

Division of Securities
Utah Department of Commerce
160 East 300 South
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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:

**CRAIG ELDON TAYLOR,
d.b.a. THE MALL HOP and
SMOOTHIE BEACH,**

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD -12-0038

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Dave Hermansen, and Craig Eldon Taylor (Respondent), doing business as The Mall Hop¹ and Smoothie Beach,² hereby stipulate and agree as follows:

1. Respondent was the subject of an investigation conducted by the Division into allegations that he violated certain provisions of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, as amended (the Act).

1 The Mall Hop was a Utah DBA that registered with the Division of Corporations on December 1, 2006. That registration expired on January 27, 2010 for failure to file a renewal.

2 Smoothie Beach was a Utah DBA that registered with the Division of Corporations on August 20, 2009. That registration expired on September 19, 2012 for failure to file a renewal.

2. In connection with that investigation, the Division issued an Order to Show Cause against Respondent on June 25, 2012, alleging securities fraud.
3. Respondent waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf. Respondent understands that by waiving a hearing, he is waiving the requirement that the Division prove the allegations against him by a preponderance of evidence, waiving his right to confront and cross-examine witnesses who may testify against him, to call witnesses on his own behalf, and any and all rights to appeal the findings, conclusions and sanctions set forth in this Stipulation and Consent Order.
4. Respondent understands that he has a right to be represented by counsel, and he voluntarily and knowingly waives the right to have counsel represent him in this matter.
5. Respondent acknowledges that this Stipulation and Consent Order does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
6. Respondent admits the jurisdiction of the Division over him and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENT

7. Respondent, doing business as The Mall Hop and Smoothie Beach, was, at all relevant

times, a resident of the state of Utah. Respondent has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

8. Between April 2009 and December 2011, Respondent offered and sold securities to an investor, in or from Utah, and collected a total of \$5,800.
9. Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investor identified below.

INVESTOR J.V.

First Offer and/or Sale of a Security

10. J.V. initially contacted Respondent in response to an advertisement posted on KSL.com in April 2009. Through the advertisement, Respondent sought a partner to invest in a start-up smoothie company called Smoothie Beach.
11. Over a four-month period following the initial contact, J.V. and Respondent met multiple times in Utah County, Utah to discuss a possible investment in the company.
12. During those meetings, and prior to J.V.'s investment, Respondent made the following statements:
 - a. J.V.'s investment would be in Respondent's start-up smoothie company, Smoothie Beach;
 - b. Smoothie Beach would be located inside The Mall Hop, a miniature mall that

Respondent created;

- c. The investment fee would be \$6,800;
 - d. In return for his investment, J.V. would receive 50% of the profits of the first two Smoothie Beach stores, as well as 10% of the profits of all future Smoothie Beach stores that Respondent expected to open and franchise;
 - e. J.V.'s role in the business would include: handling the accounting, creating the books, and managing the money;
 - f. J.V.'s investment was secure and protected, and Respondent would repay J.V. his principal plus interest upon request;
 - g. If the first Smoothie Beach store did not open within ninety days of August 21, 2009, Respondent would pay J.V. \$200 per month until the store opened; and
 - h. J.V. would not receive any ownership interests in the business.
13. After having decided to invest with Respondent, and while in Utah County, Utah, J.V. delivered to Respondent a Zions Bank personal check in the amount of \$5,800. J.V. made the check payable to The Mall Hop for "Smoothie Beach Buy in."
14. At that time, J.V. and Respondent agreed that J.V. would invest an additional \$1,000 when the store opened. That money would be placed in the cash register for inventory and product purchases.
15. J.V. understood that some of his investment funds would be paid to Respondent personally, but the rest of his funds would go toward opening the Smoothie Beach store.

Specifically, Respondent would use the funds to purchase products and other inventory items.³

16. At the time of investment, J.V. and Respondent executed a document entitled “*Investment/Partnership Contract Between Craig Taylor and [J.V.]*.” The contract is dated August 21, 2009, contains both parties’ signatures, and was notarized on that same date.
17. The terms of the contract memorialize the agreement and include the following provisions:
 - a. Investment description: “To invest in Smoothie Beach. Business will be in all future Mall Hop locations planned to open across country as investment is established;”
 - b. The stated investment amount is \$6,800;
 - c. In return for the investment, J.V. will receive “50% of net profits for 1st Orem Location and 50% of net profits of a 2nd location that will be in operation no later than August 21, 2010. Also promised with this investment are 10% of all net

³ In an interview with an investigator from the Division, Respondent stated that he invested \$50,000 to \$60,000 of his own money into Smoothie Beach and used some of J.V.’s funds to “retrieve money that [Respondent] had already put in.” Respondent also stated that he pooled J.V.’s investment funds with the money Respondent had invested, thereby combining the money in one “large pot.” Bank records for Respondent show that from J.V.’s \$5,800 investment, \$4,135 went to Heather Taylor, \$1,565 went to Craig Taylor, and \$100 went to Brent Wheeler. Of the money given to Heather Taylor, \$3,500 was transferred through a check, written by and payable to Heather Taylor, that included “Trade Show” on the memo line.

profits⁴ of all future Smoothie Beach locations in the United States with no extra investment except time and talent in helping administer accounting and ideas to help the business to be profitable. 10% of the purchase price (buy in price) for all future locations in the United States will also be given to [J.V.];”

- d. Additionally, “due to the 50% partnership in the 2nd store being delayed one year, [J.V.] will receive 20% on the net profits of the 2nd store in operation, instead of the contracted rate of 10%;” and
 - e. “If after nine months of the signature date on this contract, [J.V.] chooses to discontinue this agreement, he will receive a 10% return on his investment plus principal back.”
18. J.V. never performed any accounting or other work-related duties for Smoothie Beach, as provided for in the arrangement, because the project never progressed to that point.
19. Furthermore, Respondent failed to provide J.V. with any substantive information related to the operation of the company after his investment.
20. Instead, on April 17, 2010, J.V. and Respondent entered into an amendment to the original contract that clarified the “Protections” section of their agreement.
21. Both parties signed this amendment, entitled “*Investment/Partnership Contract Amendment 1 Between Craig Taylor and [J.V.]*,” while in Utah County, Utah.

⁴ The contract provides a footnote in connection with the term “net profits,” in which it states “According to this agreement, net income is defined as follows: Total Sales Revenue minus (-) COGS (Food and Beverage Costs) minus (-) Labor expense minus (-) Rent/utilities = [J.V.’s] 10% Payments. All other expense accounts listed on the Income Statement will not be included as deductions to total sales revenue when figuring [J.V.’s] 10% payments.”

22. The amendment includes the following provisions:
 - a. Due to delays in opening the first store, Respondent would forgive J.V.'s remaining \$1,000 investment;
 - b. For every month that the first store remains unopened, Respondent will pay J.V. \$200 on the eighteenth day of the month; and
 - c. The first payment will be due on May 18, 2010.
23. Respondent did not make the \$200 payment to J.V. on May 18, 2010, or any time thereafter, despite their arrangement.

Second Offer and/or Sale of a Security

24. On or about September 1, 2011, while in Utah County, Utah, J.V. told Respondent that he did not want to continue the partnership, and he asked for a complete return of his investment, plus interest.
25. Respondent agreed to repay the \$5,800 investment, plus an additional \$2,200 in interest.
26. On December 22, 2011, J.V. and Respondent formalized their agreement by executing a document entitled "*Promissory Note.*"
27. Both parties executed the document, with J.V. listed as lender and Respondent as borrower.
28. The promissory note includes the following provision: For value received, Respondent will pay J.V. \$6,000 in principal by January 10, 2012 and \$2,000 in interest by February 5, 2012.

29. The value received, as contemplated by the terms of the promissory note, includes J.V.'s forfeiture of his rights to the net profits in Smoothie Beach, as described in the original agreement.
30. J.V. agreed to these terms because Respondent had told him on several occasions that he had no pre-existing debt.
31. J.V. then received two checks from Respondent, dated February 16, 2012, in the amounts of \$6,000 and \$2,000.
32. However, at that time, Respondent told J.V. that he could not cash either check due to lack of funds. Respondent would notify J.V. when the funds became available.
33. On April 23, 2012, Respondent deposited \$6,000 into J.V.'s bank account. Respondent told J.V. that he had borrowed the money from a family member.

CAUSES OF ACTION

SECURITIES FRAUD UNDER § 61-1-1 OF THE ACT

34. The Division incorporates and re-alleges paragraphs 1-33.
35. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act.

First Offer of a Security

36. In connection with the offer and sale of a security to the investor, Respondent, 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. On April 7, 2008, a \$15,429.42 judgment was rendered against Respondent in a debt collection case;⁵
- b. On September 17, 1990, Respondent was arrested in Utah by the Alpine Police Department for theft;
- c. On October 16, 1989, Respondent was arrested in Utah by the South Salt Lake Police Department for issuing a bad check. Respondent was later convicted;
- d. On September 29, 1988, Respondent was arrested in Utah by the Woods Cross Police Department for issuing a bad check. Respondent later pled guilty. As a result of the guilty plea, Respondent was fined \$1,500 and sentenced to one year in prison, of which he served 245 days;
- e. Respondent was on felony probation from June 27, 1989 until October 16, 1991, was a prison inmate from October 16, 1991 until December 10, 1992, and was on parole from December 10, 1992 until January 9, 1995; and
- f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondent, The Mall Hop, and Smoothie Beach, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. The number of investors;

⁵ *Collection Services Bureau UT v. Best Price Utah LLC*, Fourth Judicial District of Utah, Case No. 070200879 (2007).

- iv. Suitability factors for the investment;
- v. Business experience and operating history;
- vi. Whether the investment was a registered security or exempt from registration; and
- vii. Whether Respondent was licensed to sell securities in Utah.

Second Offer of a Security

37. In connection with the offer and sale of securities to the investor, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:
- g. Respondent told J.V. that he did not have any pre-existing debt, when in fact, Respondent had a \$15,429.42 judgment against him in April 2008.⁶
38. In connection with the offer and sale of a security to the investor, Respondent, 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. How Respondent used J.V.'s original investment of \$5,800;
 - b. On September 17, 1990, Respondent was arrested in Utah by the Alpine Police Department for theft;
 - c. On October 16, 1989, Respondent was arrested in Utah by the South Salt Lake Police Department for issuing a bad check. Respondent was later convicted;

⁶ *Collection Services Bureau UT v. Best Price Utah LLC*, Fourth Judicial District of Utah, Case No. 070200879 (2007).

- d. On September 29, 1988, Respondent was arrested in Utah by the Woods Cross Police Department for issuing a bad check. Respondent later pled guilty. As a result of the guilty plea, Respondent was fined \$1,500 and sentenced to one year in prison, of which he served 245 days;
- e. Respondent was on felony probation from June 27, 1989 until October 16, 1991, was a prison inmate from October 16, 1991 until December 10, 1992, and was on parole from December 10, 1992 until January 9, 1995; and
- f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondent, The Mall Hop, and Smoothie Beach, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. The number of investors;
 - iv. Suitability factors for the investment;
 - v. Business experience and operating history;
 - vi. Whether the investment was a registered security or exempt from registration; and
 - vii. Whether Respondent was licensed to sell securities in Utah.

II. THE DIVISION'S CONCLUSIONS OF LAW

39. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunities offered and sold by Respondent are securities under

§ 61-1-13 of the Act.

- b. Respondent violated § 61-1-1(2) of the Act by making untrue statements of material fact and omitting to state material facts in connection with the offer and sale of securities, disclosure of which were necessary in order to make representations made not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

40. Respondent neither admits nor denies the Division's findings of fact and conclusions of law but consents to the sanctions below being imposed by the Division.
41. Respondent agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.
42. Respondent agrees not to seek licensure or engage in the offer or sale of securities in the state of Utah.
44. Pursuant to § 61-1-20(1)(f) of the Act and in consideration of the guidelines set forth in Utah Administrative Code Rule R164-31-1, the Division imposes a fine of \$500 against Respondent, due and payable within six months of the Securities Commission's approval of the Stipulation and Consent Order.

IV. FINAL RESOLUTION

45. Respondent acknowledges that this Stipulation and Consent Order, upon approval by the

Securities Commission, shall be the final compromise and settlement of this matter.

46. Respondent further acknowledges that if the Securities Commission does not accept the terms of the Stipulation and Consent Order, it shall be deemed null and void and without any force or effect whatsoever.
47. Respondent acknowledges that the Stipulation and Consent Order does not affect any civil or arbitration causes of action that third-parties may have against him rising in whole or in part from his actions, and that the Stipulation and Consent Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.
48. Respondent acknowledges that a violation of this Stipulation and Consent Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.
49. The Stipulation and Consent 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 the Stipulation and Consent Order in any way.

Utah Division of Securities:

Date: MAR 22 2013

By: *[Signature]*
Dave Hermansen
Director of Enforcement

Respondent:

Date: MAR 21-2013

By: *[Signature]*
Craig Eldon Taylor

Approved:

Wade Faraway
~~D. Scott Davis~~ *Wade Faraway*
Assistant Attorney General
A.S.

ORDER

IT IS HEREBY ORDERED THAT:

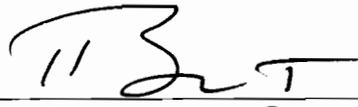
1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondent cease and desist from violating the Utah Uniform Securities Act.
3. Respondent not seek licensure or engage in the offer or sale of securities in the state of Utah.
4. The Division imposes a fine of \$500 against Respondent.
5. Payment of the fine is due and payable within six months of the entry of this Order.

DATED this 29 day of MARCH, 2013.

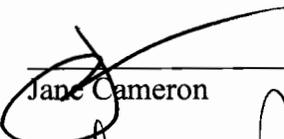
BY THE UTAH SECURITIES COMMISSION:



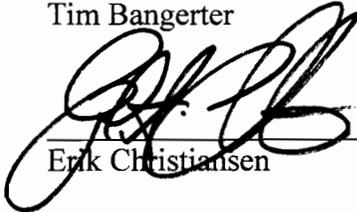
Brent Baker



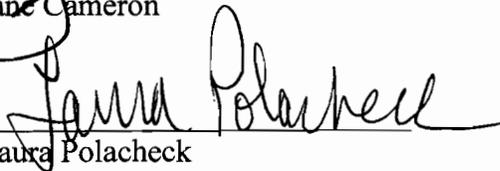
Tim Bangerter



Jane Cameron



Erik Christiansen



Laura Polacheck

Certificate of Mailing

I certify that on the 29 day of March, 2013, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Craig Eldon Taylor
524 West 440 South
Orem, UT 84058

Certified Mailing # 7007022000100642586



~~Julie Price~~ Maria Cohe
Executive Secretary