing the options market or any other market. (In fact, if anyone did ever truly know in advance where the market was going, the very integrity of the market itself would be beached.) Furthermore, it is philosophically true and statistically proven that the past price movement of any given market is not, and cannot be, predictive or even indicative of future price movement.

The options markets, and other liquid markets, reflect the uncertainty that looms over all human affairs. Indeed, the origin of the futures market itself is derived from people's innate desire to identify and avoid such uncertainties. One of the major functions of modern futures markets is to transfer risk. Those who are willing to accept the transfer of these risks do so in hopes of generating a profit, because they are speculating on whether the price will rise or fall from its current level.

Joneses both and definitely jointly knew the risks. Cal Jones solicited Jensen to trade in his account. He was very bearish and told Jensen to aggressively pursue a bearish posture with options.

Cal Jones was told numerous times Jensen had no securities licenses. The Joneses could have easily done a check over the internet or called the Divisions of Securities, if such was so important, to see if Jensen had any securities licenses.

After moneys were lost in Jones' account, Cal Jones blamed Respondent and started a series of extortion attempts against respondent for respondent to pay for their losses. If not Cal Jones was going to the Ruthless (Cal Joneses' email dated January 8, 2007) Utah Division of

Securities and file a complaint, which he did some year and a half plus later during the end of August 2008.

Risk is fundamental to profit. The terms risk and profit are inseparable, opposite sides of the same coin. So the profit potential of any given financial opportunity can only be assessed in the context of its attendant risks. Joneses both know of the risks involved and accepted those risks. Both Joneses met the suitability requirement for trading options. Both Joneses had the knowledge and financial ability to sustain the risks of loss. Yet, after losing, when crying the the “Ruthless” Utah Securities Division, after repeated extortion attempts to pay up or else.

Joneses were like a football player in a football game. Only one team wins and oftentimes there are injuries along the way. Can the injured football players then go filing complaints against the coaches, the player that hurt them, the school district because they didn’t win or got hurt along the way? Tort law says, the answer is a resounding no. And the same reasoning should be applied to the Division’s action in this matter.

CONCLUSION

For the foregoing reasons, Division’s claims should be dismissed. Complainant and complainant’s wife clearly knew the risks and rewards. When things didn’t go their way, they tried to extort respondent, and the “Ruthless” Division of Securities took the bait and abused their discretion by filing this frivolous and meritless action and failing to state any claim upon which relief can be properly granted.

Joneses and the Division act like Joneses are to be resolved of any and all assumptions of risk. They wanted to “Rock and Roll” (email from Complainant) in the high risk arena of options trading. So after a little over a month of trading, Joneses now say to Respondent and to Division,

heads we win, tails you lose.

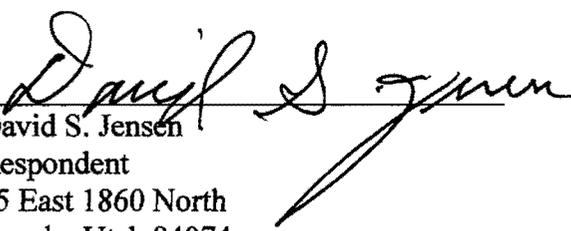
Sorry Joneses and Division, but the legal defense in the law of torts, doesn't allow such irrational denial, meritless claims and allegations or frivolous actions by either of you for people who knowingly and intentionally assume risks, and later on "try" to ignore or deny such behavior.

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.



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Date 10/31/2009

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