

Division of Securities  
Utah Department of Commerce  
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Salt Lake City, UT 84114-6760  
Telephone: (801) 530-6600  
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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

<b>IN THE MATTER OF:</b>	<b>DEFAULT ORDER</b>
<b>360 WIRELESS SOLUTIONS, INC. EVAN DOUGLAS YAZZIE,  Respondents.</b>	<b>Docket No. SD 10-0080 Docket No. SD 10-0081</b>

**I. BACKGROUND**

A formal adjudicative proceeding was initiated against Respondent 360 Wireless Solutions, Inc. (360 Wireless) and Evan Douglas Yazzie (Yazzie) by the Division's Order to Show Cause (OSC) dated November 30, 2010. A Notice of Agency Action accompanying the OSC advised them to file an answer within thirty days and appear at a scheduling hearing set for January 4, 2011 or default would be entered against them. The OSC and Notice were sent by certified mail.

Yazzie contacted the Division and requested that the scheduling hearing be rescheduled because he would be out of the state. The scheduling hearing was set for February 8, 2011. At the scheduling hearing on February 8, 2011, the parties were instructed to exchange discovery materials by March 17, 2011 and an additional prehearing conference was scheduled for March 23, 2011. Yazzie was also granted an additional thirty days to file a response.

Yazzie attended the March 23, 2011 scheduling conference, but had not filed a response to the Division's OSC or exchanged discovery materials. Yazzie has since ceased all communication with the Division.

Yazzie has not responded to the Division's OSC. Thus, on July 20, 2011 the Division filed a motion for default to be entered against Yazzie.

In response to the Division's motion for default, Judge Eklund issued a Scheduling Order on July 28, 2011. In the Scheduling Order, Judge Eklund extended the deadline for Yazzie to file a response to the Order to Show Cause until August 4, 2011. The Scheduling Order also provides that if a response was not made by August 4, 2011 then Judge Eklund would "submit a Recommended Order to the Commission no later than August 17, 2011.

Yazzie has not filed a response to the Division and on September 15, 2011 Judge Eklund issued a Recommended Order. The Recommended Order provides that Yazzie "cease and desist from engaging in any further conduct in violation of § 61-1-1 or any other section of the Utah Uniform Securities Act." It further provides that Yazzie "pay a fine to the Division in an amount to be determined by the Commission in accordance with R164-31-1, which may be

reduced by restitution paid to the investor.” On October 19, 2011, Judge Eklund issued a second Recommended Order providing that Yazzie pay a fine of \$2,500.

## II. ORDER

Based on the above, the Securities Commission hereby:

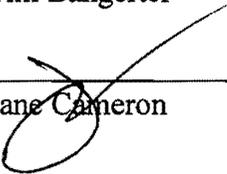
1. Declares Yazzie in default for failing to file a response to the Division’s Order to Show Cause within thirty days of its filing and of the extended deadline.
2. Enters, as its own findings, the Finding of Fact described in the OSC.
3. Enters, as its own conclusions, the Conclusions of Law described in the OSC.
4. Finds that Respondents violated the Utah Uniform Securities Act by misstating material facts in connection with the offer and sale of a security in or from Utah in violation of § 61-1-1(2).
5. Finds that Respondents violated the Utah Uniform Securities Act by failing to disclose material information which was necessary to make the statements made not misleading, in connection with the offer and sale of a security in or from Utah in violation of § 61-1-1(2).
6. Orders Respondent to permanently CEASE and DESIST from any violations of the Act.
7. Orders Yazzie to pay a fine of (\$ 2500<sup>00</sup> ) to the Division within 30 days of the entry of this Order.

DATED this 27 day of October 2011.



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Tim Bangerter

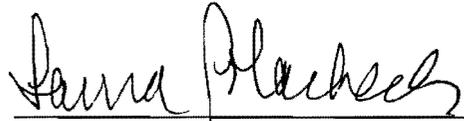


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Jane Cameron

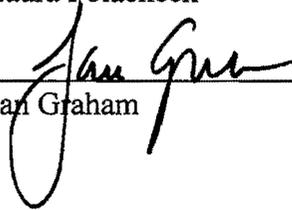
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Erik Christiansen



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Laura Polacheck



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Jan Graham

Pursuant to § 63-46b-11(3), Respondents may seek to set aside the Default Order entered in this proceeding by filing such a request with the Division consistent with the procedures outlined in the Utah Rules of Civil Procedure.

**CERTIFICATE OF MAILING**

I certify that on the 2nd day of ~~October~~ November, 2011, I mailed a true and correct copy of

the Notice of Entry of Default and Order to:

360 Wireless Solutions, Inc.  
Evan Douglas Yazzie  
P.O. Box 187  
Ririe, ID 83443

Certificate# 7007 0220 0001 0003 1578

  
Executive Secretary

And hand-delivered to:

Jeffrey Buckner, Assistant Attorney General  
Office of Attorney General of Utah

Thomas Brady, Securities Analyst  
Utah Division of Securities

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

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**IN THE MATTER OF  
360 WIRELESS SOLUTIONS, INC. AND  
EVAN DOUGLAS YAZZIE**

**NOTICE OF ENTRY OF DEFAULT  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDED ORDER  
CASE NO. SD-10-0080  
CASE NO. SD-10-0081**

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**BY THE ADMINISTRATIVE LAW JUDGE:**

This adjudicative proceeding was initiated pursuant to a November 30, 2010 Notice of Agency Action. A response to the accompanying Order to Show Cause was due by December 30, 2010. A prehearing conference was scheduled to be conducted on January 4, 2011.

The notice was sent to Respondent Yazzies' Idaho address of P.O. 187, Ririe, ID, 83443 by certified mail. However, postal authorities returned that mailing to the Division on December 5, 2010 with a notation that it should be returned to sender and the mailing could not be forwarded. The certificate of service does not recite whether the notice was also sent by regular mail.

The notice recites that, if Respondents failed to file a response or failed to appear for any scheduled hearing, the presiding office may enter a default order against Respondents without any further notice to them. Respondents did not file a response.

However, Respondent Yazzie contacted the Division and requested that the January 4, 2011 prehearing conference be rescheduled because he would be out of state until early February 2011. The Court thus conducted a prehearing teleconference with the Division and Respondent Yazzie. Based on an agreement of the parties, the initial prehearing conference was reset to 9:00 a.m. on February 8, 2011.

The February 8, 2011 prehearing conference was to be conducted telephonically. During that teleconference, the Court ordered the Division to disclose the relevant and nonprivileged contents of its investigation file to Respondent Yazzie by March 17, 2011. Respondent was to similarly disclose any documents which he may have as relevant to the claims or defenses in this proceeding.

The next prehearing conference was scheduled to be conducted telephonically on March 23, 2011. However, the Court conducted a February 23, 2011 teleconference as prompted by the Division. The Division thus requested that the March 23, 2011 prehearing conference be conducted on an in-person basis. Given the consent of the parties, the Court ordered that the conference would be so conducted.

During that conference, the Court granted Respondent Yazzie leave to file a response within the next thirty (30) days. Based on pending charges in a related criminal case, the Division informed Respondent Yazzie that it would not oppose his filing of a

motion to stay enforcement of this proceeding pending the resolution of the criminal case. When the March 23, 2011 conference had concluded, Respondent Yazzie was arrested just as he left the Division's offices.

The Court contacted Thomas Brady (Securities Analyst for the Division) on or about May 11, 2011 to inquire regarding the present status of this proceeding. Mr. Brady acknowledged the Division was aware of the related criminal proceeding filed as to Respondent Yazzie. The Court next contacted Mr. Brady on or about June 23, 2011 to address the ongoing status of this proceeding. Mr. Brady informed the Court that he has reviewed this case with Respondent Yazzie and thus informed him that a motion to stay this proceeding must be filed if any stay of enforcement were to be entered by the Division.

Mr. Brady also informed the Court that Respondent Yazzie is represented by legal counsel in the criminal proceeding, but Respondent Yazzie is both representing himself and Respondent 360 Wireless Solutions, Inc. in this adjudicative proceeding. Mr. Brady further informed the Court that the Division has not received any motion from Respondents to stay this proceeding, but the Division remains willing to consider such a request upon Respondents' filing of a motion seeking that action.

The Court next contacted Mr. Brady on July 7, 2011 to review the ongoing status of this proceeding. Mr. Brady informed that Court that Respondents have not filed a

motion to stay this proceeding. Accordingly, Mr. Brady stated the Division is reviewing the possible filing of a motion to enter Respondents' default absent the filing of any request by Respondents to stay this proceeding.

The Division filed a July 20, 2011 motion for a default order. The motion recites Respondent Yazzie "never filed a response despite several attempts to contact him since his arrest". The July 20, 2011 motion was sent on that same date to Respondent Yazzie at the same Idaho address as previously recited herein. The certificate of mailing does not recite whether notice of the pending motion was sent to Respondents by certified or regular mail.

Given the relatively unique circumstances of this case, the Court appreciates why the Division's notice of agency action as sent to Respondent Yazzie at the Idaho address. Perhaps Respondent Yazzie still receives mail at that address. The Court thus understands why notice of the pending motion was sent to that address rather than merely filing that pending motion without notice thereof to Respondent Yazzie at his last known address. The Court similarly concluded a scheduling order should be entered to expressly establish the time when Respondents are to file any response to the pending motion.

If Respondents did file a response to the Division's motion within one (1) week from the date of that Scheduling Order, the Court concluded it would be warranted to

summarily review and act on the Division's motion and enter Findings of Fact and Conclusions of Law consistent with the Order to Show Cause. Such findings, conclusions and a recommended order were to then be submitted to the Utah Securities Commission for its review and action.

The Court thus entered a July 28, 2011 Scheduling Order, which provides Respondents were to file any response to the pending motion no later than August 4, 2011. If a response were timely filed, the Court ordered the Division to file a final reply no later than August 10, 2011. The Court would then submit a Recommended Order to the Commission no later than August 17, 2011.

The July 28, 2011 Scheduling Order alternatively provides that, if Respondents did not file a timely response to the pending motion, the Court would submit Findings of Fact, Conclusions of Law and a Recommended Order to the Commission for its review and action.

#### **FINDINGS OF FACT**

1. Absent any matters offered in defense or mitigation, the Court adopts the allegations set forth in Paragraphs 2 through 16 of the November 30, 2010 Order to Show Cause as its Findings of Fact.

#### **CONCLUSIONS OF LAW**

The Court adopts the Cause of Action set forth in Paragraphs 17 through 20(e)(vi)

of the November 30, 2010 Order to Show Cause as its Conclusions of Law.

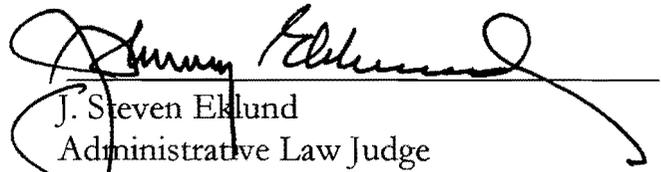
Respondent has engaged in securities fraud in violation of §61-1-1 of the Utah Uniform Securities Act. Accordingly, the Court concludes a proper factual and legal basis exists to submit the following Recommended Order to the Commission for its review and action.

**RECOMMENDED ORDER**

WHEREFORE, IT IS ORDERED that Respondent cease and desist from engaging in any further conduct in violation of §61-1-1 or any other section of the Utah Uniform Securities Act.

IT IS FURTHER ORDERED that Respondent pay a fine to the Division in an amount to be determined by the Commission in accordance with R164-31-1, which may be reduced by restitution paid by Respondents to any investor.

I hereby certify the foregoing Notice of Entry of Default, Findings of Fact, Conclusions of Law and Recommended Order was submitted to the Commission on the 15<sup>th</sup> day of September 2011 for its review and action on the \_\_\_ day of September 2011.

  
J. Steven Eklund  
Administrative Law Judge  
Department of Commerce