

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:

ANDREW V. PAYNE, CRD#4468462

Respondent.

STIPULATION AND CONSENT ORDER

Docket No. SD-10-0082

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondent Andrew V. Payne ("Payne"), hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1, *et seq.*
2. On December 2, 2010, the Division initiated an administrative action against the Respondent by filing a Petition to Sanction Licensee.
3. Respondent has agreed with the Division to settle this matter by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the December 2, 2010 Petition.
4. Respondent admits the jurisdiction of the Division over him and over the subject matter of this action.

5. Respondent waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Respondent has read the Order, understands its contents, and submits to this Order voluntarily. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.
7. Respondent is represented by attorney Erik A. Christiansen and is satisfied with the legal representation he has received.

L FINDINGS OF FACT

8. 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.
9. PFS is a securities broker-dealer headquartered at 3120 Breckinridge Boulevard, Bldg. 700, Duluth, Georgia, 30099.
10. 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.
11. 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

12. 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:

13. In April 2008, V.L. visited with Payne and began to fill out a new account application. On April 22, 2008, V.L. 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 another agent out of the Draper branch.
14. V.L. was given a receipt from Payne reflecting receipt of the customer funds.
15. Payne accepted the application and check despite knowing the application was incomplete and not in good order¹.
16. The Draper branch trade blotter for April 2008 has no record of Payne receiving V.L.'s cashier's check at any time
17. 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 be more thorough when handling trades.
18. V.L. 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

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

required.

19. However, no account was established and no investment was purchased for V.L.
20. Payne stated that between April 2008 and September 2008 he attempted to get V.L.'s application in proper order, and held the check and application in his possession in a "pending" file. His efforts to contact her by telephone during that time were unsuccessful.
21. PFS written supervisory procedures require the safekeeping of investor checks. 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.
22. 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.
23. V.L. reported to McNiven that she had not received any information on the investment and that she wanted her money back.
24. Payne told the Division that in response he gave the application and check to McNiven to return to V.L.
25. 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.

26. 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.
27. On April 13, 2009, Payne first reported the missing application and check to PFS.

II. CONCLUSIONS OF LAW
Failure to Safeguard Customer Funds

28. 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's check.
29. Payne's actions violate SEC Rule 15c3-3, FINRA Rule 2010, and 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.

Failure to Supervise

30. 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 Code Ann. _ 61-1-6(2)(a)(ii)(J).

III. REMEDIAL ACTIONS/SANCTIONS

31. Respondent neither admits nor denies the Division's findings or conclusions, but consents

to the sanctions below being imposed by the Division.

32. Respondent represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.
33. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine in the amount of \$5,000, \$2,500 of which shall be suspended so long as Respondent complies with all of the terms of this Order. The remaining fine shall be paid within two years by monthly payments of at least \$100.00, due by the 20th day of each month. The first payment is due within thirty (30) days following entry of this Order. If Respondent fails to make a payment as set forth in this Order, the failure will be deemed a material breach of the Order, and the remaining fine, including the suspended amount, shall become payable within thirty (30) days of the breach.
34. Respondent shall requalify by successfully passing the Series 26 Examination within ninety (90) days following entry of this Order. If Respondent fails to pass the examination by that date, he is precluded from acting in the capacity of a principal until such time as he passes the examination.
35. Respondent shall cease and desist from violating the Utah Uniform Securities Act and shall comply with the requirements of the Act in all future business in this state.

IV. FINAL RESOLUTION

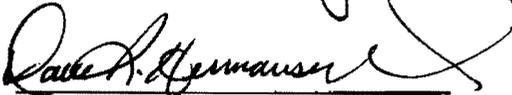
36. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondent further acknowledges that if the Commission does not accept the terms of the Order, it

shall be deemed null and void and without any force or effect whatsoever.

37. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.
38. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way.

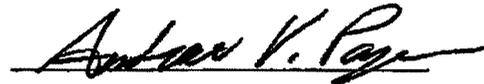
Utah Division of Securities

Dated this 13 day of January 2011.

By: 

Dave R. Hermansen
Director of Licensing and Compliance

Dated this 12 day of January 2011.



Andrew V. Payne

Approved:



D. Scott Davis
Assistant Attorney General

Approved:



Erik A. Christiansen
Attorney for Respondent

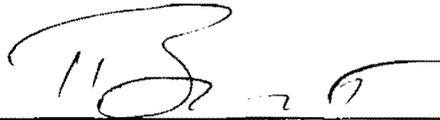
ORDER

IT IS HEREBY ORDERED THAT:

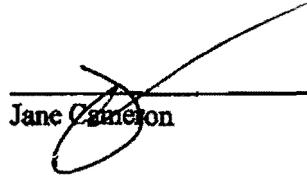
1. the Division's Findings and Conclusions, which are neither admitted nor denied by Respondent, are hereby entered.
2. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent pay a fine according to the terms set forth in paragraph 33 above.
3. Respondent requalify by successfully passing the Series 26 Examination within ninety (90) days following entry of this Order. If Respondent fails to pass the examination by that date, he is precluded from acting in the capacity of a principal until such time as he passes the examination.
4. Respondent cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state.

BY THE UTAH SECURITIES COMMISSION:

DATED this 20th day of January, 2011.



Tim Bangerter

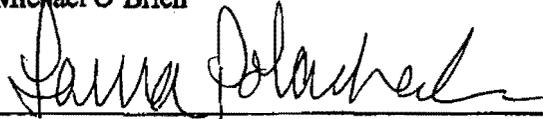


Jane Cameron

Erik Christiansen



Michael O'Brien

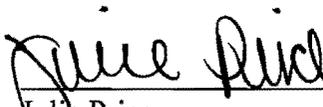


Laura Polacheck

CERTIFICATE OF MAILING

I, Julie Price, hereby certify that on the 24th day of January 2011, I mailed, by certified mail, a true and correct copy of the forgoing **Stipulation and Consent Order** to:

Erik Christiansen
Parsons Behle & Latimer
201 S Main St, Suite 1800
Salt Lake City, UT 84145-0898
Certified Mail # 7007 0220 0001 0005 4787



Julie Price
Executive Secretary