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

IN THE MATTER OF:

CRAIG TANNER DALY,
JOSHUA CARL JOHNSON,

Respondents.

**ANSWER TO ORDER TO SHOW
CAUSE**

Docket No. SD-12-0017
Docket No. SD-12-0018

Respondents Craig T. Daly and Joshua C. Johnson, by and through counsel undersigned, and hereby submit this ANSWER TO ORDER TO SHOW CAUSE. The original allegations are included (in italics) for reference purposes. Respondents' separate answers are marked as **Daly Answer** and **Johnson Answer**.

ANSWER

1. *Jurisdiction over Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud) and § 61-1-3 (unlicensed activity) of the Act while engaged in the offer and sale of securities in or from Utah.*

Daly Answer: Admitted.

Johnson Answer: Admitted.

2. *Craig Tanner Daly (Daly) was, at all relevant times, a resident of the State of Utah. Daly has never been licensed in the securities industry in any capacity.*

Daly Answer: Admitted.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations and therefore denies the same.

3. *Joshua Carl Johnson (Johnson) was, at all relevant times, a resident of the State of Utah. Johnson has never been licensed in the securities industry in any capacity.*

Daly Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations and therefore denies the same.

Johnson Answer: Admitted.

4. *From July 2010 to September 2010, Respondents offered and sold investment contracts to an investor, in or from Utah, and collected at least \$165,000.*

Daly Answer: Denied that Respondent sold “investment contracts.” Admitted that one individual (“V.C.”) solicited Respondent to invest on his behalf in the FOREX pursuant to an “Investor & Advisor Agreement” for \$50,000. Admitted that the same individual asked Respondent to invest a second amount of \$65,000 in the FOREX, but that no written agreement or contract was signed for the second amount.

Johnson Answer: Denied that Respondent sold “investment contracts.” Admitted that V.C. asked Respondent Daly to invest in the FOREX also asked Respondent to invest an amount of \$50,000 in the FOREX, but that no fully executed document was signed for the \$50,000.

5. *Investment contracts are securities under the Act.*

Daly Answer: Admitted.

Johnson Answer: Admitted.

6. *Respondents made material misstatements and omissions in connection with the offer and sale of securities to the investor below.*

Daly Answer: Denied.

Johnson Answer: Denied.

7. *Investor lost \$160,800 of his principal.*

Daly Answer: Admitted with the caveat that the investor also received several payments on his investment.

Johnson Answer: Admitted with the caveat that the investor also received several payments on his investment.

8. *In July 2010, V.C. saw an ad on the internet from Freedom Wealth Group, LLC (FWG) offering to teach investors how to FOREX trade. The ad claimed to reduce the amount of risk in FOREX trading and listed Daly as the contact.*

Daly Answer: Admitted.

Johnson Answer: Admitted.

9. *V.C. contacted Daly via telephone for more information. During the conversation, Daly made the following statements about an investment in FWG:*

a. FWG taught investors how to FOREX trade their own money;

b. FWG taught investors how to use the daily ONIT trade; and

c. The program package cost \$5,000.

Daly Answer: Admitted as to the telephone call and to the statements made during the call.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning the phone conversation and therefore denies the same.

10. *On August 3, 2010, Daly emailed V.C. more information about the ONIT trade. In the email, Daly gave an example of one account that had earned a 225% return. Daly also stated that FWG was now "56 for 56" in successful trades on the account.*

Daly Answer: Admitted.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning email communication between Daly and V.C. and therefore denies the same.

11. *In an email response, V.C. asked Daly how FWG was able to make such successful trades.*

Daly Answer: Admitted.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning email communication between Daly and V.C. and therefore denies the same.

12. *On August 3, 2010, Daly responded with another email making the following statements:*
- a. *There is a steep learning curve with FOREX trading;*
 - b. *Daly would never want V.C. to learn the lessons of trading with his principal;*
 - c. *Daly would personally do all of V.C.'s trading with short thirty-day terms in case V.C. needed his principal back;*
 - d. *It would be easy to return principal plus dividends each month; and*
 - e. *He could have V.C.'s money back within a few days' notice.*

Daly Answer: Respondent admits that all of the statements were made in the email.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning email communication between Daly and V.C. and therefore denies the same.

13. *In another email response, V.C. told Daly that he wanted to put his money in a safe and conservative investment.*

Daly Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning this email communication and therefore denies the same.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning email communication between Daly and V.C. and therefore denies the same.

14. *On August 3, 2010, Daly responded with a third email making the following statements:*
- a. *Daly had managed other investments before and this would not be anything new;*
and
 - b. *He would try to place parameters and limits on himself as the trader in case of initial losses, in which case Daly would pull out the funds. Daly claimed, however, that he had never had to do this.*

Daly Answer: Respondent admits that both statements were made in the August 3, 2010 email.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning email communication between Daly and V.C. and therefore denies the same.

15. *On August 4, 2010, Daly sent V.C. a follow-up email stating that his example of the trade that gained 225% was due to him leveraging double what he normally leveraged. Daly is more conservative and consistent, resulting in smaller gains.*

Daly Answer: Respondent does not recall the August 4, 2010 email and is therefore without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning this email communication and therefore denies the same.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning email communication between Daly and V.C. and therefore denies the same.

16. *Shortly following the email exchange, Daly and V.C. spoke via telephone. V.C. indicated some reluctance in investing in FWG.*

Daly Answer: Denied. Respondent does not recall that V.C. was reluctant.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning the telephone communication between Daly and V.C. and therefore denies the same.

17. *Daly then stated the following:*

- a. *He was a member of the Church of Jesus Christ of Latter-day Saints (LDS);*
- b. *He was a descendant of LDS apostle Bruce R. McConkie; and*
- c. *He came from a long line of strong LDS heritage.*

Daly Answer: Denied. Respondent does not recall ever making any such representations and asserts that that he would never say such things to gain V.C.'s trust.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning telephone communication between Daly and V.C. and therefore denies the same.

18. *On or about August 10, 2010, Daly and V.C. met in Salt Lake County, Utah and signed a document titled Investor & Advisor Agreement to invest \$50,000 with Daly. The agreement states the following:*

- a. *Daly is the “Advisor;”*
- b. *Daly will give his best efforts to earn a 5% monthly return for V.C.;*
- c. *Projected returns are goals and not a guarantee;*
- d. *The length of the investment is two months, after which, V.C. can cancel the agreement at any time;*
- e. *The agreement may be null and void after an investor loss of 25% of principal and the remaining principal will be returned to the investor; and*
- f. *There are inherent risks in trading.*

Daly Answer: Respondent admits to the allegation in its entirety, with the caveat that the Investor and Advisor Agreement indicates that the *Advisor* has the discretion to determine whether the agreement is null and void after a loss of 25%.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning an Investor Agreement between Daly and V.C. and therefore denies the same.

19. *Based on Daly’s statements, V.C. invested \$115,000 with Daly. On August 11, 2010, V.C. wired \$50,000 to Daly’s account. Daly transferred \$48,000 of the funds to a FOREX trading account while Daly retained \$2,000.*

Daly Answer: Admitted.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning these transactions and therefore denies the same.

20. *On September 16, 2010, V.C. wired \$65,000 to Daly's account. Daly transferred \$64,000 of the funds to a FOREX trading account while Daly retained \$1,000.*

Daly Answer: Admitted.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning these transactions and therefore denies the same.

21. *V.C. has received approximately \$4,200 from Daly, but is owed \$110,800 in principal alone.*

Daly Answer: Denied. V.C. has received some monies back—Respondent believes the amount is in excess of \$4,200. Respondent denies that he personally owes V.C. \$110,800 in principal. Nothing in the *Investor and Advisor Agreement* guarantees that the market trading will result in a profit for the investor. V.C. solicited Respondent to invest on his behalf and was notified of the serious risk involved with investing in a volatile market. V.C. chose to move forward with the investment despite these risk. Accordingly, Respondent asserts that V.C. bears some responsibility for the decision to invest in the market.

Johnson Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning these transactions and therefore denies the same.

22. *Shortly after V.C.'s initial investment, V.C. wanted to invest more funds and Daly referred V.C. to Johnson.*

Daly Answer: Admitted.

Johnson Answer: Admitted.

23. *Daly and Johnson met with V.C. to discuss another investment opportunity in FWG. Daly told V.C. that Daly and Johnson work together and discuss whether trades will be successful before trading.*

Daly Answer: Admitted that Respondents met with V.C. and spoke about market conditions and trends. Respondents, however, never disclose their progress to one another so as to not create any competition.

Johnson Answer: Admitted that Respondents met with V.C. and spoke about market conditions and trends. Respondents, however, never disclose their progress to one another so as to not create any competition.

24. *Johnson promised V.C. a return of 10% monthly or 120% per annum.*

Daly Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning these transactions and therefore denies the same.

Johnson Answer: Admitted the terms were discussed over the phone and an agreement was drafted that represented those terms. Johnson did not guarantee. The agreement was never signed by Respondent.

25. *Johnson told V.C. that the investment funds would be used for FOREX trading, similar to V.C.'s previous investment with Daly.*

Daly Answer: Respondent is without knowledge or information sufficient to form an opinion or belief as to the truthfulness or accuracy of said allegations concerning these transactions and therefore denies the same.

Johnson Answer: Admitted.

26. *Based on Johnson and Daly's statements, V.C. invested \$50,000 with Johnson. On August 26, 2010, V.C. wired \$50,000 to Johnson's account. Johnson transferred \$48,000 of the funds to a FOREX trading account while Johnson retained \$2,000.*

Daly Answer: Admitted.

Johnson Answer: Admitted.

27. *V.C. has not received any payments from Johnson and is still owed \$50,000 in principal alone.*

Daly Answer: Admitted that V.C. has not received any payments. Respondent denies the balance of the allegation for lack of knowledge.

Johnson Answer: Admitted that V.C. has not received any payments. Respondent denies that he personally owes V.C. \$50,000 in principal.

28. *In October 2010, V.C. met with Daly and Johnson. Daly and Johnson told V.C. that the investment was going really well.*

Daly Answer: Denied.

Johnson Answer: Denied.

29. *On January 7, 2011, V.C. met with Daly and Johnson. Daly and Johnson told V.C. that FWG incurred some losses, the "buffer zone" was gone, and FWG could "go under."*

Daly Answer: Admitted with the caveat that Respondent does not recall saying that “FWG” would go under.

Johnson Answer: Admitted with the caveat that Respondent does not recall saying that “FWG” would go under.

30. *On January 31, 2011, V.C. received an email from Daly stating that he and Johnson had closed the doors to their office due to losses.*

Daly Answer: Admitted.

Johnson Answer: Admitted.

31. *The Division incorporates and re-alleges paragraphs 1 through 30.*

Daly Answer: No response required.

Johnson Answer: No response required.

32. *The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.*

Daly Answer: Denied

Johnson Answer: Denied.

33. *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. *Daly would retain \$2,000 of V.C. 's \$50,000 investment funds;*
- b. *Daly would retain \$1,000 of V.C. 's \$65,000 investment funds;*
- c. *Johnson would retain \$2,000 of V.C. 's \$50,000 investment funds;*

- d. *Some or all of the information typically provided in an offering circular or prospectus regarding FWG, Daly, and Johnson such as:*
- i. *Financial statements;*
 - ii. *Risk factors;*
 - iii. *The number of investors;*
 - iv. *Suitability factors for the investment;*
 - v. *Whether the investment was a registered security or exempt from registration; and*
 - vi. *Whether Respondents and were licensed to sell securities.*

Daly Answer: Respondent denies that the FOREX investment was an “offer or sale” of a “security.” Respondent denies that he failed to disclose any information that was “material” to the investment. Respondent denies that he was required to disclose information typically provided in an offering circular. Respondent asserts that material risks were discussed several times with V.C. prior to his request that Respondent invest on his behalf. Respondent called IBFX (FOREX broker) to inquire whether it was necessary to be licensed. Respondent was told (among other things) that if he had a personal relationship with the investor, licensure was not required.

Johnson Answer: Respondent denies that the FOREX investment was an “offer or sale” of a “security.” Respondent denies that he failed to disclose any information that was “material” to the investment. Respondent denies that he was required to disclose information typically provided in an offering circular. Respondent asserts that material

risks were discussed several times with V.C. prior to his request that Respondent invest on his behalf.

34. *The Division incorporates and re-alleges paragraphs 1 through 30.*

Daly Answer: No response required.

Johnson Answer: No response required.

35. *Respondents have not been licensed in the securities industry in any capacity.*

Daly Answer: Admitted.

Johnson Answer: Admitted.

36. *Respondents acted as investment advisers in the offer and/or sale of a security in Utah.*

Daly Answer: Denied. Respondent asserts that he did not act as an “adviser” as defined under relevant law and did not require licensure as an “adviser.”

Johnson Answer: Denied. Respondent asserts that he did not act as an “adviser” as defined under relevant law and did not require licensure as an “adviser.”

37. *Daly received compensation of \$3,000 in the offer and/or sale of a security in Utah.*

Daly Answer: Admitted that Respondent retained \$3,000 as compensation for agreeing to trade V.C.’s funds on the FOREX. Denied that he offered to sale or sold a security.

Johnson Answer: Denied for lack of knowledge.

38. *Johnson received compensation of \$2,000 in the offer and/or sale of a security in Utah.*

Daly Answer: Denied for lack of knowledge.

Johnson Answer: Admitted that Respondent retained \$2,000 as compensation for agreeing to trade V.C.'s funds on the FOREX. Denied that he offered to sale or sold a security.

39. *Accordingly, each offer or sale of securities by Respondents violated Section 61-1-(3) of the Act.*

Daly Answer: Denied.

Johnson Answer: Denied.

40. *Based on the above information, Respondents violated § 61-1-3(3).*

Daly Answer: Denied.

Johnson Answer: Denied.

RESERVATION

Respondents reserve the right to assert such additional defenses as may become apparent through the conducting of discovery or the natural progression of this case.

SIGNED and DATED this 22nd day of March, 2012.

HEIDEMAN, MCKAY, HEUGLY & OLSEN, LLC



Justin R. Elswick,
Attorney for Respondents Craig Tanner Daly
And Joshua Carl Johnson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by the method indicated below on the individuals named on this 22nd day of March, 2012.

Attorney/Party	Method
D. Scott Davis Assistant Attorney General Utah Division of Securities 160 East 300 South, 5 th Floor Salt Lake City, Utah 84114-0872 Telephone: (801) 366-0358 Facsimile: (801) 530-6980 Email: dscottdavis@utah.gov	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Fax Transmission <input checked="" type="checkbox"/> Email

Party/Attorney	Method
Administrative Court Clerk c/o Julie Price Utah Division of Securities 160 East 300 South, 2 nd Floor Box 146760 Salt Lake City, Utah 84114-6760 Telephone: (801) 530-6600 Facsimile: (801) 530-6980 Email: julieprice@utah.gov	<input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Fax Transmission <input checked="" type="checkbox"/> Email

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