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

In the matter of: TYLER D. ARCHULETA and DANIELLE L. ARCHULETA dba ARCHULETA TRUCKING, LLC, Respondents.	ORDER DENYING RESPONDENT TYLER D. ARCHULETA'S MOTION TO SET ASIDE Docket No. 12-0019 Docket No. 12-0020

This matter is before the Division of Securities (hereinafter "Division") on Respondent Tyler D. Archuleta's Motion to Set Aside the Division's Final Order by Default. The Division has considered the parties' arguments and, for the reasons discussed fully below, will deny the Motion.

DISCUSSION

The Division entered a Final Order by Default in this matter on July 19, 2012. Respondent filed a Motion to Set Aside the Final Order by Default on August 15, 2012. UTAH CODE ANN. § 63G-4-209(3)(a) allows a defaulted party to seek to have the agency set aside the default order by following the procedures outlined in the Utah Rules of Civil Procedure. Because the law disfavors default judgments, a tribunal should be generally indulgent toward setting a judgment aside where there is reasonable justification or excuse for the Applicant's failure to participate and when timely application is made. *Black's Title, Inc. v. Utah State Insurance Department*, 991 P.2d 607, 610, 1999 UT App 330 ¶ 5. Nonetheless, the tribunal has

considerable discretion in granting or denying a motion to set aside. *Id.*

To be relieved from the final order by default, Respondent must show that a motion to set aside was timely made, that it has a meritorious defense, and that the default occurred for a reason specified in Utah Rule of Civil Procedure 60(b). *Id.* at ¶6. Rule 60(b) states:

> "On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (3) fraud, misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of judgment."

Respondent's motion was timely in as much as it was brought twenty-seven (27) days after the entry of the final order by default. However, Respondent's motion fails to identify which reason specified in Rule 60(b) that the default occurred. Respondent states only that he is incarcerated and thus unable to respond to the agency action against him. Yet in Respondent's motion, he represents that he responded to the Division investigator in writing at some point during the prosecution of this matter. No distinction is made by Respondent in his motion to

indicate why he was capable of responding during the investigation of the matter, but unable to respond to the agency action until after the final order by default was entered.

Respondent has failed to demonstrate how the conditions of his incarceration amount to one of the grounds set forth in Utah Rule of Civil Procedure 60(b) sufficient to merit setting aside the final order by default.

CONCLUSION AND ORDER

Based on the foregoing discussion, Respondent Tyler D. Archuleta has not alleged sufficient grounds to set aside the Final Order by Default pursuant to Rule 60(b). Therefore, the Division orders as follows:

IT IS HEREBY ORDERED that the Respondent's Motions to Set Aside the Final Order by Default in this matter is denied.

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Agency review of this order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, 160 East 300 South, P.O. Box 146704, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of this

order. The laws and rules governing agency review are found in Title 63G, Chapter 4 of the Utah Code and R151-4 of the Utah Administrative Code.

Dated this 4 day of October, 2012.

UTAH DIVISION OF SECURITIES

ANGELA HENDRICKS, PRESIDING OFFICER
160 East 300 South
Box 146704
Salt Lake City, Utah 84114
Telephone No. (801) 530-6601

CERTIFICATE OF SERVICE

I certify that I have this 4 day of October, 2011 served the foregoing ORDER DENYING RESPONDENT'S MOTION TO SET ASIDE on the parties in this proceeding by mailing a copy, properly addressed by first class mail with postage prepaid, to:

TYLER D. ARCHULETA
UTAH DEPT. OF CORRECTION
OFN: 197621
P.O. BOX 250
DRAPER, UT 84020

DANIELLE L. ARCHULETA
4949 SAN PEDRO DR. NE, APT. 92
ALBUQUERQUE, NM 87109

And by hand delivery to:

Ann Skaggs, Securities Analyst
Utah Division of Securities

D. Scott Davis, Assistant Attorney General
Office of the Attorney General of Utah