

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.

STIPULATION AND CONSENT ORDER

Docket No. SD-12-0025

Docket No. SD-12-0026

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondents Securities America, Inc. and Gary L. Barker (collectively referred to at times as "Respondents"), hereby stipulate and agree as follows:

1. 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 April 10, 2012, the Division initiated an administrative action against Respondents by filing a Petition to Censure Licensees and Impose Fines.
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 pertaining to the Petition.

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 voluntarily agree to the entry of the Order set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents 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. Securities America, Inc. ("SAI") is a broker-dealer that has been licensed in Utah since 1985.
9. 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.
10. 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.

11. Craig L. Niebuhr (“Niebuhr”), CRD#347983, is a licensed broker-dealer agent of SAI and investment adviser representative of PFG.
12. 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.
13. 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

14. 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.
15. 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
- 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)

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).

- 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.

16. 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.
17. 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.
18. 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.

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

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

20. 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.
21. 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.
22. 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

II. CONCLUSIONS OF LAW

23. Although Respondents knew Niebuhr was engaged in securities activities from 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

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

manual, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

24. Respondents neither admit nor deny the Division's findings and conclusions, but consent to the sanctions below being imposed by the Division.
25. Respondents represent that the information they have provided to the Division as part of the Division's investigation is accurate and complete.
26. Respondents agree to cease and desist from violating the Utah Uniform Securities Act, and to comply with the requirements of the Act in all future business in this state.
27. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondents agree to pay fines to the Division as follows:

- a. SAI: \$4,000.00
- b. Barker: \$1,500.00

The fines shall be paid within thirty (30) days following entry of this Order.

IV. FINAL RESOLUTION

28. 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.
29. 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 on, and do not bar, this administrative action by the Division against them.

30. 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 14 day of MAY, 2012.



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

Dated this 2nd day of May, 2012.



Designated Official on behalf of
Respondent Securities America, Inc.

Gary L. Barker
Respondent

Approved:



D. Scott Davis
Assistant Attorney General

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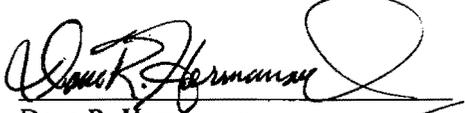
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Home Office
COMPLIANCE SECT.

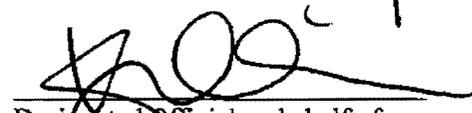
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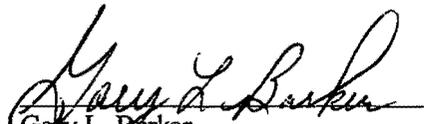
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Dated this 14 day of May, 2012.


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

Dated this 2nd day of May, 2012.


Designated Official on behalf of
Respondent Securities America, Inc.


Gary L. Barker
Respondent

Approved:


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 Respondents, are hereby entered.
2. 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.
3. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, fines are hereby imposed as follows:
 - a. Securities America, Inc.: \$4,000.00
 - b. Gary L. Barker: \$1,500.00

The fines shall be paid within thirty (30) days following entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this 31 day of May, 2012.



Tim Bangerter

Brent Baker

Erik Christiansen

Brent Baker

Laura Polacheck

Certificate of Mailing

I certify that on the 4th day of JUNE, 2012, I mailed, by certified mail, a

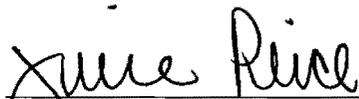
true and correct copy of the fully executed Stipulation and Consent Order to:

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

Certified Mail # 7007 0220 0001 00003 7315

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

Certified Mail # 7007 0220 0001 00003 7322



Julie Price
Executive Secretary