

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:

ALEX MURILLO

Respondent.

STIPULATION AND CONSENT ORDER

Docket No. SD-10-0062

The Utah Division of Securities (“Division”), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondent Alex Murillo, 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 or about September 2, 2010, the Division initiated an administrative action against Respondent by filing an Order to Show Cause.
3. Respondent hereby agrees to settle this matter with the Division 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 September 2, 2010 Order to Show Cause.
4. Respondent admits that the Division has jurisdiction over him and the subject matter of

this action.

5. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order set forth below. 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 Richard L. Hill of HILL, JOHNSON & SCHMUTZ and is satisfied with his representation and counsel in this matter.

I. FINDINGS OF FACT

8. Murillo is a resident of Utah County, Utah.
9. Murillo has never been licensed in the securities industry in any capacity.
10. On April 1, 2010, a receiver for FFCF Investors, Ascendus Capital Management LLC, and Smith Holdings LLC (FFCF Receiver) filed information with the Division concerning Murillo's activities with an investment adviser, Ascendus Capital Management, LLC¹ (Ascendus) and the compensation Murillo received from the FFCF Receiver companies.
11. Murillo received compensation as an unlicensed investment adviser representative pursuant to two contracts with Ascendus, for soliciting three (3) investors to invest with Richard Smith (Smith), Roger Taylor CRD #4634268 (Taylor), and Ascendus. Smith

¹Ascendus was an investment adviser licensed in Utah from April 2003 until December 2005, when it failed to renew. Ascendus managed a now defunct fund of pooled investor monies, Ascendus Growth & Income Fund.

and Taylor were the two principals of Ascendus.

12. In February 2002, Murillo entered into a contract with Ascendus as a “finder” to refer potential clients to the investment adviser, Ascendus.
13. In 2003, Murillo agreed by contract to act as a “consultant” to introduce Ascendus to potential clients.
14. Murillo referred three clients from 2003 to 2004 who initially invested \$190,900. From July 29, 2003 to October 5, 2007, Murillo was paid \$58,512.90 in compensation. Murillo received forty (40) checks over the course of four years, primarily from Ascendus, one check from FFCF Investors, and two checks from Smith Holdings.

Division Investigation

Investor S.P.

15. On February 5, 2010, one of the investors referred by Murillo, S.P., signed a declaration to the FFCF Receiver. S.P. declared the following:
 - a. S.P. invested with Ascendus Capital Management, Smith, and Taylor.
 - b. Murillo introduced Ascendus in 2003. Murillo told S.P. the fund was run by a “great group of guys” that graduated from BYU and knew how to “work the market and make a profit.”
 - c. Murillo brought Smith and Taylor to S.P.’s office, who, then persuaded S.P. to invest money with Ascendus.
 - d. Murillo stayed in touch with S.P. on a regular basis after S.P. invested with Ascendus. Murillo told S.P. his investment was doing well.
 - e. S.P. initially invested \$25,000, then later invested an additional \$43,700.
 - f. Murillo told S.P. he was paid a commission for referring investors to Ascendus.
 - g. S.P. believed from his conversation with Murillo that Murillo knew all about

Ascendus and its business.

- h. S.P. called Murillo when Ascendus went into receivership. Murillo said he would try to find out what happened.
16. Documentation provided to the Division indicates that in June 2003 S.P. gave Richard Smith \$25,000 to invest in Ascendus. Murillo told S.P. it was a great investment and that many of Murillo's friends had invested.
17. S.P. later invested an additional \$43,700 for a total of \$68,700. He lost approximately \$43,700 when Ascendus went into receivership.

Investor D.A.

18. On January 31, 2010, D.A. signed a declaration to the FFCF receiver. D.A. declared the following:
- a. D.A. invested in Ascendus run by Smith and Taylor.
 - b. Murillo introduced D.A. to Ascendus in 2003. Murillo went to D.A.'s house and showed D.A. a presentation from a CD. The presentation pitched a 7% return which would cause D.A.'s money to grow quickly.
 - c. Murillo then invited Smith and Taylor over to D.A.'s house to talk to D.A. about investing with Smith and Taylor.
 - d. D.A. invested \$100,000 with Ascendus. As the fund reported significant earnings thereafter, D.A. made additional investments.
19. D.A. lost approximately \$100,000 of the money he invested with Ascendus after being solicited by Murillo in 2003.

Investor J.M.

20. After being solicited by Murillo in 2003, J.M. invested \$22,200 with Ascendus. In 2005

she received a check for \$30,000.²

II. CONCLUSIONS OF LAW

21. Respondent Murillo transacted business in the State of Utah as an investment adviser representative while not licensed, in violation of Utah Code Ann. § 61-1-3(3)(a).

III. REMEDIAL ACTIONS/SANCTIONS

22. Respondent Murillo neither admits nor denies the Division's findings and conclusions, but consents to the sanctions below being imposed by the Division.
23. Respondent agrees to cease and desist from violating the Utah Uniform Securities Act, and to comply with the requirements of the Act in all future business in this state.
24. Pursuant to Utah Code Ann. § 61-1-20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent agrees to the entry of a fine by the Division in the amount of \$10,000.00. The fine shall be paid within 30 days of the entry of the Order below.
25. Respondent agrees to immediately disgorge the \$58,512.90 he received from his activities as set forth above, and provide documentation to the Division for such disgorgement within 30 days following entry of this Order.
26. Respondent agrees that he will provide truthful testimony and cooperation, including production of documents, with any State or Federal investigation involving Richard Smith and Roger Taylor.

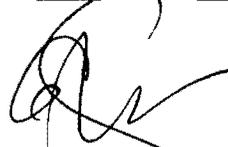
² Documents received from the FFCF Receiver indicate that J.M. received a check for \$30,000 in November 2005, and therefore, received back more than her initial investment. The receiver's record indicates a demand letter was sent to J.M. in June 2009 for the amount of \$7,800.

Dated this 4TH day of October, 2010.



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

Dated this 28TH day of SEPT., 2010.



Alex Murillo
Respondent

Approved:



D. Scott Davis
Assistant Attorney General



Richard L. Hill
Counsel for Respondent

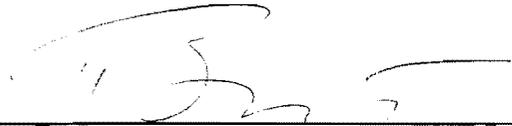
ORDER

IT IS HEREBY ORDERED THAT:

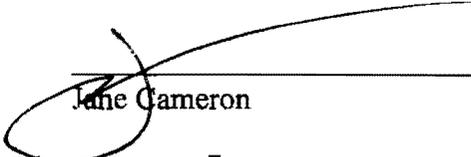
1. The Division's Findings and Conclusions, which are neither admitted nor denied by the Respondent, are hereby entered.
2. Respondent shall cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state.
3. Pursuant to Utah Code Ann. § 61-1-20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, a fine is hereby imposed in the amount of \$10,000.00, which shall be paid within 30 days of the entry of this Order.
4. Respondent agrees to immediately disgorge the \$58,512.90 he received from his activities as set forth above, and provide documentation to the Division for such disgorgement within 30 days following entry of this Order.
5. Respondent agrees that he will provide truthful testimony and cooperation, including production of documents, with any State or Federal investigation involving Richard Smith and Roger Taylor.

BY THE UTAH SECURITIES COMMISSION:

DATED this 28th day of October, 2010.



Tim Bangerter



Jane Cameron

Erik Christiansen

A handwritten signature in black ink that reads "Michael O'Brien". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

Michael O'Brien

Laura Polacheck

Certificate of Mailing

I certify that on the 9th day of NOV., 2010, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Richard L. Hill
HILL, JOHNSON & SCHMUTZ
4844 North 300 West # 300
Provo, Utah 84604

7008 1140 0004 1142 0756


Executive Secretary