

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:

**SECURITIES AMERICA, INC.,
CRD#10205;
GARY L. BARKER, CRD#819264**

Respondents.

**PETITION TO CENSURE LICENSEES
AND IMPOSE FINES**

Docket No. SD-12-0025

Docket No. SD-12-0026

Pursuant to the authority of the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-6, the Utah Division of Securities (“Division”) hereby petitions the Utah Securities Commission (“Commission”) to enter an Order censuring the Respondents and imposing fines. In support of this petition, the Division alleges:

STATEMENT OF FACTS

1. Securities America, Inc. (“SAI”) is a broker-dealer that has been licensed in Utah since 1985.
2. Gary L. Barker (“Barker”) is a licensed broker-dealer agent of SAI. Barker is also the president, chief compliance officer, and owner of PFG Advisors Inc. (“PFG”), a Utah licensed investment adviser. Barker is licensed as an investment adviser representative of PFG.

3. Barker conducts SAI and PFG business from an office located at 555 East 4500 South, Bldg. C-250, Salt Lake City, Utah ("Branch 111111"). Branch 111111 is designated as an Office of Supervisory Jurisdiction ("OSJ") of SAI.
4. Craig L. Niebuhr ("Niebuhr"), CRD#347982, is a licensed broker-dealer agent of SAI and investment adviser representative of PFG.
5. Barker is designated as the supervisor/person in charge of Branch 111111. During the period relevant to this action, Niebuhr was identified on the Central Registration Depository ("CRD")¹ as an associated agent of Branch 111111.
6. Niebuhr's primary business is insurance. He is the owner of an insurance agency, CN Insurance Associates, Inc. ("CN Insurance"), located at 5330 South 900 East, Suite 180, Salt Lake City, Utah.

Division Examination

7. A 2011 examination by the Division revealed that although Niebuhr was conducting SAI securities business from the CN Insurance location, that office was not properly registered as a branch office of SAI, as required by FINRA rules² and SAI's compliance manual.
8. SAI's Field Compliance Manual states:

C. Branch Office Registration and Location.

If you perform any of the following activities from a location, even a private residence, you are conducting securities business and the location must be registered with FINRA.

- Soliciting new accounts or orders
- Opening new accounts

¹CRD is a computerized database maintained by the Financial Industry Regulatory Authority ("FINRA"). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

²See NASD Rule 3010(g)(2)(A) (defining branch office).

- Accepting or entering orders
- Handling checks and securities (“handling” is defined as acceptance and/or processing or client funds and/or securities)
- Meeting clients or prospects (See “Office of Convenience” below)
- Use of company name and references to that location and phone number on any of the following: business cards, letterhead, stationery, advertisements (print and electronic), or using signage.

9. Niebuhr acknowledged to the Division that from the CN Insurance location he: a) meets with clients both in person and over the telephone; b) maintains account records, including original³ client files; and c) services SAI client accounts from a computer.
10. In addition, his web site, www.cninsurance.com includes the statement “Securities offered through Securities America, Inc., Member FINRA/SIPC.” The only address provided on the web site, however, was that of the CN Insurance location, not Branch 111111.
11. In 2008, an SAI internal compliance audit raised concerns that Niebuhr’s place of business should be registered as a branch office. A deficiency letter to Barker dated June 28, 2008 states:

Branch Office Registration and Location- Any location, even a private residence, where securities business is conducted must be registered with FINRA and applicable state regulators. It was noted during your audit that Craig Niebuhr is conducting securities business at 5330 South 900 East, Salt Lake City, Utah. This address is not properly registered with SAI, FINRA and your applicable state regulators. Immediately contact SAI’s Licensing Department. A Licensing Specialist will ensure the proper information is recorded in SAI’s internal database and that the FINRA and applicable state are notified of the change.
12. Although the letter required that Barker provide “a written statement explaining the procedures you will employ to correct the above-stated deficiencies” within 10 business

³Mr. Niebuhr indicated that duplicate client files are kept at Branch 111111.

days, SAI was unable to produce evidence of any written response made by Barker or follow-up actions taken by SAI.

13. Despite the instructions, after Barker received the deficiency letter the CN Insurance location was not registered as a branch office. The issue appears not to have been raised in a 2009 SAI internal compliance audit. The 2010 SAI internal audit includes among “initial examination findings” a handwritten note that Niebuhr “may be required to register his office location with SAI/FINRA” but no action was taken thereafter to do so. In 2011, the SAI internal audit notes “Discussed [Niebuhr’s] office as a non-branch location and the advertising restrictions associated with this.” Each audit document was signed by Barker and the SAI examiner conducting the audit to confirm their discussion of the items contained therein.
14. SAI’s written supervisory procedures require that branch offices be audited “at least every other calendar year” by SAI’s Director of Compliance Examination or a designee. Because the CN Insurance location was not registered as a branch office, no such audits took place.
15. On November 16, 2011, more than three years after SAI knew Niebuhr was conducting securities business from a location other than Branch 111111, the CN Insurance location was registered on CRD as a branch office of SAI.⁴

FIRST CAUSE OF ACTION
Failure to Supervise Under Section 61-1-6 of the Act

16. Despite the fact that Respondents knew Niebuhr was engaged in securities activities from

⁴Following the Division’s examination, SAI also registered the home office locations of two other agents as branch offices.

the CN Insurance location, Respondents failed to follow SAI's own policies and procedures and register that office as a branch office as required by FINRA rules and SAI's compliance manual, warranting sanctions under Section 61-1-6(2)(a)(II)(J) of the Act.

REQUEST FOR RELIEF

The Division requests that, based upon the Respondents' violation of the Act, the Commission enter an order censuring Respondents and imposing fines as follows:

- a. SAI: \$5,000.00
- b. Barker: \$2,500.00

Dated this 10 day of April, 2012



Dave R. Hermansen
Director of Licensing and Compliance
Utah Division of Securities

Approved:



D. Scott Davis
Assistant Attorney General

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

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NOTICE OF AGENCY ACTION

Docket No. _____

Docket No. _____

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 legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-6. The facts on which this action is based are set forth in the accompanying Petition. 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 Petition, including a detailed explanation for any response other than an unqualified admission. Allegations in the Petition 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 Petition, 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
160 E. 300 South, Fifth Floor
Box 140872
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing in this matter has been set for May 16, 2012 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City Utah, at 9am. The purpose of the initial hearing is to

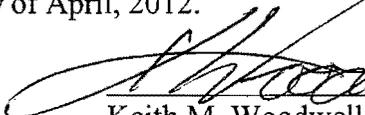
enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

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 Petition, 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. At any hearings, the Division will be represented by the Attorney General's Office. 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 Petition should be directed to Scott Davis, Assistant Attorney General, 160 E. 300 South, Fifth Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310.

Dated this 10th day of April, 2012.


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

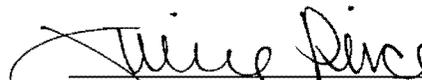
I certify that on the 11th day of April, 2012, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

Securities America, Inc.
Attn: Kevin Miller, Chief Compliance Officer
P.O. Box 460001
Papillion, NE 68046-0001

Certified Mail # 7007 0226 0001 0063 7100

Gary L. Barker
555 East 4500 South
Building C-250
Salt Lake City, UT 84107-4539

Certified Mail # 7007 0226 0001 0063 7094



Julie Price
Executive Secretary