

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:

BRIAN Y. HORNE, CRD#1830136
KEVIN D. KUNZ, CRD#1274540
INVESTMENT MANAGEMENT
CORPORATION, CRD#37196
DESERET FINANCIAL SERVICES, INC.
HORNE FINANCIAL, INC.
TWIN K INVESTMENTS, INC.
MODENA HILLS, INC.

Respondents.

STIPULATION AND CONSENT ORDER

Docket No. SD-11-0017
Docket No. SD-11-0018
Docket No. SD-11-0019

Docket No. SD-11-0020
Docket No. SD-11-0020
Docket No. SD-11-0021
Docket No. SD-11-0022

The Utah Division of Securities (“Division”), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondents Brian Y. Horne and Horne Financial, Inc., fka Deseret Financial Services, Inc.(Horne/Respondents), hereby stipulate and agree as follows:

1. The Respondents have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. §61-1-1, *et seq.*
2. On or about March 10, 2011, the Division initiated an administrative action against the Respondents by filing an Order to Show Cause. Actions against Respondents Kevin D.

Kunz, Investment Management Corporation, Twin K Investments, Inc., and Modena Hills Inc. were also filed at that time and have been resolved by a separately executed Stipulation and Consent Order.

3. Respondents hereby agree to settle this matter with the Division by way of this Stipulation and Consent Order (“Order”). If entered, the Order will fully resolve all claims the Division has against Respondents Brian Y. Horne and Horne Financial, Inc. fka Deseret Financial, Inc., pertaining to the March 10, 2011 Order to Show Cause.
4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.
5. Respondents hereby waive any right to a hearing to challenge the Division’s evidence and present evidence on their behalf.
6. Respondents have read this Stipulation and Consent Order, understand its contents, and freely and voluntarily submit to the entry of the Order. No promises or agreements, other than this Stipulation and Consent Order, have been made by the Division, nor by any representative of the Division, to induce them to enter into this Order, other than as described in this Order.
7. Respondents understand that they may be represented by counsel in this matter, understand the role that counsel would have in defending and representing their interests in this case, and hereby knowingly, freely and voluntarily waive their right to have counsel represent them in this proceeding.

I. FINDINGS OF FACT

8. Investment Management Corporation (“IMC”) is a defunct broker-dealer which was

licensed in Utah from 1994 until December 2007.

9. From 1994 through December 2007, Kevin Dee Kunz (“Kunz”) was a licensed agent and principal of IMC. Kunz was one of the founders of IMC, its majority owner, and president. Prior to IMC, he was licensed in the securities industry from 1984 to 1994 with a number of other broker-dealer firms.
10. From December 1999 through December 2007, Brian Y. Horne (“Horne”) was a licensed agent and principal of IMC. In addition, Horne was an owner of IMC and served as an officer of IMC in several capacities, most recently as president and chief executive officer. Prior to his association with IMC, Horne was licensed in the securities industry from 1988 through 1999 with a number of other broker-dealer firms.
11. In 2008, IMC was expelled from membership by the Financial Industry Regulatory Authority (“FINRA”). IMC principals Kunz and Horne were barred from associating with any FINRA member in any capacity.
12. Horne is currently licensed as an insurance agent in Utah.
13. Deseret Financial Services (“Deseret Financial”) was a Utah DBA registered with the Utah Division of Corporations from 1996 until 2000. Horne was its registered agent. In 2000, Horne canceled the DBA and incorporated Deseret Financial. Horne was its secretary, director and president. In 2004, Horne changed the name to Horne Financial.
14. Horne Financial fka Deseret Financial, has never been licensed as a broker-dealer at any time.

Vescor

15. IMC and its agents, including Horne, sold securities investments in “Vescor”, which as

used herein collectively refers to a network of more than 115 companies owned or controlled by Val Edmund Southwick (“Southwick”). Those companies include, but are not limited to VesCor Capital Corp., VesCorp Capital, LLC, VesCor Capital, Inc., Vescor Development, LLC, Siena Vista, LLC, Five Star Lending, LLC, SV Lending, LLC, One Mortgage, Ltd., VDC Commercial, VesCor Capital IV-M, LLC, and VesCor Capital IV-A, LLC.

16. Vescor raised significant capital from investors through the sale of securities. Investors were told their monies were being used to finance commercial and industrial real estate projects. However, in reality, some new investor monies were used to pay interest owed to prior investors, to pay commissions for the sale of Vescor securities, or for personal use.
17. Some Vescor investors were unsophisticated senior citizens who invested substantial amounts of their net worth in Vescor, often consisting of retirement monies and equity from investors’ homes.
18. Vescor securities sold by IMC were issued as promissory notes which paid interest ranging from 8% to 12% annually, with terms ranging from 24 to 60 months. Investors were given an option of receiving monthly interest payments on the notes (“monthly notes”), or accruing the interest until the end of the term (“accrual notes”), at which time the investor was to be paid their principal plus accrued interest in a lump sum.
19. Investors who chose the accrual notes received a higher interest rate. As the principal amounts for monthly notes and accrual notes became due, some investors were encouraged by some IMC agents to “renew” or “roll over” their investments into new

Vescor notes, and to move from monthly interest payments to accrual interest notes.

20. In May 2006 Vescor ceased making payments to most investors.
21. More than \$44 million in Vescor sales were made through IMC and its agents, from which more than \$4 million in commissions was paid to IMC and its agents.
22. Horne also offered and sold Vescor securities to investors. In addition, Horne received compensation as a principal of IMC based on sales, including Vescor sales, by other IMC agents.
23. In 2008, Southwick pled guilty to nine felony counts of securities fraud for defrauding investors from Utah and several other states out of approximately \$180 million. He was sentenced to 1-15 years in prison on each count and is presently incarcerated.

2001 NASD Action

24. A 2001 NASD enforcement action against Kunz and IMC led to sanctions, including fines, a bar against Kunz from acting as a Financial and Operations Principal¹ for any NASD member firm, and an additional suspension from acting in any other principal capacity for six months. Horne then became the Financial and Operations Principal for IMC. Kunz unsuccessfully appealed the NASD decision, which was affirmed by NASD's National Adjudicatory Council ("NAC") on December 15, 2003.²
25. Among the violations found by NASD in that matter following an evidentiary hearing

¹A Financial and Operations Principal oversees a firm's back office operations, including the maintenance of books and records and the firm's compliance with financial responsibility rules.

²<http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p006957.pdf>

were that once again Kunz permitted the sales of securities and commissions being paid to an unlicensed agent. In so doing, NAC found that Kunz and IMC “showed a willingness to ignore or evade established NASD rules.”³

Vescor 2002 Order

26. In September 2002, Southwick and Vescor were sanctioned by the Division for selling unregistered, nonexempt securities in Utah in violation of the 1992 Vescor Order. The 2002 Order prohibited Vescor and Southwick from offering or selling unregistered securities in Utah, imposed a fine of \$75,000, and required Vescor to make rescission offers to investors who had purchased the unregistered securities. Some of the transactions at issue were effected by IMC and its agents.

October 2004 Vescor Letters to Division

27. In October 2004, Vescor, through Southwick and Vescor employees Shawn Moore and Christopher Layton, sent letters to the Division representing it had ceased the offer and sale of Vescor securities in Utah, including the renewal of any existing notes, and agreed to make full and final payment of principal and accrued interest at the maturity date of each Vescor note or at an earlier date. In addition, Vescor promised not to give effect to automatic “rollover” renewal provisions contained in the notes absent investor consent and prior notice to the Division.

³The NASD Hearing Panel also found that IMC, acting through Kunz, violated net capital rules; maintained inaccurate books and records; filed inaccurate FOCUS reports; submitted an incomplete and materially inaccurate notice of a possible net capital deficiency; failed to file required information concerning an NASD arbitration award and a settlement; and failed to establish adequate written supervisory procedures with respect to the reporting of arbitration awards and settlements. For additional information, see n.8.

28. Despite such representations, Vescor, through IMC, Horne, and IMC agents continued to offer and sell Vescor securities in Utah and elsewhere.

Unlicensed Activity in Connecticut

29. In 2005, the State of Connecticut filed an administrative Order to Cease and Desist against IMC for selling Vescor securities in Connecticut while the firm and its selling agent were not licensed in Connecticut. In the resolution of that action, IMC paid a fine, and Kunz was prohibited from supervising any agents doing business in Connecticut.

Disregard of NASD Suspension and Requirements

30. Under the NASD Order affirmed by the Tenth Circuit Court of Appeals, IMC was prohibited from participating as primary placement or sales agent in securities offerings such as Vescor until it retained an independent consultant to a) review the firm policies and procedures relating to such offerings, and b) provide a report with recommendations, after which IMC was required to demonstrate to NASD that it had implemented the consultant's recommendations prior to participating in any offering.
31. IMC never complied with those requirements. Nonetheless, it continued to sell Vescor, acting as the sales agent in connection with four private placements from April 2003 through August 2004, selling more than \$16.5 million in Vescor notes in that period.
32. Despite Kunz's principal suspension from May 5, 2003 until August 16, 2004, he continued to function in a principal capacity during that period through his active involvement in the supervision and management of IMC activities relating to Vescor private placements. Horne permitted Kunz's activities despite being the firm's designated principal during that time period.

Selling Away through Non-Broker-Dealer Entities

33. After the NASD suspension, to conceal IMC's activities from regulators, Vescor transactions were not recorded on the books and records of IMC as required by law, and Kunz and Horne facilitated the payment of commissions from Vescor through outside business entities.
34. In total, at least \$1,825,890 in Vescor commissions were paid through Deseret Financial, and \$116,964 through Horne Financial.

Misrepresentations and Omissions of Material Fact

35. IMC and IMC agents misrepresented material facts in connection with the offer and sale of Vescor securities, including but not limited to the following:
 - a. an investment in Vescor was "safe" and carried little to no risk;
 - b. Vescor was a highly successful company in good financial condition and its operations were profitable;
 - c. Southwick had a successful 20-year history;
 - d. a Vescor investment was guaranteed because it was backed by real estate; and
 - e. investors would be protected by an ownership interest in real estate purchased with their monies.

These representations were false.

36. In connection with the offer and sale of Vescor securities, IMC and IMC agents omitted numerous material facts, including but not limited to:
 - a. risk factors of the investment;
 - b. relevant disclosures about Vescor's true financial condition, significant liabilities,

- history of operating losses and substantial negative net equity;
- c. failing to disclose to investors material misrepresentations in prior Vescor securities offerings, including the use of a fraudulent balance sheet based upon a sham land transaction to reflect a positive net value;
 - d. Southwick's extensive prior litigation history and outstanding judgments, including prior 1992 and 2002 Consent Orders with the Utah Securities Division relating to the offer or sale of unregistered securities;
 - e. that new Vescor investor monies were used to pay interest owed to prior investors, to pay commissions for the sale of Vescor securities, or for personal use;
 - f. investors who extended or renewed their investments in 2005 or 2006 were not told that Vescor had operated with substantial negative equity in 2003 and 2004;
 - g. that Vescor and its principal employees had agreed they would not solicit or accept any funds from Utah residents after October 2004;
 - h. significant commissions paid to IMC agents and "overrides" to Kunz as well as other special incentive payments;
 - i. IMC's and Kunz's NASD disciplinary history and sanctions with respect to some of the Vescor sales and offerings;
 - j. that after March 2003, IMC was prohibited by NASD from selling Vescor securities or any other private offering;
 - k. that all post-March 2003 sales of Vescor by IMC were in violation of an express NASD Order;

- l. that IMC was “selling away” from itself and violating the securities laws by not recording Vescor transactions on the books and records of the firm so IMC could evade detection by regulators of its continued violations of the securities laws and the NASD order;
- m. that by paying its agents through non-broker-dealer entities such as Deseret Financial and Horne Financial, IMC caused its selling agents to violate the securities laws;
- n. that IMC permitted several agents whom Kunz and Horne knew did not have the required license to sell Vescor securities and receive commissions; and
- o. that in addition to sales commissions and overrides for Kunz and some IMC agents, Respondents also received undisclosed bonus incentives to encourage Vescor sales and to minimize any investors taking their money out of Vescor pursuant to a rescission offer or at the end of a note’s duration. Those incentives included cash payments.

Other Fraudulent Acts
Sales by Unlicensed Agents

- 37. IMC and Horne permitted the sale of Vescor securities by agents whose Series 6 licenses limited their securities activities to selling mutual funds and variable insurance products through IMC. Despite the lack of appropriate licensure, Respondents paid compensation to such agents, and shared in such compensation.

Undisclosed Incentive Compensation

- 38. IMC and IMC agents received additional undisclosed incentive compensation based upon achieving fund-raising goals set by IMC principals and Southwick.

39. Renewal investments were closely tracked for maturity dates. Agents were notified of clients who were due to renew. Special undisclosed incentives were offered and paid to some IMC agents as a bonus for successfully convincing clients to “renew” their investments and keep their money with Vescor rather than cashing out.

Preferential Payments and Discouraging Cooperation with Division Investigation

40. After the Vescor scheme began to unravel in May 2006, Respondents helped prolong the fraud by working with Southwick to make preferential transfers of remaining Vescor monies to investors who had made significant investments and to complaining investors deemed likely to contact regulators.
41. IMC also actively discouraged investors from cooperating with the Division’s investigation of Vescor.

II. CONCLUSIONS OF LAW

42. Respondents violated Section 61-1-1(2) of the Act by misrepresenting or omitting material facts in connection with the offer or sale of securities, including but not limited to those set forth in paragraphs 35-36 above.
43. In connection with the offer or sale of securities, Respondents engaged in acts, practices, and a course of business which operated as a fraud, in violation of Section 61-1-1(3) of the Act, including but not limited to:
- a. failing to comply with the NASD Order disqualifying IMC from participating in the offer or sale of any private offering;
 - b. continuing to offer and sell Vescor securities despite the NASD Order and Vescor’s own October 2004 representations to the Division;
 - c. Respondents did not record Vescor securities transactions on the books and

records of IMC and instead sold away from IMC, running commissions for securities transactions through non-broker-dealer entities Deseret Financial, Horne Financial;

- d. by failing to tell IMC agents that IMC was disqualified from selling private placement securities, Respondents caused IMC agents to sell away, exposing the agents to civil liability and regulatory actions;
 - e. permitting the offer and sale of Vescor securities by agents who did not have the securities licenses required in order to sell an individual security such as a private offering, and paying commissions to such agents;
 - f. accepting undisclosed sales incentives to encourage Vescor sales and to minimize any investors taking their money out of Vescor pursuant to a rescission offer or at the end of a note's duration;
 - g. perpetuating the Vescor fraud by making preferential payments to certain investors; and
 - h. discouraging investors from cooperating with the Division's investigation.
44. The only entity through which Horne and other IMC agents were licensed to sell securities was IMC.
45. As described above, Horne oversaw and processed securities commissions and/or conducted securities transactions through and was paid compensation by Deseret Financial and Horne Financial. He was not a licensed agent of those entities, and his conduct violates Section 61-1-3(1) of the Act.
46. Accordingly, each offer or sale of Vescor securities by Horne and other IMC agents for

which they were paid by these non-broker-dealer entities violated Section 61-1-3(1) of
IMO: Brian Y. Horne, & Deseret Financial, Inc., fka Horne Financial, Inc.
Stipulation and Consent Order

the Act.

47. In effecting such transactions, Deseret Financial and Horne Financial acted as unlicensed broker-dealers in violation of Section 61-1-3(1) of the Act.
48. Horne's Form U4 documents, filed with the Division through the CRD, were false and misleading at the time they were filed, in violation of Section 61-1-16 of the Act, because they failed to disclose his investment-related business activities through Deseret Financial and Horne Financial, and significantly, did not disclose that Horne was receiving substantial investment-related securities compensation from these entities, rather than IMC, the broker-dealer with which he was licensed.

III. REMEDIAL ACTIONS/SANCTIONS

49. The Respondents neither admit nor deny the Division's findings and conclusions, but consent to the sanctions below being imposed by the Division.
50. Respondents represent that the information they have provided to the Division as part of the Division's investigation is accurate and complete.
51. Pursuant to Utah Code Ann. §61-1-20(1)(f), and in consideration of the guidelines set forth in Utah Administrative Code Rule R164-31-1, the Division imposes a fine against the Respondents in the amount of \$500,000.00. Respondents will be given dollar-for-dollar credit against the fine for payments actually made toward restitution, fines and judgments in related Vescor cases. Proof of actual payments must be provided to the Division within six months of the date of entry of this Order. Acceptable proof will include, but not be limited to, canceled checks, bank records, statements from investors, or other proof of actual payments. Unsupported 1099s will not be acceptable. The fine

shall be paid on or before January 1, 2015. If Respondents are unable to pay the fine in full by that date (and in consideration of any credits for restitution, fines and judgments actually made in related cases), Respondents may enter into a payment agreement with the Division.

52. Each Respondent named herein agrees to be barred from associating with any broker-dealer or investment adviser licensed in this state, and from acting as an agent for any issuer soliciting investor funds in this state.

53. Respondents agree that they will provide truthful testimony and cooperation, including production of documents, with any State or Federal investigation involving Southwick, the VesCor companies and any individuals under investigation as a result of their affiliation with VesCor and/or Southwick.

54. Respondents agree to cease and desist from violating the Utah Uniform Securities Act.

IV. FINAL RESOLUTION

55. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondents further acknowledge 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.

56. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of their conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect, and do not bar, this administrative action by the Division against them.

57. 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.

Dated this 1 day of August, 2011.

Dated this 28 day of July, 2011.

Utah Division of Securities

By:

Dave R. Hermansen
Dave R. Hermansen
Director of Licensing and Compliance

Brian Y. Horne
Brian Y. Horne
Respondent, and for Respondents
Deseret Financial, Inc., and Horne
Financial, Inc.

Approved:

D. Scott Davis
D. Scott Davis
Assistant Attorney General

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by the Respondent, are hereby entered.
2. Pursuant to Utah Code Ann. §§ 61-1-20(1)(f), and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, a fine against the Respondents is hereby imposed in the amount of \$500,000.00. Respondents will be given dollar-for-dollar credit against the fine for payments actually made toward restitution, fines and judgments in related Vescor cases. Proof of actual payments must be provided to the Division within six months of the date of entry of this Order. Acceptable proof will include, but not be limited to, canceled checks, bank records, statements from investors, or other proof of actual payments. Unsupported 1099s will not be acceptable. The fine shall be paid on or before January 1, 2015. If Respondents are unable to pay the fine in full by that date (and in consideration of any credits for restitution, fines and judgments actually made in related cases) Respondents may enter into a payment agreement with the Division.
3. Respondents are barred from associating with any broker-dealer or investment adviser licensed in this state, and from acting as an agent for any issuer soliciting investor funds in this state.
4. Respondents shall provide truthful testimony and cooperation (including production of documents) with any State or Federal investigation involving Southwick, the VesCor companies, and any individuals under investigation as a result of their affiliation with VesCor and/or Southwick.

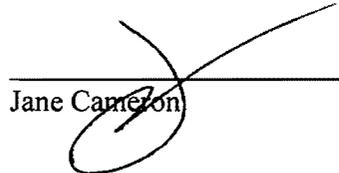
5. Respondents shall cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state.

BY THE UTAH SECURITIES COMMISSION:

DATED this 27 day of October, 2011.

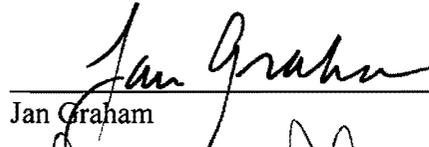


Tim Bangerter



Jane Cameron

Erik Christiansen



Jan Graham

Laura Polacheck

Certificate of Mailing

I certify that on the 17th day of November, 2011, I mailed, by certified mail, a true and correct copy of the signed and executed Stipulation and Consent Order to:

Brian Y. Horne
Deseret Financial, Inc.
Horne Financial, Inc.
1382 Pheasant Ridge Circle
Bountiful, Utah 84010-1370

7007 0220 0001 0009 0044



Executive Secretary