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

**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, 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. Mr. Jensen has had no firm, has had no access to any other client's accounts, has written no publications or given advise to anyone and he is not a financial planner. Division of Securities Order to Show Cause, fails for the most fundamental of reasons. People are exempt, under Utah's Securities Laws from having to be licensed as an Investment Advisor if they have less than 6 clients, have less than \$25 Million under management, don't have a firm, don't hold themselves out as investment advisers, don't receive compensation and are not financial planners.

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. Jensen was not in the trade or business of advising others either directly or indirectly.

3. Respondent did not for compensation advise others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

4. Respondent did not for compensation advise others, either directly or through publications or writings, as to the value of securities or promulgate analyses or reports concerning securities.

5. Respondent never has been financial planner.

6. Respondent has never held himself out to be a financial planner.

7. Respondent has never held himself out to be an investment adviser.

8. Respondent has no letter head of either a financial planner nor an investment adviser.

9. Respondent has no calling cards of either a financial planner nor an investment advisor.

10. Respondent has no business telephones as either a financial planner nor an investment adviser.

11. Respondent has no business address as either a financial planner nor an investment adviser.

12. Respondent has no business licenses as either a financial planner nor an investment adviser.

13. Respondent has never reported any compensation nor has respondent ever received

any income as an investment advisor or financial planner.

14. Respondent has never had any place of business in Utah as an investment adviser nor financial planner.

15. C.J. had no more than \$30,000 of C.J.'s moneys in his account, when Jensen had access to the account.

16. 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.

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

18. 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.

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

20. 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). Was an Assistant U.S. Attorney in Utah and worked on numerous Securities cases (again, I worked first hand with Mr. Boyack on 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

Licensing as shown on the Utah Division of Securities Website
http://www.securities.utah.gov/license_investmentadviser.html

Investment Advisers

DEFINITION

"Investment Adviser" is defined, in section 61-1-13(1)(o) of the Utah Uniform Securities Act ("Act"), as "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities." "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation."

TYPE OF INVESTMENT ADVISORY FIRM

- * State Covered Investment Adviser:
 - o Has assets under management of less than \$25 million
 - o Required to license as an investment adviser with the state if they meet either of the following criteria:
 - + Firm has more than 5 clients who are Utah residents
 - + Firm has a place of business in Utah

ARGUMENT

Division in this case allege respondent, made a handful of trades for one sophisticated securities client for just over a month and received no compensation. The most that was in the account was \$30,000.

By Utah Statute, if one has a firm and for compensation, gives advise to more than 5 Utah

clients or has more than \$25 million under management or is a financial planner, they need to be registered as an investment advisor.

Respondent sought legal advice from an attorney with extensive securities legal experience, regarding respondent's relationship with complainant. Boyack advised Mr. Jensen, he did not need to be registered with Utah to trade in complainant's account or any other's accounts as long as he never exceeded 5 clients or had in excess of \$25,000,000 he was trading.

Let's even assume petitioners facts are correct. Their allegations alone don't prove any of the elements shown above of being an investment advisor. Even worse Division hasn't even come close to the level of preponderance of the evidence of proving respondent should be an investment adviser any other allegations contained in their Notice to Show Cause, in fact just the contrary.

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.

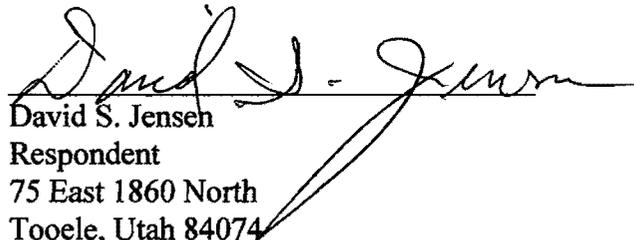
Mr. Jensen also sought legal advice from an attorney well versed in Securities matter and was specifically told no Utah licenses were required in dealings with complainant or others as long as Respondent didn't exceed 5 people or have more than \$25,000,000 under management.

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.

 _____ Date 10/31/2009
David S. Jensen
Respondent
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A copy of this was mailed (or emailed) to Charles M. Lyons
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