

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

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

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**IN THE MATTER OF:**

**ANDREW V. PAYNE, CRD#4468462**

**Respondent.**

**PETITION TO SANCTION LICENSEE**

**Docket No.** SD-10-0082

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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 Andrew V. Payne (“Payne”), requiring him to requalify by examination and imposing a fine. In support of this petition, the Division alleges:

**STATEMENT OF FACTS**

1. Payne is currently licensed as a broker-dealer agent and principal of PFS Investments, Inc. (“PFS”), CRD#10111. He has been employed with PFS since October 2001.
2. PFS is a securities broker-dealer headquartered at 3120 Breckinridge Boulevard, Bldg. 700, Duluth, Georgia, 30090.
3. Payne has taken and passed the Series 6, 26, and 63 securities examinations. Pursuant to PFS supervisory procedures, he was the Person-in-Charge, Series 26 Principal, for PFS’s Draper, Utah office (“Draper branch”) at the times relevant to the allegations set

forth below.

4. Payne currently is the "Person-in-Charge" for a PFS branch located in Albuquerque, New Mexico, from which location he is responsible for supervising four PFS agents located in Utah.

#### Division Examination

5. On April 20, 2009, the Division received a written complaint from V.L. concerning an account she attempted to establish with PFS through Payne. The Division's examination into the complaint revealed the following:
  6. On April 22, 2008, V.L. completed a new account application and gave Payne a cashier's check in the amount of \$3,000.00 to open an investment account and purchase a mutual fund. V.L. had previously purchased a life insurance policy from Payne.
  7. V.L. was given a receipt from Payne reflecting receipt of the customer funds.
  8. Payne accepted the application and check despite knowing the application was incomplete and not in good order<sup>1</sup>.
  9. The Draper branch trade blotter for April 2008 has no record of Payne receiving V.L.'s cashier's check on that date or any time thereafter.
  10. Several months prior to the receipt of V.L.'s check, a January 2008 internal PFS audit revealed Payne and the Draper branch had failed to record an earlier trade on the branch trade blotter. At that time, Payne received verbal instruction from the field auditor on PFS requirements for maintaining the trade blotter and was advised by the field auditor to

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<sup>1</sup>V.L. was unable to present personal identification and bank account information at the time she met with Payne

be more thorough when handling trades.

11. V.L. returned to the branch, provided personal identification, and contacted her bank to request that the bank fax her account information to Payne. She had no additional contact from Payne, and understood that no additional documentation was required.
12. However, no account was established and no investment was purchased for V.L.
13. Payne stated that between April 2008 and September 2008 he tried getting V.L.'s application in proper order, and held the check and application in his possession in a "pending" file.
14. PFS written supervisory procedures require the safekeeping of investor checks in the branch office safe. Checks must be sent to the appropriate PFS processing location by first class mail by the close of the next business day following the sale. In addition, checks accompanying account applications determined to be not in good order are required to be returned to the investor.
15. Payne told the Division that V.L. called him in September 2008. Because V.L.'s native language is Spanish, Payne had V.L. talk to a Spanish-speaking agent, Thomas McNiven, CRD#5317247, a Series 26 registered representative who also worked in the Draper branch at the time.
16. V.L. reported to McNiven that she had not received any information on the investment and that she wanted her money back.
17. Payne told the Division that in response he gave the application and check to McNiven to
18. McNiven terminated his employment with PFS in December 2008. At that time, the

whereabouts of V.L.'s application and check are unknown. McNiven is unsure if he returned the application and check to Payne or if it was eventually shredded. Payne stated he never received the application and check back from McNiven.

19. In April 2009, V.L. requested that a mutual acquaintance of hers and Payne's (who speaks both English and Spanish) contact Payne regarding the return of her money.
20. On April 13, 2009, Payne first reported the missing application and check to PFS.

**FIRST CAUSE OF ACTION**  
**Failure to Safeguard Customer Funds**

21. Payne failed to protect V.L.'s funds by:
  - a. holding a check, and/or failing to properly deposit the check for nearly one year;
  - b. failing to properly account for receipt of the funds by recording the check receipt on the PFS trade blotter;
  - c. ultimately losing the customer funds.
22. Payne's actions violate SEC Rule 15c3-3, FINRA Rule 2010, and constitute a dishonest or unethical practice under Rule R164-6-1g(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**

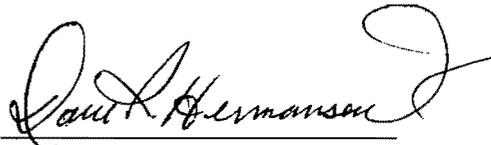
23. As the "Person in Charge" of the Draper branch, as described above Payne failed to enforce and follow industry standards and firm procedures in handling customer funds and failed to ensure that other branch agents did so, warranting sanctions under Utah

**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 Payne;
- b. requiring him to retake and pass the Series 26 Examination within 90 days; and
- c. imposing a fine in the amount of \$5,000.

Dated this 2<sup>nd</sup> day of December, 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, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
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FAX: (801)530-6980

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**BEFORE THE DIVISION OF SECURITIES  
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**IN THE MATTER OF:**

**ANDREW V. PAYNE, CRD#4468462**

**Respondent.**

**NOTICE OF AGENCY ACTION**

**Docket No.**

SD-11-0082

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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 include the following information: your name, address, telephone number, and e-mail address. 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, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-0872  
(800) 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  
(800) 530-6600

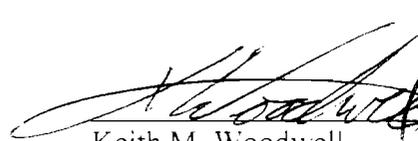
If you fail to file a response, as described above, or fail to appear at any hearing that is set,

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 2<sup>nd</sup> day of December, 2010.

  
Keith M. Woodwell  
Director, Division of Securities

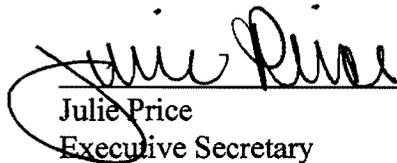


**CERTIFICATE OF MAILING**

I, Julie Price, hereby certify that on the 6th day of December 2010, I mailed, by certified mail, a true and correct copy of the forgoing **Petition to Sanction Licensee** to:

Andrew V. Payne  
10523 Tuscany Dr. NW  
Albuquerque, NM 87114-3873  
Certified Mail # 7008 1140 0004 1642 0930

Erik Christiansen  
Parsons Behle & Latimer  
One Utah Center  
201 S Main St, Suite 1800  
Salt Lake City, UT 84145-0898  
Certified Mail # 7008 1140 0004 1642 0947

  
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Julie Price  
Executive Secretary