

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

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

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**IN THE MATTER OF:**

**JOSHUA FLOYD BLACK, CRD#4280729**

**Respondent.**

**STIPULATION AND CONSENT ORDER**

**Docket No. SD-10-0036**

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The Utah Division of Securities (“Division”), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondent Joshua Floyd Black (“Black”), hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. §61-1-1, *et seq.*
2. On June 21, 2010, the Division initiated an administrative action against the Respondent by filing a Petition to Censure and Fine Licensee.
3. Respondent has agreed with the Division to settle this matter by way of this Stipulation and Consent Order (“Order”). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the June 21, 2010 Petition.
4. Respondent admits the jurisdiction of the Division over him and over the subject matter of this action.

5. Respondent waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Respondent has read the Order, understands its contents, and submits to this Order voluntarily. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.
7. Respondent is represented by attorney Justin R. Elswick and is satisfied with the legal representation he has received.

#### **I. FINDINGS OF FACT**

8. Black is currently employed as a broker-dealer agent and investment adviser representative with Sunset Financial Services, Inc. ("SFS"). He has been licensed as an SFS broker-dealer agent since September 24, 2008, and licensed as an investment adviser representative since December 11, 2008.
9. 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.
10. Ascent Capital Management, LLC ("Ascent") is a Utah limited liability company whose principal place of business is 13721 South Duskywing Way, Riverton, Utah 84096.
11. Black, along with Jonathan Charles Thatcher ("Thatcher"), CRD#4442559, and Kevin Stewart ("Stewart") are Ascent's three principals.
12. 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

13. 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.
14. 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.
15. The Form D stated that Paragon did not intend to sell to nonaccredited investors, and required a minimum investment of \$25,000.00.
16. Hannah M. Terhune ("Terhune"), of Capital Management Services Group ("CMSG"), signed the Form D as Paragon's attorney.

#### Licensing Inquiry

17. 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").
18. 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.

19. 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.
20. 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....”
21. 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.
22. 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.

23. On January 11, 2009, the Division received notification from Terhune that she and CMSG would no longer be representing Paragon and Thatcher.
24. 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.
25. 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.
26. 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.<sup>1</sup>
  - f. Paragon generally communicated to its investors in writing, but only verbally informed each investor of Paragon's losses.
27. 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

28. As set forth above, Black became licensed in Utah as a broker-dealer agent with SFS on September 24, 2008. While Paragon initially represented to the Division that the limited partnership interests were sold on October 31, 2008, subsequent documentation indicates the partnership interests were actually sold on October 1, 2008.
29. Black remained part of Paragon's management, through Ascent, while he was licensed as both a broker-dealer agent and investment adviser representative with SFS. However, Black failed to fully disclose these outside business activities to SFS, and that the activities were ongoing.
30. SFS 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."
31. SFS told the Division that when it learned of Black's outside business activities, SFS

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<sup>1</sup>These figures appear to be incorrect, as a 46% loss would reflect a current value of \$26,136 rather than \$22,374.

instructed Black, by letter dated September 2, 2008, to discontinue all such activities and provided the Division with documentation of those instructions.

32. 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.
33. 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.
34. 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.
35. On October 28, 2008, Black signed an acknowledgment that he had received, read and understood the contents of the SFS "Representative Compliance & Operations Manual."
36. 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.

## **II. CONCLUSIONS OF LAW**

37. 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).

38. 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.
39. 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)(7), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.
40. 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 notwithstanding that Black became licensed with the Division on September 24, 2008 and the sale of the limited partnership interests occurred on October 1, 2008;
  - 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.

### **III. REMEDIAL ACTIONS/SANCTIONS**

41. Respondent neither admits nor denies the Division's findings or conclusions, but consents to the sanctions below being imposed by the Division.
42. Respondent represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.
43. Respondent represents that the fund has been unwound and all remaining monies have been distributed pro-rata among the investors. In this regard, Respondent shall provide supporting documentation to the Division within thirty (30) days following entry of this Order.
44. Pursuant to Utah Code Ann. § 61-1-20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine in the amount of \$7,500. Respondent shall pay at least \$500.00 per month, to be received by the 20<sup>th</sup> day of each month, until the fine is paid in full. The first payment shall be made within thirty (30) days of the entry of this Order. If Respondent fails to make a payment as set forth in this Order, such failure will be deemed a material breach of this Order, and payment of the remaining fine amount shall become due in full immediately.
45. Respondent shall cease and desist from violating the Utah Uniform Securities Act and shall comply with the requirements of the Act in all future business in this state.

### **IV. FINAL RESOLUTION**

46. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondent further acknowledges that if the Commission does not accept the terms of the Order, it

shall be deemed null and void and without any force or effect whatsoever.

47. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.
48. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way.

Utah Division of Securities

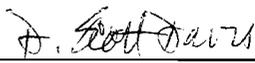
Dated this 5<sup>th</sup> day of ~~September~~ <sup>October</sup>, 2010.

By:   
Dave R. Hermansen  
Director of Licensing and Compliance

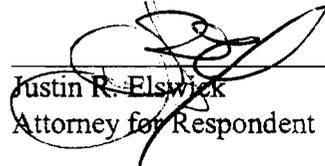
Dated this 28 day of September, 2010.

  
Joshua Floyd Black

Approved:

  
D. Scott Davis  
Assistant Attorney General

Approved:

  
Justin R. Elswick  
Attorney for Respondent

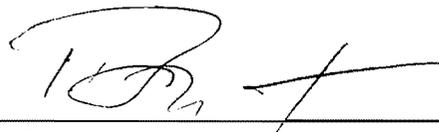
**ORDER**

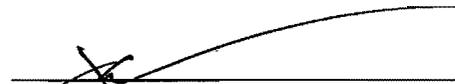
IT IS HEREBY ORDERED THAT:

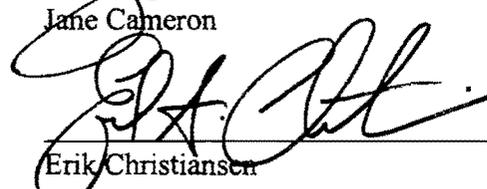
1. the Division's Findings and Conclusions, which are neither admitted nor denied by Respondent, are hereby entered.
2. Respondent undertake the remedial actions as set forth in Section III, above, and pay a fine to the Division in the amount of \$7,500 according to the schedule set forth in paragraph 44 above.
3. Respondent shall cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state.

**BY THE UTAH SECURITIES COMMISSION:**

DATED this 28<sup>th</sup> day of October, 2010.

  
\_\_\_\_\_  
Tim Bangerter

  
\_\_\_\_\_  
Jane Cameron

  
\_\_\_\_\_  
Erik Christiansen

  
\_\_\_\_\_  
Michael O'Brien

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Laura Polacheck

**Certificate of Mailing**

I certify that on the 07th day of NOVEMBER, 2010, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Justin R. Elswick  
HEIDEMAN, MCKAY, HEUGLY & OLSEN, L.L.C.  
2696 N. University Ave., Suite 180  
Provo, UT 84604

7008 1140 0007 1042 07103

  
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Executive Secretary