Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600

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

IN THE MATTER OF: **JOSHUA FLOYD BLACK, CRD#4280729** **Respondent.**	**PETITION TO CENSURE AND FINE LICENSEE** **Docket No.** SD-10-0026

Pursuant to the authority of the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-6, the Utah Division of Securities ("Division") hereby petitions the Utah Securities Commission ("Commission") to enter an Order, censuring and imposing a fine upon Joshua Floyd Black. In support of this petition, the Division alleges:

STATEMENT OF FACTS

1. Black is currently licensed as a broker-dealer agent and investment adviser representative with Sunset Financial Services, Inc. ("SFS"). He has been employed with SFS since June 1, 2008, licensed as a broker-dealer agent since September 24, 2008, and licensed as an investment adviser representative since December 11, 2008.

2. Paragon Capital Investments, LP ("Paragon") is a Delaware limited partnership formed on August 27, 2008. Paragon's executive address is: 160 Greentree Drive, Suite 101, Dover, Delaware, 19904.

3. Ascent Capital Management, LLC ("Ascent") is a Utah limited liability company whose principal place of business is 13721 South Duskywing Way, Riverton, Utah 84096.

4. Black, along with Jonathan Charles Thatcher ("Thatcher"), CRD#4442559, and Kevin Stewart ("Stewart") are Ascent's three principals.

5. Paragon, Ascent, Thatcher, Stewart and Randall Homer ("Homer") are named as respondents in an Order to Show Cause filed by the Division contemporaneously with this action.

Division Investigation

6. On October 21, 2008, the Division received a Form D notice filing for Paragon that stated Paragon would be offering or selling securities in Utah under Regulation D, Rule 506.

7. The Form D identified Ascent as the general and/or managing partner of Paragon, and listed four executive officers of Paragon: Thatcher, Black, Stewart, and Homer.

8. The Form D stated that Paragon did not intend to sell to nonaccredited investors, and required a minimum investment of $25,000.00.

9. Hannah M. Terhune ("Terhune"), of Capital Management Services Group ("CMSG"), signed the Form D as Paragon's attorney.

Licensing Inquiry

10. On October 28, 2008, the Division sent an initial Inquiry Letter requesting that Paragon: (1) respond to licensing concerns regarding Ascent; (2) provide the Division Paragon's offering documents; (3) provide the Division information about Paragon's investors; and (4) explain why Paragon had not filed its Form D with the Securities and Exchange Commission ("SEC").

11. On November 19, 2008, the Division received a response in which Paragon addressed the Division's licensing concerns by stating that: (1) Paragon was a commodity pool; (2) that Ascent was licensed as a Commodity Pool Operator ("CPO") with the National Futures Association ("NFA") in compliance with rules and regulations of the Commodity Futures Trading Commission ("CFTC"); and (3) that such licensing was sufficient for Paragon to operate as a commodity pool. Paragon also provided some of the requested investor information (discussed below), the offering documents, and proof that it had filed Form D with the SEC on September 25, 2008.

12. NFA records listed Paragon as an "Exempt Commodity Pool" but contained no information that Ascent was licensed as a commodity pool operator as stated in Paragon's written response.

13. Paragon's Private Placement Memorandum ("PPM") indicated that Paragon permitted its investment manager and general partner, Ascent, to invest in securities beyond commodities. Specifically, Paragon stated that the limited partners "...by pooling their assets in the Partnership, will be able to invest their funds in a portfolio of securities managed by the Investment Manager...."

14. Based on the discretion to invest in securities as set forth in the PPM, the Division determined that Ascent needed to be licensed as an investment adviser and that Thatcher, Black, Stewart and Homer needed to be licensed as investment adviser representatives.

15. After several conversations with Thatcher and Terhune, the Division sent a second Inquiry Letter dated December 30, 2008 that explained: (1) that Paragon's November 19 response failed to exempt Ascent from licensing as an investment adviser; (2) that

Paragon's investments in securities required licensing as an investment adviser; (3) that the payment of performance-based compensation as described in the PPM required Ascent to comply with R164-2-1 of the Utah Administrative Code; and (4) that if Paragon sought an exemption from licensing for Ascent, the Division would require that Paragon be limited to the current investors who were family members and friends, and that no compensation could be received by the manager.

16. On January 11, 2009, the Division received notification from Terhune that she and CMSG would no longer be representing Paragon and Thatcher.

17. After receiving this notification, Division staff had a conversation with Thatcher in which he stated his intention to shut down Paragon, but that he needed to find new counsel first. On April 29, 2009, the Division received a letter from Paragon's new counsel.

18. On May 7, 2009, the Division sent a third Inquiry Letter dated May 6, 2009 requesting that Paragon provide to the Division: (1) more detailed information about Paragon's investors; (2) an accounting of the fund's balances; (3) an accounting of all compensation paid for the management of the fund; and (4) any communication sent to clients regarding the closing of their accounts and the closing of Paragon.

19. On June 8, 2009, Paragon provided the requested information and reaffirmed some of the statements in the November 19 response and those made in conversations with Terhune and Thatcher. The response included the following representations:

    a. On October 31, 2008, Paragon sold limited partnership interests to five investors, including the principals. The investors were as follows:

        i. S.T. invested $23,302.00, and was listed as an accredited investor.

ii. J.B. invested $6,516.00, and was listed as a non-accredited investor.

iii. Stewart invested $6,516.00, and was listed as a non-accredited investor.

iv. Black invested $6,033.00, and was listed as a non-accredited investor.

v. Thatcher invested $6,033.00, and was listed as a non-accredited investor.

b. Paragon did not acquire any other investors.

c. The five investors neither made any additional deposits nor withdrew any funds.

d. Paragon, Ascent, and its principals did not withdraw any compensation as no profits had been made in the partnership.

e. As of June 8, 2009, Paragon had lost 46 percent of investors' funds, and the principal amount of $48,400 initially invested was then worth $22,374.[1]

f. Paragon generally communicated to its investors in writing, but only verbally informed each investor of Paragon's losses.

20. On June 10, 2009, the Division had a conversation with Paragon's new counsel in which it was agreed that Paragon would proceed to shut down the fund and that Thatcher would keep all remaining monies in the fund pending the Division's decision on this matter.

Selling Away

21. As set forth above, Black was licensed as a broker-dealer agent with SFS when the limited partnership interests in Paragon were sold on October 31, 2008, and he continued to manage Paragon, through Ascent, while licensed as both a broker-dealer agent and investment adviser representative with SFS. However, he failed to fully disclose these outside business activities to SFS.

22. SFS told the Division that when it learned of Black's outside business activities, SFS

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[1]These figures appear to be incorrect, as a 46% loss would reflect a current value of $26,136 rather than $22,374.

instructed Black to discontinue all such activities and provided the Division with documentation of those instructions.

23. SFS provided the Division a letter it received from Homer on September 30, 2008, stating that he was in the process of purchasing Black's interest in Ascent and that Black was no longer involved.

24. SFS also provided an email Black sent to an SFS compliance officer, dated July 23, 2008, in which Black stated that Ascent only obtained investment monies from "7 investors" who were "...family and a few close friends." Either Black provided incorrect information to his broker-dealer (i.e. seven investors) or Paragon failed to provide the Division a complete list of its investors, as it only informed the Division of five investors.

25. In all the documents SFS provided to the Division, Ascent was the only name used and Paragon was never mentioned. By this omission, Black failed to fully disclose his outside businesses to SFS.

26. SFS's "Representative Compliance & Operations Manual" requires its registered representatives to report any outside business activity to SFS prior to engaging in the activity. It also prohibits SFS representatives from engaging in private securities transactions without prior written notice to SFS and approval from SFS.

27. On October 28, 2008, Black signed an acknowledgment that he had received, read and understood the contents of the SFS "Representative Compliance & Operations Manual"--just three days prior to the sale of Paragon's limited partnership interests to five investors.

28. While Black submitted documents to SFS regarding Ascent, he failed to fully disclose Paragon's securities offering, and made offers or sales of Paragon to investors without

prior approval, thereby violating the policies and procedures of his broker-dealer and selling away from SFS in violation of industry standards.

FIRST CAUSE OF ACTION
Unlicensed Investment Adviser Representative under Section 61-1-3 of the Act

29. Through his activities with Paragon and Ascent, Black transacted business as an investment adviser representative while not licensed, in violation of Utah Code 61-1-3(3)(a).

SECOND CAUSE OF ACTION
Dishonest and Unethical Business Practices under Section 61-1-6 of the Act

30. Black effected securities transactions not recorded on the regular books or records of the broker-dealer which he represents (SFS), which transactions were not authorized in writing by the broker-dealer either prior or after the execution of the transactions. Black's conduct constitutes dishonest or unethical practices as proscribed by Utah Admin. Code Rule R164-6-1g(D)(2), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

31. Black's conduct also violates FINRA Rule 3040, which constitutes a dishonest or unethical practice under Utah Admin. Code Rule R164-6-1g(C)(28), made applicable to agents through (D)(2), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

THIRD CAUSE OF ACTION
False Statements to Division under Section 61-1-16 of the Act

32. Black made false and/or misleading statements to the Division, including but not limited to, the following:

    a. Black misrepresented that his Paragon activities predated his employment with SFS;

    b. Black misrepresented that he complied with SFS's instructions to discontinue

activities with Ascent;

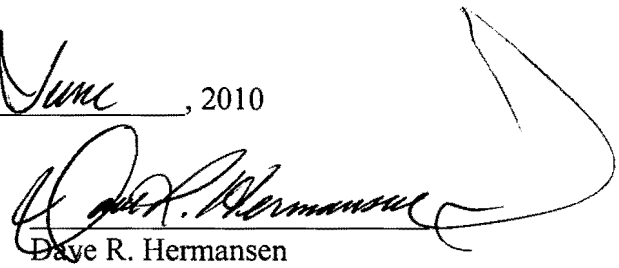
c. Black misrepresented that he fully disclosed his outside business activities to SFS but in fact failed to disclose his activities with Paragon; and

d. Black misrepresented that he invested his own personal funds on October 31, 2008 despite previously reporting to SFS on July 23, 2008 that he had already invested personal funds.

REQUEST FOR RELIEF

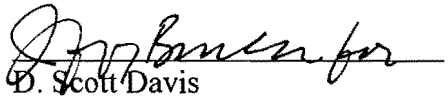
The Division requests that, based upon the Respondent's willful violations of the Act, pursuant to § 61-1-6 of the Act, the Commission enter an order censuring him and imposing a fine in the amount of $10,000.00.

Dated this 16 day of June, 2010



Dave R. Hermansen
Director of Licensing and Compliance
Utah Division of Securities

Approved:



D. Scott Davis
Assistant Attorney General

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

IN THE MATTER OF: **JOSHUA FLOYD BLACK, CRD#4280729** **Respondent.**	**NOTICE OF AGENCY ACTION** **Docket No.** SD-10-0034

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Utah Division of Securities hereby commences a formal adjudicative proceeding against you as of the date of mailing of this Notice. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through -209. The facts on which this action is based are set forth in the accompanying Petition. You may be represented by counsel or you may represent yourself in this proceeding.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding, your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-

204(3), the presiding officer requires that your response:

(a) admit or deny the allegations in each numbered paragraph of the Petition, including a detailed explanation for any response other than an unqualified admission. Allegations in the Petition not specifically denied are deemed admitted;

(b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and

(c) state in short and plain terms your defenses to each allegation in the Petition, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

After your response is filed, a pre-hearing conference will be held. Utah Admin. Code R151-46b-9(9). The purpose of the pre-hearing conference is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:
Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:
D. Scott Davis
Assistant Attorney General
160 E. 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310

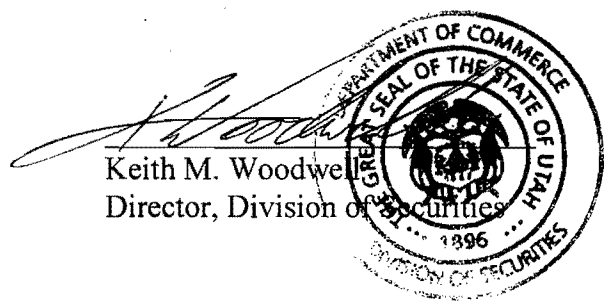
If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-46b-10(11). After issuing the default order, the presiding

officer may grant the relief sought against you in the Petition, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4); Utah Admin. Code R151-46b-10(11)(b). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. This adjudicative proceeding will be heard by Mr. Eklund and the Utah Securities Commission. At any hearings, the Division will be represented by the Attorney General's Office. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Petition should be directed to Scott Davis, Assistant Attorney General, 160 E. 300 South, Fifth Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 17th day of June, 2010.



Keith M. Woodwell
Director, Division of Securities

Certificate of Mailing

I certify that on the 21st day of June, 2010, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

Joshua Floyd Black
3322 North Alpine Vista Way
Lehi, UT 84043

Certified Mail # 7009 2820 0001 2595 4738

Julie Price
Executive Secretary