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JUN 23 2010

Utah Department of Commerce
Division of Securities

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF: ALBERT CLARK ALVEY, CRD#3088610 Respondent	RESPONSE TO ORDER TO SHOW CAUSE DOCKET NO. SD-10-0011
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Respondent, Albert C. Alvey, hereby responds to the Order to Show Cause issued by the Director of the Utah Division of Securities, alleging violations under the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.* Respondent's response to the alleged acts and practices giving rise to the alleged violations are described more fully herein.

STATEMENT OF FACTS

1. Admit.
2. Admit.
3. Admit.
4. Admit insofar as I knew of only 6 projects out of the 150 companies the State claims.
5. Deny insofar as the statement calls for a legal conclusion. Deny for lack of sufficient information as to the charges against Southwick and amounts in question. I do not in any way support Southwick and I have been forever damaged by him. My understanding is that there were 9 specific cases of Securities Fraud Southwick plead guilty to and that the dollar amount was closer to \$9-10 million.

6. Deny. I have very little knowledge of this. As I understand, it was a Broker/Dealer withdrawal from FINRA in 2007 as stated in the arbitration. Brian Horne and Kevin Kunz sent a letter to FINRA offering to bar themselves based on a misunderstanding of a 1996 FINRA order on outside approval on direct investments.
7. Deny. I have no knowledge of this.
8. Deny. I have no knowledge of this.
9. Deny. My involvement in sales of Vescor products ended approximately mid to late summer 2004.
10. Deny, insofar as the statement calls for a legal conclusion.
11. Deny. The best of my records shows 25 investors and approximately \$3 million raised. Commissions would have been around \$150,000. I have no knowledge of any transactions or commissions not being recorded on IMC's books. As an outside sales representative, my primary area of expertise and concern was sales and I relied upon IMC and its managers to keep IMC's books in accordance with appropriate industry practice and applicable law. Everything I did with Vescor was with and through IMC.
12. Admit. Vescor's incentive contract appeared to be no different than mutual fund incentives which are paid as standard industry practice. Incentives are given all the time. This was no different than had been done at Prudential Securities when I was there. I was not the only one and it didn't seem any different from other incentives. REITS also offer bonuses and incentives. I never met the goal so nothing was ever paid.
13. Deny. I have no knowledge of this or any 'bonus' whatsoever and never received it. I was not privy to or responsible for IMC or other records.

14. Deny. Although I did receive some recognition along with others, I have no knowledge of it coming as a result of reaching any sales goal. I do not recall there ever being a specific sales goal or a 2003 “offering”. Neither do other reps I have asked about this.
15. Deny. I did not do anything with Vescor after the August closing. The referral (a referral/introduction at their request is not a solicitation) of the Hornes came at their request, and was to possibly purchase and own property/real-estate in the range of \$250,000 from Southwick, not Vescor. Not to create a partnership or LLC with Southwick and invest \$1 million. That was the Horne’s doing. It was for property only, not a security.
16. Deny. The \$16,500 was return of commission and I received a promissory note that it was to be returned to me with interest (it never was and was completely lost). It was a good investment according to my IMC boss, Kevin, so many reps did it. No agreement stated Southwick would use the money for certain clients. He may have stated that after the fact, but he was free to do what he wanted with the money.
17. Admit. Some clients called and asked if they were required to complete the questionnaire. I was told there was no requirement and conveyed the same information to clients when asked. I also helped others fill it out because they asked for help. The questionnaires I helped fill out are mostly the ones that the Utah Securities Division now has.
18. Deny. I was an independent sales representative and not an agent. As stated above, my expertise was limited to sales and I had no part in the internal accounting or payroll structure at IMC. My primary concern was receiving payment, and not which entity ultimately issued the paycheck. At the time, I was still very young in the business (just over 4 years). I was new with IMC as a broker. I was trying to survive the worst market crash in 70 years as a new broker. I had no knowledge of nor was I aware of any anomaly

or impropriety in the way I was paid. I relied upon my superiors at IMC to follow applicable law and industry practice and was not involved in the internal structure of IMC. As far as I was concerned it was all IMC. I worked outside the office, not inside. The State's allegations of concealment are purely speculation, and an attempt to hold me accountable for something I did not do or control. I trusted IMC as my new broker dealer and bosses.

19. Deny. See Response #18. The use of Double A was at the suggestion of my CPA, Scott Livingston. He recommended that it would be easier to pay my company, Double A, directly and then pay me at the end of the year for tax purposes. That was the ONLY reason. There may have been a check or two early on that way but then Brian said IMC couldn't do that and be compliant so it was never done again. I can't confirm the numbers but they seem high. *Exhibit #1.*
20. Deny. There were discussions continually with IMC on any and all outside business activities. They knew everything! As I understand it, it was their responsibility to update my U4 as needed as the broker/dealer, not mine. I know it did show Real Estate notes. I didn't see my U4 again until 2006, when I wasn't involved in that anymore. It showed Real-estate sales and /or development. In 2004, IMC was audited by the State and by FINRA, and according to Brian they were shown all records and documents, including U4's without any issues. If everything was reviewed without objection in 2004, I am confused as to why this is an issue now.
21. Deny. First part not true as discussed above. IMC/Brian knew everything I was doing and were responsible for any required updates or changes to my U4. Last part ok.
22. Deny. Nothing was ever promised. Interest rate was/is stated. *Exhibit #2.*

23. Deny. Vescor's material stated they had a 30 year track record. *Exhibits #2, 3, 4, 5 & 6*. The clients were shown everything I had which included completed projects, history, both good and bad including specifics. The Private Placement Memorandum they received and signed was the only information that could be relied upon. Information about Vescor (*Exhibit #6*) and the Security Agreement (*Exhibit #7*) they received from Vescor signed by Mr. Southwick stated possible collateral or trust deeds, not me. They and everyone else knew and were told that promissory notes don't have ownership. That is the reason for having collateral, otherwise collateral wouldn't be needed.
24. Deny. Interest was stated on their promissory note as was the duration of the investment, usually 36 months. Repayment of note with interest over 24 months was never an option that I know of. See *Exhibit #8*. This is the same investment D.W. and S.W. did. The only difference is the dollar amount.
25. Deny. False. See Response# 23 above. The promissory note says right on it "Secured by Deed of Trust" (*Exhibit #8*). They received a Private Placement Memorandum and signed it. Neither IMC nor Vescor would accept money without it and all other signed documents. There was never a "pre-notarized" subscription agreement that I know of. There was no misrepresentation.
26. Deny for lack of sufficient information. I do not know how much they received in payments. They were quite happy with the investment. When their note came due, they were so happy with the performance they wanted to roll it into a new note and keep it going. There wasn't anything better they said! There also wasn't anything available at the time they wanted to change to so they said to let it accumulate until there was. It was their option. It wasn't until much later that they requested money, if they ever did at all.

27. Deny. Interest would have been shown at 12% monthly over a 36 month period with repayment at maturity. **(Exhibit #2 & 9)**. I know of no Vescor investment that paid quarterly and repaid over 36 months.
28. Deny. I went over the same material with everyone. **(Exhibit #7)**. We even met with her daughter and went over past records, investigations of Vescor by the State of Utah with a fine of \$75,000 for non full disclosure, the SEC investigation number (D-2026) in 1999 etc. and possible loss of principle. That was discussed with every investor. She also signed a Private Placement Memorandum that her daughter reviewed with her and reviewed the Security Agreement she would get back from Mr. Southwick. They knew there was no ownership in a promissory note, that is why there was collateral. Each Security Agreement stated the client could check on their collateral anytime they wanted **(Exhibit #7 page 2 #4)** and also states what their recourse is in the event of a default. **Exhibit #7 page 2 #8-15**. This was all reviewed with each client.
29. Deny. As stated above in # 28. Promissory notes don't have legal title or interest in property unless stated in the security agreement. They knew that. See Response #28 and **Exhibit #7 page 2 #8-15**.
30. Deny. I did sell a promissory note but not as stated. Nothing was ever promised. Again no quarterly payments, only monthly. **Exhibit #2**.
31. Deny. They were shown the same information, PPM, Security agreement, Subscription Agreement etc. Everything was as per Vescor's paperwork which the client received and reviewed before signing off. **Exhibit #7 & 9**.
32. Deny. We discussed, on multiple occasions, what could happen and the possible loss of investment as we discussed their other investments. They knew promissory notes didn't

have ownership, that is why the collateral and what legal rights they had. (*All previous Exhibits*). They liked the investment so much they told their neighbors about it and suggested they also invest. Even the neighbors told them they could lose their investment. They also wanted to roll the investment into a new one at maturity because they couldn't find anything better anywhere and were very happy. Their choice! They knew very well what could happen and hoped things would continue like everyone, why shouldn't it?

33. Deny. I did sell them an investment but not as stated. There was no promise or repayment over three years. I'm not sure they have their facts correct. *Exhibit #10*.

34. Deny. All information I had was shared with **all** investors including here. Such information included investigations, fines, known problems with previous Vescor developments and company history. I never stated the investment "would not fail", how could I? Especially after going over all the info. They knew full well all risks, those are their words in hoping "it would not fail" not mine. There is no investment I can guarantee and I would never say that. You even state "that the risk was minimal" meaning there was risk. Vescor did have a default and that was discussed with every investor including this one. They are mixing things up, if Vescor had a default that we discussed and the \$75,000 fine, how can I turn around and say they haven't had a default in 30 years. Everything stated previously and all documents from Vescor were also included and reviewed here, then signed. (*All previous exhibits apply*).

35. Deny. This has already been handled through arbitration and is legally redundant and settled. This was also previously reviewed and dismissed by the previous Securities Director, Wayne Klein (*Exhibit #11*) This is truly "Res judicata". The same applies with the Wing case which is already settled. It is worth noting that though J.H. and P.H.

initiated an arbitration proceeding through FINRA (as described in footnote 3 of the Order to Show Cause), the vast majority of the alleged damages were attributed to the actions of others and not me. I did introduce Hornes to Val Southwick at their request so they could look at property/real-estate he was selling if they were interested in buying as part of an investment portfolio. It was not Vescor. They wanted property, not the different securities I had been showing them. The Hornes were familiar with Vescor because Scott Steorts had been trying to get them as clients for years and had tried to entice them with Vescor's returns in a crashing market place. They didn't want to do business with Mr. Steorts and approached me to help them in Feb./March timeframe in 2005. It was months later that this came up when they were asking me "didn't I have any property/real estate investments, not REITS" which they already had, that I knew of. Kevin and Brian had just weeks previously mentioned that if we knew of anyone interested in property that Southwick was selling his new "Las Vegas" property but it was for purchasing only, and that we could refer them to Southwick if they were interested. That is the only reason I even knew of it. Even your own statements show it was communications between the two entities, Southwick and Hornes, and the timeframe involved to achieve a certain level of status with each other, not me, I was not involved in communication. This is also stated in Horne's deposition where he states Southwick told them the info, prices, amounts and everything about a partnership with him in the LLC. Southwick is the one that invited them to fly with him (and pay for it) to Las Vegas to look at the properties so they could choose. They made multiple trips to Las Vegas, walked the properties, toured the area with Southwick, and put together a business deal that included Horne giving Southwick one of his "Dealer" license plates for his exotic cars to save on registration and taxes which he knew was illegal

as stated in the previous arbitration. Why would Horne do that if they weren't partners and looking out for one another? The Hornes knew full well what they were doing and why. I had nothing to do with their deal. The arbitration showed they had at least 22 other property deals they had done or were still involved in, including 5-6 homes. They have plenty of experience, and I have almost none. I had nothing to do with any of it. The Hornes remain savvy investors with well over a million dollars in investments not including their property holdings, whereas I am now bankrupt.

36. Deny. The statement is mostly correct however it was the JPH LLC and the Foresgren Family Trust that sent money to Southwick, not J.H. and P.H. Those are separate and legal entities. JPH LLC and the Foresgren Family Trust **did not have any accounts** with me or IMC and they were the investment entities. It was their deal they put together with Southwick personally as a partner which is required even in their Operating Agreement with Specific Functions and Responsibilities of members and time commitments (*Hornes info, 'Operating agreement page 4 article 2)*. Vegas Vista Holdings, LLC didn't exist until Aug. 1st, 2005 when Southwick/Hornes created it as a Nevada Corporation (*Hornes info 'Articles of Organization Limited-Liability Company'*). It had nothing to do with me. I don't create Nevada Corporations or LLCs for people, and even the FINRA arbitration denied any claims by J.H and P.H. because they didn't participate.

37. Deny. I was not paid a commission of \$115,000 on this. I and other IMC reps had accrued commissions from previous sales over time that we had not been paid for and were accruing interest at 12% until paid, that is where that money came from, it was just like an investment with Vescor only we didn't have a promissory note or collateral paperwork, we trusted Kevin Kunz, Brian Horne and Vescor, why shouldn't we? At least that is the way

we felt at that time. We felt it was as good as any other investment and Kevin (owner of IMC and my boss) encouraged it at that point in time. Everyone seems to think that this came from the Hornes and it did not. That may be because I purchased property like the Hornes were supposed to do, 8 months after them. It looked like and seemed like a good investment and the Hornes had done their due diligence and were happy with what was planned for the area. They had increased their holding/investment by over 4x (4 times) what they had originally talked about if they were going to do anything at all. They were the real estate experts so I was just following their lead, plus Kevin and Brian suggested they could get me a good deal on some partial pieces that Southwick had and might sell. It may be true that IMC was trying to get some placement fee for me for the Hornes referral but to my knowledge they were unsuccessful because I never received one. There was discussion between Southwick and Brian Horne (President of IMC) about letting me use my accrued commissions as part of purchasing property which Southwick ultimately turned down because "if he was going to discount the price he wanted cash, not trades". The e-mail from Brian I showed you clearly shows this. My accrued commission investment was ultimately lost.

38. Deny. I did review Vescor's history with the Hornes including everything I had or knew, good or bad. They asked me so they would have some basis in dealing with Southwick. Of course I told them what I knew, who wouldn't? The Hornes also did their own due diligence, calling and talking to their contacts in Las Vegas in the construction and development business, Clark County offices for past history and current status, also their contacts in Las Vegas concrete companies etc. that they knew were also looking at dealing with Southwick and were looking to purchase some of his property with high gravel

content in the Las Vegas Apex area. All this and more they told me about while looking for information about Southwick and the potential for the property area, including at least 3 visits to the Apex property area themselves, with and without Southwick. All their usual things they did before buying properties. They knew more about Southwick than I did!! Anything to do with their investment or property came from Southwick, not me. I was asking them for information, not the other way around.

39. Deny. I did tell them that IMC had legal advice on IMC investments, Kevin and Brain had told me that, pretty standard for a broker dealer. This was not an IMC deal, they knew that, so no IMC attorney would review it. Hornes already had at least two attorneys as financial/investment advisors they could use to review anything, investment related or otherwise if they wanted it reviewed. Part of their investments were with the legal firm of Holmgren & Mitten already. They were using Matthew Mitten who was a partner in the Law firm of Holmgren & Mitten and was both an attorney and licensed financial advisor for some of their investments. Why didn't they ask him to review their docs if they had questions? They did both the legal trust work and set up JPH LLC and the Forsgren Family Trust for the Hornes as well as financial investments (mutual funds, REITS etc) for the Hornes.

40. Deny, because it is a statement about the Hornes and Vescor and I don't have all the details. Note however that it is again Vescor that they are communicating with and has nothing to do with me. These issues had nothing to do with me, it was between Southwick and Hornes and that is who they communicated with.

41. Admit. I know this because of the arbitration. Notice that it again says “partner with Southwick.” I can’t set up a partnership or any of the details to do so, let alone a Nevada LLC partnership. Only the partners can.
42. Deny. Again this is their deal not mine. How can I fail to disclose something I don’t know or am privy to? I do think common sense would tell you that anytime you partner with the president of a company on one of his deals he was going to develop that he would have the controlling interest, it was Southwick that was going to develop the property not the Hornes, which is what they were banking on. The property plat/map of lot 6, their property they had been looking at for months shows the property value of \$4.7 million. It doesn’t take much to figure out that their investment into that property would only be worth close to 20 percent at best and that is a far cry from a controlling interest in any one’s math book. It is their documents they agreed to that describe operations etc. My name isn’t associated or on any agreement or document with this deal, anywhere! These entities were not my clients, nor did the Hornes want them to be.

FIRST CAUSE OF ACTION
Securities Fraud Under § 61-1-1(2) of the Act

43. Deny. Any sale of Vescor products included all documents that had to be reviewed and signed, Vescor history was reviewed to the best of my knowledge both good and bad. There was no misrepresentation or omission of facts. As the provided material clearly shows, all the information came from and was in the Vescor materials and included in every investor booklet which they signed for. If it came from the client as you say it did then I didn’t omit anything because they knew it, everything was from Vescor not me. The clients read the same info I did or had, there was no misrepresentation. I’m not responsible

for **non clients**. In addition, the First Cause of Action is barred by the Statute of Limitations described in Section 61-1-21.1 of the Act.

SECOND CAUSE OF ACTION
Securities Fraud Under § 61-1-1(3) of the Act

44. Deny. As previously stated: You are absolutely wrong. This is past incredible!! Everyone at IMC must have been acting as frauds. I find it pretty hard to swallow that ex-CIA employees, ex-military folks would knowingly put their own money, their family and friend's money, let alone neighbor's money because they were frauds, all 39 of them in one company.
- a. As stated above, I was not privy to nor responsible for the internal structure of IMC. I was brand new to the company as an independent representative, not an agent, and still new in the business. My primary concern was receiving a paycheck, not which of my employer's specific entities issued the check. I, along with all of my co-workers simply trusted IMC and our superiors to comply with the law. No one else seemed concerned, and there were no red flags to cause me/us to care or be concerned. We picked our checks up at IMC, they knew what they were doing and if there were licensing issues, they would have mentioned it or taken care of it as the broker dealer. On direct deposits I wouldn't know or be concerned with who paid, only that the money was there.
- b. The use of Double A was not a fraud but rather a recommendation by my CPA, Scott Livingston, to ease compliance with tax law as previously described in *Exhibit #1*. Any potential violation in Double A's use was corrected quickly. Plus if this had been a problem or issue why wasn't it mentioned before in the multiple audits by the Utah State

Dept of Securities and by FINRA who both audited and looked at the records of IMC and specifically asked for records on Vescor multiple times including 2004.

c. All Business activities were reported to my broker/dealer IMC as required. If they didn't act on it, it is their fault as the broker dealer, not because they didn't know something. Nothing was withheld, there was nothing to withhold, they were the reporting entity and responsible for any updating required.

In addition, the Second Cause of Action is barred by the Statute of Limitations as provided by Section 61-1-21.1 of the Act.

THIRD CAUSE OF ACTION
Unlicensed Agent Under § 61-1-3 of the Act

45. Admit.
46. Deny. As described above, all securities transactions I did were through IMC, not through Deseret Financial. I did not know the internal workings or lack there of, of IMC. I'm sure every independent representative that worked for IMC felt the same. I was still a young broker and learning the ropes, I had only been in the business just over 4 years when I joined IMC. I picked up or was mailed my checks from IMC, not Deseret Financial. Any issues were IMC's not mine. How they did their business was not my concern. Not only that, but it never crossed my mind that they were not one in the same. The Secretaries and CPA's usually did payroll and handed out checks, what was there to question?
47. Deny. As far as I'm concerned, every sale and check received was from IMC (they came from Brian or Kevin (or the Secretaries or CPA if there weren't there) and was in accordance with correct policy. They were the broker dealer and were constantly being audited by someone, so naturally we all figured they were in compliance. If there was an

issue you would have thought they would have said something or made a change. I was not IMC nor did I know about the inner workings of IMC, and I'm sure that everyone who worked for IMC would agree. We trusted IMC and our superiors to follow the law and appropriate industry practice. We had no reason to think otherwise. If there was a violation, it was with IMC, not me. I was doing business with IMC. If you do business with a household do you care if you get paid by the husband or the wife? Of course not, it is the same household, why would you care? There was never any reason to think differently from any of the reps or someone would have said something. These were people who spoke their minds.

In addition to the above, the Third Cause of Action is barred by the Statute of Limitations as provided by Section 61-1-21.1 of the Act.

FOURTH CAUSE OF ACTION
False Statements to Division Under § 61-1-16 of the Act

48. Deny. I disclosed any and all outside business activities to IMC which was supposed to update my U4. Representatives don't do that, the broker dealer does. Deseret Financial **was** IMC for all practical purposes. I had no reason to question it or give it a second thought. If it needed to be on mine or anyone else's U4, IMC, the broker dealer, would have done it. Who would have thought it to be an outside business activity from IMC when it was IMC. And if it was an outside business activity IMC knew about it and would have disclosed it if necessary as the broker dealer. When you work for someone and you are new you assume everything is ok and as the broker/dealer they have to be compliant and look out for their brokers and keep them compliant. We paid them to comply. How would I know of any multiple layers of business within IMC, there were plenty already

with RBC Dain the clearing company and IMC. They, IMC were the broker/dealer and compliance people. We paid them to keep us out of trouble and instead they got us into trouble. Same as #47.

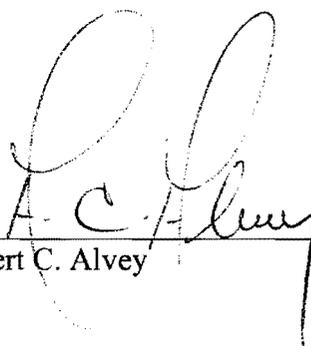
Finally, the Fourth Cause of Action is barred by the Statute of Limitations as provided by Section 61-1-21.1 of the Act.

REQUEST FOR RELIEF

Respondent hereby requests the following relief:

1. That Respondent should not be found to have engaged in violations of the Act as alleged;
2. That Respondent should not be ordered to pay a fine to the Division; and
3. That Respondent should not be barred from associating with a licensed broker-dealer or investment advisor licensed in the State of Utah nor from acting as an agent for any issuer raising funds in the State.

Dated this 23 day of June, 2010.



Albert C. Alvey