

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

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

IN THE MATTER OF:

**ASCENDUS CAPITAL MANAGEMENT, LLC
RICHARD T. SMITH**

Respondents.

ORDER TO SHOW CAUSE

Docket No.

Docket No.

~~11-10-0070~~
~~11-10-0071~~

It appears to the Director of the Utah Division of Securities (Director) that Ascendus Capital Management, LLC and Richard T. Smith have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. Ascendus Capital Management, LLC (Ascendus) is a Utah limited liability company, formed on January 21, 2003. Richard T. Smith is the manager and registered agent of Ascendus. Ascendus' status as a business entity is expired. Ascendus has never been licensed by the Division as a broker/dealer agent nor an issuer/agent to sell securities.
3. Richard T. Smith (Smith) was, at all relevant times, a resident of the State of Utah. Smith has never been licensed as a broker-dealer, agent, investment advisor, or investment advisor representative in Utah.

GENERAL ALLEGATIONS

4. From approximately March 2008 to April 2008, Respondents offered and sold securities to an investor, in or from Utah, and collected a total of \$115,000.
5. Respondents made material misrepresentations and omissions in connection with the offer and sale of a security to the investor below.
6. The investor lost all \$115,000 in principal.

INVESTOR AD

7. In June 2003, AD began investing with Smith and Ascendus.
8. In March of 2008, Smith called AD, who was living in Chicago, Illinois at the time, and offered her another investment opportunity in Ascendus. Smith called from Utah.

9. Smith made the following representations:
 - a. If AD gave Smith \$115,000, AD would receive her principal and a return of \$30,000 within thirty-one days;
 - b. AD would receive a promissory note in exchange for the investment funds; and
 - c. All of the investment funds would go to an oil project in Texas.
10. Based on Smith's representations, AD invested \$115,000 in Ascendus. On March 19, 2008, AD wired \$115,000 to Ascendus's Zions Bank account.
11. In exchange for the investment funds, AD received a promissory note promising AD the \$115,000 principal and a \$30,000 return paid by April 19, 2008. The note was signed by Smith and faxed to AD on March 19, 2008.
12. On March 19, 2008, Ascendus sent \$115,000 to Superwire Telecomm, Inc.¹
13. On March 19, 2008, Superwire sent \$115,000 to J. Michael Heil/Ad Systems Communications, Inc.²
14. Ascendus still owes AD \$115,000 in principal alone.

¹Superwire Telecomm, Inc. (Superwire) is a California corporation, formed on February 20, 2004. Richard T. Smith and J. Michael Heil are directors for Superwire. Superwire's status as a business entity is active. Superwire is a multi-media management group offering interactive television, telephone, broadband services and Cable TV ad insertion to high income Retirement, Educational and Hotel/Recreational communities throughout the United States.

²Ad Systems Communications, Inc. (ASC) is an Oregon corporation, formed on November 9, 2009. Joseph Michael Heil is the registered agent for ASC. ASC's status as a business entity is inactive.

CAUSES OF ACTION

COUNT I

Securities Fraud under § 61-1-1 of the Act

15. The Division incorporates and re-alleges paragraphs 1 through 14.
16. The investment opportunity offered and sold by Respondents is a security under § 61-1-13 of the Act.
17. In connection with the offer and sale of securities to the investor, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
 - a. That AD's investment funds would be used for an oil project in Texas, when in fact, upon receiving AD's wire transfer, Smith wrote a check for \$115,000 to Superwire.
18. In connection with the offer and sale of securities to the investor, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
 - a. That Smith filed for bankruptcy in 2000;³
 - b. That Smith pleaded guilty to Forgery in March 2008;⁴
 - c. The minimum amount required to invest; and

³*United States Trustee v. Richard T. Smith*, Case #00-20432 (Utah 2000).

⁴*State of Utah v. Richard T. Smith*, Case No. 071403512 in the Fourth District Judicial Court. (Utah 2007)

- d. Some or all of the information typically provided in an offering circular or prospectus regarding Ascendus, such as:
- i. Financial statements;
 - ii. Risk factors for investors;
 - iii. The number of investors;
 - iv. Suitability factors for the investment;
 - v. Ascendus' business and operating history;
 - vi. Ascendus' track record to previous investors;
 - vii. Whether the investment is a registered security or exempt from registration; and
 - viii. Whether Smith was licensed to sell securities.

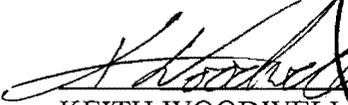
ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on Tuesday, December 7, 2010, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents

in default, and a fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents may show cause, if any they have:

- a. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act; and
- c. Why Respondents should not be ordered to pay to the Division a fine amount to be determined by stipulation or by the presiding officer after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investors.

DATED this 5th day of October, 2010.


KEITH WOODWELL
Director, Utah Division of Securities



Approved:


JEFF BUCKNER
Assistant Attorney General
A.S.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
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IN THE MATTER OF:

**ASCENDUS CAPITAL MANAGEMENT, LLC
RICHARD T. SMITH**

Respondents.

NOTICE OF AGENCY ACTION

Docket No.

Docket No.

[Handwritten signatures and numbers]

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through 209; see also Utah Admin. Code R151-46b-1, *et seq.* The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-46b-6.

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 Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause 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 Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

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:

Jeff Buckner
Assistant Attorney General
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0310

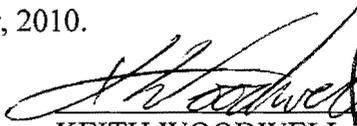
An initial hearing in this matter has been set for December 7, 2010 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9:00 A.M.

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 Order to Show Cause, 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. 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 Securities Division. Questions regarding the Order to Show Cause should be directed to the Division's attorney, Jeff Buckner, at (801) 366-0310.

Dated this 5th day of October, 2010.


KEITH WOODWELL
Director, Division of Securities



Evidence of Mailing

I certify that on the 5th day of October, 2010, I mailed a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

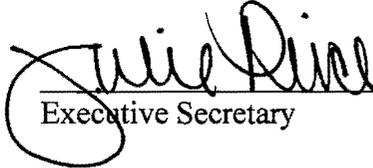
Ascendus Captial Management, LLC

Richard T. Smith

443 N. 750 E.

Orem, UT 84097

Certificate # 1008 1140 0004 1142 0572


Executive Secretary