

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:

**Paragon Capital Investments, LP
Ascent Capital Management, LLC
Jonathan Charles Thatcher, CRD#4442559
Kevin Stewart
Randall Homer**

Respondents.

STIPULATION AND CONSENT ORDER

**Docket No. SD-10-0037
Docket No. SD-10-0038
Docket No. SD-10-0039
Docket No. SD-10-0040
Docket No. SD-10-0041**

The Utah Division of Securities (“Division”), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondents Paragon Capital Investments, LP (“Paragon”), Ascent Capital Management, LLC (“Ascent”), Jonathan Charles Thatcher (“Thatcher”), Kevin Stewart (“Stewart”), and Randall Homer (“Homer”) (hereinafter referred to collectively at times as “Respondents”), hereby stipulate and agree as follows:

1. Respondents have been the subject of an investigation by the Division into allegations that they 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 Respondents by filing an Order to Show Cause.
3. Respondents have 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 Respondents pertaining to the June 21, 2010 Order to Show Cause.

4. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.
5. Respondents waive any right to a hearing to challenge the Division’s evidence and present evidence on their behalf.
6. Respondents have read the Order, understand its contents, and submit to this Order voluntarily. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.
7. Respondents are represented by attorney Justin R. Elswick and are satisfied with the legal representation they have received.

I. FINDINGS OF FACT

The Parties

8. Paragon is a Delaware limited partnership formed on August 27, 2008. Paragon’s executive address is: 160 Greentree Drive, Suite 101, Dover, Delaware, 19904.
9. Ascent is a Utah limited liability company whose principal place of business is 13721 South Duskywing Way, Riverton, Utah 84096.
10. Thatcher is Ascent’s registered agent and manager, and Thatcher, Stewart and Joshua Floyd Black (“Black”), CRD#4280729. are Ascent’s three principals.
11. Thatcher was previously licensed as a broker-dealer agent with Great Eastern Securities, Inc. from October 1, 2004 through May 1, 2005 and with Fidelity Brokerage Services

LLC from August 14, 2001 through October 4, 2002, and was not licensed in any capacity during the times at issue in this matter. Thatcher's current address is listed as 13721 South Duskywing Way, Riverton, Utah, 84096.

12. Stewart and Homer have never been licensed in the securities industry in any capacity.
13. Black is currently employed as a broker-dealer agent and investment adviser representative with Sunset Financial Services, Inc. ("SFS"). He has been licensed with SFS as a broker-dealer agent since September 24, 2008, and licensed as an investment adviser representative since December 11, 2008.
14. Black is named as a respondent in a Petition filed by the Division contemporaneously with this action.

Division Investigation

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

Licensing Inquiry

19. 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").
20. 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.
 21. 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.
 22. The Private Placement Memorandum ("PPM") submitted by 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...."
 23. 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.

24. 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.
25. On January 11, 2009, the Division received notification from Terhune that she and CMSG would no longer be representing Paragon and Thatcher.
26. 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.
27. 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.
28. On June 8, 2009, Paragon provided the requested information and reaffirmed some of the statements in the November 19 response and 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.
29. On June 10, 2009, the Division had a conversation with Respondents' 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.

II. CONCLUSIONS OF LAW

30. Paragon and Ascent transacted business as investment advisers while not licensed, in violation of Utah Code Ann. § 61-1-3(3)(a).

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

31. Through their activities with Paragon and Ascent, Thatcher, Stewart, and Homer transacted business as investment adviser representatives while not licensed, in violation of Utah Code Ann. § 61-1-3(3)(a).

III. REMEDIAL ACTIONS/SANCTIONS

32. Respondents neither admit nor deny the Division's findings or conclusions, but consent to the sanctions below being imposed by the Division.
33. Respondents represent that the information they have provided to the Division as part of the Division's investigation is accurate and complete.
34. Respondents represent that the fund has been unwound and all remaining monies have been distributed pro-rata among the investors. In this regard, Respondents shall provide supporting documentation to the Division within thirty (30) days following entry of this Order.
35. 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 fines in the following amounts:
- a. Paragon, Ascent, and Thatcher, jointly and severally: \$2,500.00
 - b. Paragon, Ascent, and Stewart, jointly and severally: \$2,500.00
 - c. Paragon, Ascent and Homer, jointly and severally: \$2,500.00

The fines shall be paid within thirty (30) days following entry of this Order.

36. The fines shall be reduced for all monies paid back to investors following the Division's review of the supporting documentation.
37. Respondents 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

38. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondents further acknowledge 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.
39. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of their conduct referenced herein.
40. 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 5th day of October ~~September~~, 2010.

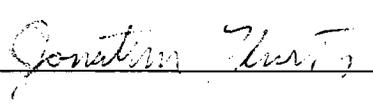
By: 

Dave R. Hermansen

Director of Licensing and Compliance

Paragon Capital Investments, LP

Dated this ___ day of September, 2010.



Its Principal

Ascent Capital Management, LLC



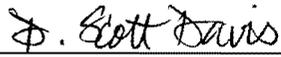
Its Principal


Jonathan Charles Thatcher

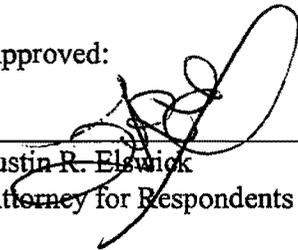

Kevin Stewart


Randall Homer

Approved:


D. Scott Davis
Assistant Attorney General

Approved:


Justin R. Elswick
Attorney for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

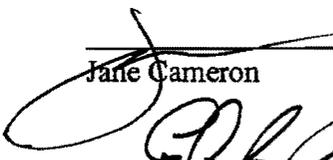
1. the Division's Findings and Conclusions, which are neither admitted nor denied by Respondents, are hereby entered.
2. Respondents undertake the remedial actions and pay fines to the Division as set forth in Section III, above. The fines shall be reduced for all monies paid back to investors following the Division's review of the supporting documentation.
3. Respondents 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:

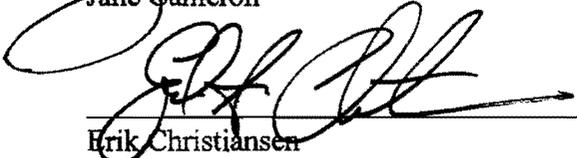
DATED this 20th day of October, 2010.



Tim Bangert



Jane Cameron



Erik Christiansen



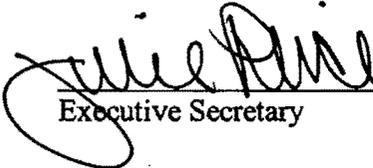
Michael O'Brien

Laura Polacheck

Certificate of Mailing

I certify that on the 10th 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



Executive Secretary