

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

**IN THE MATTER OF
WING HAVEN FARM, LLC
AND GARY G. HATCH**

**NOTICE OF
PREHEARING CONFERENCE
AND SCHEDULING ORDER
CASE NO. SD-10-0072
CASE NO. SD-10-0073**

BY THE ADMINISTRATIVE LAW JUDGE:

This adjudicative proceeding was initiated pursuant to an October 12, 2010 Order to Show Cause. A prehearing conference was scheduled to be conducted on December 7, 2010. That conference was reset to be conducted on January 4, 2011. Respondent filed a December 3, 2010 Response. The Court conducted a January 4, 2011 prehearing teleconference with Jeff Buckner, counsel for the Division of Securities, and Gary G. Hatch for Respondents.

Based on agreement of the parties, the Court entered a verbal Scheduling Order at the conclusion of the January 4, 2011 teleconference. The Court thus ordered the Division to disclose the relevant and nonprivileged contents of its investigative file to Respondents no later than February 3, 2011. Respondents were to similarly disclose and provide to the Division any documents they may have which relate to the claims or defenses in this proceeding.

Mr. Hatch informed the Court and Mr. Buckner that the only such documents which presently exist were filed with the response in this proceeding. Those documents consisted of an engagement agreement and various electronic mail exchanges. The Court also granted leave to the parties for 2-3 weeks to pursue settlement negotiations. The Court conducted the next prehearing teleconference on March 22, 2011. That teleconference was prompted by a March 21, 2011 telephone call by Mr. Hatch to the Court.

Respondents thus informed the Court and the Division that Respondents would file a motion to dismiss this proceeding. The Court then scheduled the filing of the submissions on that motion and informed that parties that the Court would determine whether oral argument would be beneficial and should be conducted.

Respondents' motion with a supporting memorandum was filed on April 18, 2011. The Division filed an opposing memorandum on May 18, 2011. The Court contacted both parties by electronic mail on May 31, 2011 to consider when oral argument on the motion might be conducted. Mr. Buckner sent an electronic mail to the Court two (2) minutes later, stating he saw no need for oral argument, but that -- if held -- a teleconference would be fine.

Mr. Buckner again contacted the Court by electronic mail on June 2, 2011, repeating his position that he could see no reason for oral argument. The Court

contacted both parties by electronic mail at 10:25 a.m. on June 13, 2011. The Court thus informed the parties of the date, time and location for any oral argument and that the Court would review the submissions made to that point and notify the parties no later than June 14, 2011 if oral argument would be conducted.

Mr. Buckner contacted the Court ten (10) minutes later by electronic mail, once more stating he saw no reason for oral argument. The Court contacted the parties by electronic mail on June 14, 2011 and informed the parties that oral argument would be conducted as had been tentatively scheduled. Mr. Buckner sent another electronic mail to the Court on June 17, 2011, again stating he did not believe there was any reason for oral argument.

Respondents' final reply was filed June 17, 2011. Notwithstanding the repeated recalcitrance of counsel for the Division, the Court conducted oral argument during a June 21, 2011 teleconference with the parties. When that argument concluded, the Court entered a verbal order denying the motion. The terms of that Order are as follows:

CONCLUSIONS OF LAW

Respondents acknowledge neither of them are licensed to practice as a broker-dealer, agent, investment advisor or investment advisor representative in this state.

However, Respondents contend they have not offered or sold a security to any person entity in or from this state.

Respondents also assert they have received no compensation from any person or entity regarding the management or control of any activity related to the Wing Haven Mare Lease program. Respondents thus argue that the Division lacks any jurisdiction to pursue the claims in this case. Respondents have filed a lengthy affidavit of Mr. Hatch as support for the motion under review.

The Division initially contends Respondents' motion should be denied because it is not timely. Specifically, the Division generally posits that any Rule 12(b) motion pursuant to the Utah Rules of Civil Procedure (which includes an asserted lack of subject matter jurisdiction) must be filed prior to the filing of a response. The Division recognizes that a lack of subject matter jurisdiction can be raised at any time when the moving party goes beyond the allegations of the case and challenges the facts upon which subject matter jurisdiction depends.

The Division pointedly argues that whether the mare leasing program is a security is a mixed question of fact and law which must be decided in favor of the Division at this stage of this proceeding. Further, the Division concedes a Rule 12(b)(6) motion may be considered under the Utah Rules of Civil Procedure as a Rule 56 motion for summary judgment if submissions are made which are outside the pleadings.

However, the Division asserts Mr. Hatch's affidavit does not comply with the requirements of Rule 56 because it lacks specific citations to the record. The Division

also contends the statements in the motion are not supported by citations to any document or affidavit, the statements in the affidavit are unsworn and are not all based on personal knowledge. Accordingly, the Division contends Respondent's motion does not comply with the requirements of Rule 56, the Division is not able to meaningfully respond to the motion and it should thus be denied.

Respondents' final reply recites Mr. Hatch has no legal background and the Division's opposition to the motion interposes procedural issues which Mr. Hatch is not in a position to respond at that level. Mr. Hatch urges he has attempted to apply logic to the statutory framework applicable to this proceeding as to determine how those statutes may apply to the facts of this case.

This Court concludes Respondents' motion should be considered as one seeking summary judgment since that motion was filed with Respondents' reliance on an affidavit and other documents which purport to raise matters not set forth as factual recitals contained in the Order to Show Cause. The Court thus concludes Respondents' motion is timely.

However, the Court readily agrees with the Division that Respondents' motion is facially deficient for the reasons noted by the Division. Since a motion for summary judgment -- if granted -- would deprive a party of a full hearing, it is entirely appropriate to require that a request for summary relief include submissions which comply with the

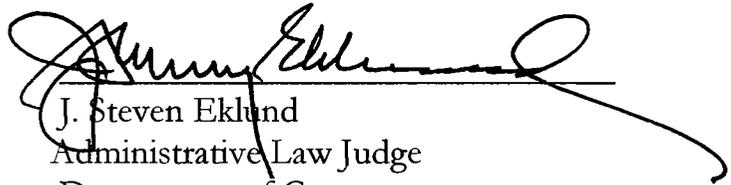
requirements applicable to that process. Respondent's lack of legal training or expertise does not excuse his compliance with such requirements.

ORDER

WHEREFORE, IT IS ORDERED Respondents' April 18, 2011 motion to dismiss this proceeding, which should be considered as a motion for summary judgment, is denied, consistent with the views set forth herein.

IT IS FURTHER ORDERED the Court will conduct a prehearing teleconference with the parties on or before August 1, 2011. During that conference, the Court will schedule the parties' exchange of witness and exhibit lists, identify the anticipated duration of the hearing to be conducted before the Securities Advisory Board and determine the Board's availability to conduct that hearing.

Dated this 26th day of July 2011.

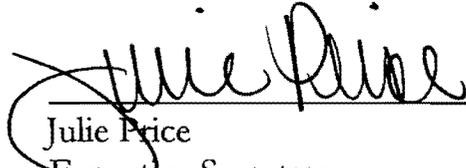

J. Steven Eklund
Administrative Law Judge
Department of Commerce

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document on the parties of record in this proceeding set forth below, by delivering a copy thereof in person to Jeff

Buckner, Assistant Attorney General, Heber M. Wells Building, Second Floor, 160 East 300 South, Salt Lake City, UT; and by mailing a copy thereof, properly addressed by first class mail with postage prepaid, to Gary G. Hatch, 6905 South 1300 East, #240, Midvale, UT 84047.

Dated this 28th day of July 2011.



Julie Price
Executive Secretary
Division of Securities