

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

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

IN THE MATTER OF:

**JACK PHILLIPS,
JAMES D. ELLIOTT,**

Respondents.

ORDER TO SHOW CAUSE

Docket No. 11-12-0001
Docket No. 11-12-0002

It appears to the Director of the Utah Division of Securities (Director) that Jack Phillips and James D. Elliott have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over Respondents and the subject matter is appropriate because the Division

alleges that they violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. Jack Phillips (Phillips) was, at all relevant times, a resident of the State of Oregon. Phillips has never been licensed in the securities industry in any capacity.
3. James D. Elliott (Elliott) was, at all relevant times, a resident of the State of Tennessee. Elliott has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

4. From January 2007 to March 2007, Respondents offered and sold investment contracts to investors, in or from Utah, and collected at least \$330,000.
5. Investment contracts are securities under the Act.
6. Respondents made material misstatements and omissions in connection with the offer and sale of securities to the investors below.
7. Investors lost all \$330,000 of their principal.

INVESTORS B.P. AND G.P. (HUSBAND AND WIFE)

8. B.P. and G.P. met Phillips through a mutual friend. At all relevant times, B.P. and G.P. lived in Salt Lake County, Utah.

FIRST INVESTMENT

9. In February 2005, Phillips began discussing investment opportunities in Guardian International Travel (GIT) with B.P. via telephone.
10. Phillips stated there were two ways to earn a profit from an investment in GIT:
 - (1) Investors could make five times the value of their initial investment by receiving “condo cards” redeemable at travel destinations with a face value of three times what an investor provided GIT; or
 - (2) Investors would receive five times their initial investment in eighteen months because their funds were used in FOREX trading.
11. In or about July 2006, B.P. and G.P. invested \$25,000 in GIT through Phillips. B.P. and G.P. received several condo cards that never worked with any travel establishment and received \$10,000 to \$12,000 in return from GIT.
12. On or about December 17, 2006, Phillips flew to Salt Lake City, Utah to meet with B.P. to discuss an investment opportunity in imported emeralds.
13. During the meeting, Phillips made the following statements about an investment with Phillips:
 - a. The investment would result in tripling the investment funds in ninety days;
 - b. The deal could subsequently include diamonds and rubies;
 - c. It was Phillips’ “deal” because he was an “insurance guy” who would make sure the deal was insured and he decided who got in;

- d. The transaction involved an emerald mining operation in Brazil that needed to export the emeralds;
 - e. A reverend with a mission in Brazil had fifteen years of experience in exporting emeralds;
 - f. The reverend needed to export the emeralds as soon as possible;
 - g. There was a buyer in the United States already lined up to buy the emeralds;
 - h. B.P. and G.P.'s money would be held in escrow as proof of funds and would never leave the country;
 - i. The worst case scenario would be that B.P. and G.P. only get their principal back;
 - j. B.P. and G.P. would have no responsibilities in the investment;
 - k. Investors could reinvest every thirty days;
 - l. Phillips was bringing B.P. into the investment as a favor to B.P. for being among a select number of friends and because he had invested in GIT; and
 - m. Elliott would be involved in the transaction and Phillips had done business with Elliott for some time.
14. On or about January 4, 2007, Phillips returned to Salt Lake City, Utah with Elliott to meet with B.P.
15. During the meeting Elliott presented the same offer and made the following statements:
- a. The investment was guaranteed;

- b. B.P. would triple his money in ninety days and the transaction was insured;
 - c. Elliott knew the reverend involved in the export of emeralds;
 - d. This offer was only available to a select few and Phillips had spoken very highly of B.P. and G.P.;
 - e. Elliott and Phillips had been doing business together for some time;
 - f. Because B.P. and G.P. invested in GIT, they were being offered this new investment;
 - g. The buyer for the emeralds was already in place;
 - h. Investors' funds would be used as proof of funds and would never leave the country;
 - i. Investors could reinvest every thirty days; and
 - j. GIT had additional opportunities to grow wealth, such as a rubber tree company and a concrete business.
16. Based on Phillips' and Elliott's statements, B.P. and G.P. invested \$30,000 with Phillips and Elliott. On or about January 26, 2007, B.P. and G.P. wired \$30,000 to an account for Marrical Music, LLC¹.

SECOND INVESTMENT

17. After B.P. and G.P.'s initial investment, Phillips advised B.P. to sell his business quickly, even if it sold it at a 50% loss, because B.P. would more than make that money back in the

¹ Marrical Music, LLC is owned by Elliott's wife. They both have signatory authority over the account along with other family members of Elliott.

emerald transaction.

18. B.P. sold his business on February 10, 2007 intending to invest the proceeds with Phillips and Elliott.
19. On or about February 14, 2007, B.P. invested \$270,000 with Respondents by wiring the funds to a trust account set up by an attorney named Paul E. Emerson (Emerson).
20. In February 2008, after many excuses for delays in payments, B.P. tracked down the “emeralds” in Georgia and transported them back to Utah.
21. B.P. had them appraised and it was determined that they were not emeralds, but industrial grade cut glass.
22. B.P. and G.P. never received any payments from Phillips or Elliott and are owed \$300,000 in principal alone.
23. Bank records show B.P. and G.P.’s funds were used by Respondents in the following manner:
 - a. \$150,000 paid to First Clearing, LLC;
 - b. \$106,000 transferred to Emerson’s personal account;
 - c. \$14,000 paid to Gail Cato;
 - d. \$11,000 cashed;
 - e. \$8,000 paid to Elliott;
 - f. \$6,790 cashed with a memo for “Car”;

- g. \$2,181 paid to Mary E. Elliott;
- h. \$600 paid to Jim Duncan; and
- i. \$1,429 paid to miscellaneous expenses such as utilities, groceries, and liquor stores.

INVESTORS P.R. AND S.R. (HUSBAND AND WIFE)

- 24. P.R. and S.R. met Phillips through a mutual friend. At all relevant times, P.R. and S.R. lived in Salt Lake County, Utah.
- 25. In December 2006, Phillips began discussing investment opportunities in GIT with P.R. and S.R. During this same month, P.R. and S.R. invested \$30,000 in GIT.
- 26. On or about January 17, 2007, Phillips and Elliott discussed a new investment opportunity via conference call with P.R. and S.R. P.R. and S.R. were in Salt Lake County, Utah during the call.
- 27. During the meeting, Phillips made the following statements about the new investment:
 - a. The investment would result in tripling the investment funds in ninety days;
 - b. The transaction involved an emerald mining operation in Brazil that needed to export the emeralds;
 - c. Investor funds would be sent to Elliott; and
 - d. P.R. and S.R. would already be millionaires.
- 28. During the meeting, Elliott made the following statements about the new investment:
 - a. The investment would result in tripling the investment funds in ninety days;

- b. The investment had no risk;
 - c. They already had prior investors;
 - d. They were looking for buyers for the emeralds; and
 - e. Money could be reinvested in diamonds and rubies.
29. Based on Phillips' and Elliott's statements, P.R. and S.R. invested \$30,000 with Phillips and Elliott in the following manner:
- a. On or about February 27, 2007, P.R. and S.R. mailed Elliott a cashier's check of \$7,500;
 - b. On or about February 27, 2007, P.R. and S.R. mailed Elliott a second cashier's check of \$7,500;
 - c. On or about March 5, 2007, P.R. and S.R. mailed Elliott a cashier's check of \$6,000; and
 - d. On or about March 5, 2007, P.R. and S.R. mailed Elliott a cashier's check of \$9,000.
30. On or about November 19, 2007, S.R. sent an email to Respondents requesting her principal returned.
31. P.R. and S.R. never received any payments from Phillips or Elliott and are owed \$30,000 in principal alone.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act

32. The Division incorporates and re-alleges paragraphs 1 through 31.
33. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
34. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
 - a. The investment funds would be held as a proof of funds only and would not be used, when in fact, Elliott used funds to pay other businesses, individuals, and personal expenses;
 - b. The investment was guaranteed, when in fact, Respondents had no reasonable basis for making such a statement;
 - c. The investment held no risk, when in fact, Respondents had no reasonable basis for making such a statement;
 - d. The investment was insured, when in fact, Respondents never provided any proof of insurance; and
 - e. The investment would be in emeralds, when in fact, the cargo was industrial grade cut glass.
35. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following,

which was necessary in order to make statements made not misleading:

- a. The identity of the emeralds buyer;
- b. Other individuals would have signatory authority over the account in which the investment funds would be deposited;
- c. Elliott had exercised unauthorized control over another investor's funds;
- d. Some or all of the information typically provided in an offering circular or prospectus regarding Phillips and Elliott, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. The involvement of Phillips and Elliott in legal proceedings;
 - iv. The number of investors;
 - v. The amount of money needed to be raised;
 - vi. The amount of money actually raised;
 - vii. Suitability factors for the investment;
 - viii. Nature of competition;
 - ix. Whether the investment was a registered security or exempt from registration;
and
 - x. Whether Respondents were licensed to sell securities.

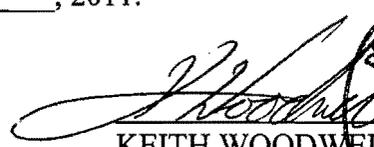
ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. § 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on Wednesday, February 1, 2012, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents may show cause, if any they have:

- a. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act;
- c. Why Respondents should not be barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah; and

- d. Why Respondents should not be ordered to pay to the Division a fine amount to be determined by stipulation or by the presiding officer after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investors.

DATED this 29 day of December, 2011.


KEITH WOODWELL
Director, Utah Division of Securities



Approved:



D. SCOTT DAVIS
Assistant Attorney General
D.W.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
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IN THE MATTER OF:

**JACK PHILLIPS,
JAMES D. ELLIOTT,**

Respondents.

NOTICE OF AGENCY ACTION

Docket No. 10-12-0001
Docket No. 10-12-0002

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. § 63G-4-201 and 63G-4-204 through -209; see also Utah Admin. Code R151-4-101, *et seq.* The facts on which this action is based are set forth in the accompanying Order to Show Cause. The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-4-110.

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

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
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0358

An initial hearing in this matter is set for **February 1, 2012** at the Division of Securities, 2nd

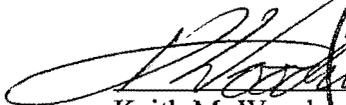
Floor, 160 E. 300 S., Salt Lake City, Utah, at **9:00 A.M.** The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

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 R151-4-710(2). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, 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). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be Angela Hendricks, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6035. This adjudicative proceeding will be heard by Ms. Hendricks and the Utah Securities Commission. 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 Order to Show Cause should be directed to D. Scott Davis, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0358.

Dated this 29 day of December, 2011


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

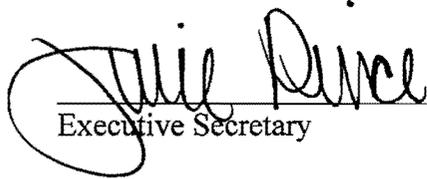
I certify that on the 2nd day of January, 2012, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Jack Phillips
39373 Lacombe Dr.
Lebanon, OR 97355

Certified Mail # 7007 0220 0001 0003 5458

James D. Elliott
5131 Prince Phillip Cv.
Brentwood, TN 37027

Certified Mail # 7007 0220 0001 0004 2920



Executive Secretary