

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:

**BRENDAN ROBERT MURTON,
CRD#2509502**

Respondent.

PETITION TO SANCTION LICENSEE

Docket No. SD-10-0077

Pursuant to the authority of the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-6, the Utah Division of Securities (“Division”) hereby petitions the Utah Securities Commission (“Commission”) to enter an Order censuring Brendan Robert Murton (“Murton”), suspending his securities license for five days, prohibiting him from acting in the capacity of a supervisor, and imposing a fine. In support of this petition, the Division alleges:

STATEMENT OF FACTS

1. Murton is currently licensed as a broker-dealer agent of PFS Investments, Inc. (“PFS”), CRD#10111. He has been employed with PFS since June 1994 and licensed as a broker-dealer agent since July 1994.
2. PFS is a securities broker-dealer headquartered at 3120 Breckinridge Boulevard, Bldg. 700, Duluth, Georgia, 30090.
3. Murton has taken and passed the Series 6, 26, and 63 examinations. Pursuant to PFS supervisory procedures, he is the “Person-in-Charge” Series 26 Principal for PFS’s South

Jordan, Utah office.

4. During the period relevant to this action, the Central Registration Depository (“CRD”)¹ identified Murton as the OSJ (Office of Supervisory Jurisdiction) supervisor for 28 PFS branch offices², 23 of which are located in Utah. Murton was also the supervisor of 18 PFS registered representatives working out of the PFS South Jordan branch.

Division Examination

5. On November 18, 2009, the Division conducted an examination of the PFS South Jordan office. The examination resulted from a complaint and concerns reported to the Division regarding one of the PFS offices supervised by Murton (“Draper branch”). The examination revealed numerous deficiencies.

Failure to Supervise and Delegating Supervisory Activities to Unlicensed Office Staff

6. Pursuant to PFS’s written supervisory procedures, each OSJ must conduct annual “Leadership Visits” to each branch office the OSJ supervises. The visits must be conducted by the designated OSJ supervisor or a designee who is licensed as a Series 26 principal.
7. PFS’s written supervisory procedures indicate that “Leadership Visits are a critical part of PFSI’s field supervision system and must be performed properly.”
8. During the visit, the supervising principal interviews branch agents and reviews branch

¹CRD is a computerized database maintained by the Financial Industry Regulatory Authority (“FINRA”). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

²At the time of the examination, this figure was determined to be incorrect due to reassignments of several offices to other OSJs. PFS, however, had failed to update CRD with current information.

office files for compliance with securities industry regulations and PFS policies. The supervising principal must then follow up and ensure correction of any field audit exceptions, review business practices, procedures, and conduct compliance training.

9. As part of the visit, the principal completes an OSJ Leadership Visit Form which is later submitted to the PFS home office. The Leadership Visit Form indicates the visits are “one of the methods to implement required OSJ Supervision” under FINRA Rule 3010³.

The Form further provides:

These visits are a critical method by which PFSI and OSJ’s [sic] are able to achieve required supervision to ensure compliance with SEC and NASD requirements. Further the information obtained through this Form is likewise critical in achieving compliance and fulfillment of the necessary elements of OSJ Supervision. These visits must meaningfully assess the RVP [a.k.a. Branch Office Manager] and Satellite offices to supervise for compliance.

10. During 2007 and 2008, Murton delegated his responsibility for Leadership Visits to two office administrators who have never been licensed in the securities industry in any capacity.
11. In that period, the unlicensed staff conducted 26 visits – approximately 59 % of the OSJ visits.
12. In one instance, an office administrator was asked to complete the leadership visit of her husband’s branch office – despite the obvious conflict of interest. In an interview with the Division, she stated she had received no training on securities compliance issues.
13. Despite PFS having communicated to Murton the importance of Leadership Visits as one of his OSJ responsibilities and obligations, Murton sent untrained and unlicensed

³FINRA Rule 3010 sets forth supervisory requirements for broker-dealers.

individuals to conduct the visits.

False Information Submitted by Murton

14. The Leadership Visit Forms require identification of the individual completing the visit. In the instances where the unlicensed staff conducted the visits, Murton was falsely identified by his name and PFS identification number as the principal conducting the visit.
15. Despite having an opportunity to do so, Murton signed the Forms without correcting the erroneous information. As a result, PFS was led to believe Murton completed the visits when in fact he had not done so.

Other Deficiencies

16. During 2008, five routine field audits completed by PFS for branch offices supervised by Murton, including the PFS Draper branch, had exceptions related to trade blotter completion. Out of 85 trades sampled in those offices, 14 were not recorded in the branch office trade blotters. One of the omissions was Murton's own transaction.
17. Despite Murton being informed of these deficiencies, three months after one of the audits, an investor check for \$3000 was not properly recorded and accounted for on the trade blotter of the PFS Draper branch. The check was ultimately lost.
18. In Murton's own South Jordan PFS office, a May 20, 2009 internal audit by PFS identified that trade blotters were not being properly maintained. This failure occurred after six separate instances were reported to Murton of non-compliance with firm policy regarding maintaining trade blotters.
19. The Division's examination of Murton's branch also revealed failure to follow PFS

policies with respect to two investor checks which were returned with new account documents as not-in-good-order. Rather than promptly returning the checks to the investors as required by PFS policy, the checks were retained, and placed in a correspondence file where they had been for nine (9) days as of the time of the Division's examination.

20. The Division's examination further revealed that Murton's branch failed to comply with PFS policies with respect to maintaining incoming and outgoing client correspondence in separate files.

FIRST CAUSE OF ACTION

Dishonest and Unethical Business Practices Under § 61-1-6(2)(a)(ii)(G) of the Act

21. Murton engaged in dishonest and unethical practices by falsely completing and signing Leadership Visit Forms which represented he had conducted such visits when he had not done so, warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.
22. Murton's conduct further violates FINRA Rule 2010, which constitutes a dishonest or unethical practice under Rule 164-6-1g(C)(28), applicable to agents through (D)(7), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

SECOND CAUSE OF ACTION

Failure to Supervise Under § 61-1-6(2)(a)(ii)(J) of the Act

23. Murton failed to conduct Leadership Visits required of him as an OSJ supervisor, delegated such visits to unlicensed and unqualified individuals in contravention of firm policy and industry standards, and otherwise failed reasonably to supervise as described above, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act.

REQUEST FOR RELIEF

The Division requests that, based upon the Respondent's willful violations of the Act, pursuant to § 61-1-6 of the Act, the Commission enter an Order:

- a. censuring Murton;
- b. suspending his securities license for five days;
- c. prohibiting him from acting in the capacity of a supervisor in Utah; and
- d. imposing a fine in the amount of \$20,000.

Dated this 8TH day of November, 2010



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

Approved:



D. Scott Davis
Assistant Attorney General

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

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Respondent.

NOTICE OF AGENCY ACTION

Docket No. SD-10-0071

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

The purpose of this Notice of Agency Action is to inform you that the Utah Division of Securities hereby commences a formal adjudicative proceeding against you as of the date of mailing of this Notice. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through -209. The facts on which this action is based are set forth in the accompanying Petition. You may be represented by counsel or you may represent yourself in this proceeding.

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

After your response is filed, a pre-hearing conference will be held. Utah Admin. Code R151-46b-9(9). The purpose of the pre-hearing conference is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

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:

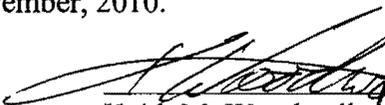
D. Scott Davis
Assistant Attorney General
160 E. 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0311

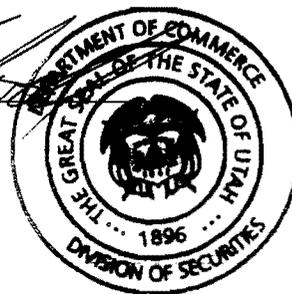
If you fail to file a response, as described above, or fail to appear at any hearing that is set,

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 Petition, 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. At any hearings, the Division will be represented by the Attorney General's Office. 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 Attorney General's Office. Questions regarding the Petition should be directed to Scott Davis, Assistant Attorney General, 160 E. 300 South, Fifth Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 8th day of November, 2010.


Keith M. Woodwell



Certificate of Mailing

I certify that on the 9th day of NOVEMBER, 2010, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

Brendan R. Murton
11233 Aubrey Meadow Cir.
South Jordan, UT 84095-2231

Certified Mail # 7008 1140 0004 1042 0732