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Utah Department of Commerce  
Division of Securities

1 Subhash S. Kithany  
2 977 East Wilson Avenue  
3 Salt Lake City, Utah 84105-3324  
4 Telephone: 801 484-2575  
5

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

**IN THE MATTER OF:**

**SUBHASH S. KITHANY, CRD #2181053**

**Respondent.**

**PETITION TO CENSURE AND FINE  
LICENSEE**

**Docket No. SD-12-0060**

6  
7 The Respondent Subhash S. Kithany answers as follows:

8  
9 **STATEMENTS OF FACTS**  
10

11 **The Respondent**

- 12 1. Admit that SK Group, Inc. (SKG), OARD #106513, is an investment advisor  
13 with its place of business in Salt Lake City, Utah. Deny the word "was". Admit  
14 that From September 1991 to today SKG is a Federal covered investment  
15 advisor. SKG is in process of switching the registration from Federal to State  
16 including Utah as part of the requirement of Dodd-Frank Wall Street Reform  
17 and Consumer Protection Reform Act of 2010. SKG has not withdrawn from  
18 United States Securities and Exchange Commission (US SEC) registration and  
19 as such has not completed the switch to State as yet. SKG is waiting for

1 approval from one last remaining state before withdrawing from US SEC.

- 2 2. Admit that Subhash S. Kithany (Kithany), CRD #2181053 is the president,  
3 owner and chief compliance officer of SKG. Admit that Kithany is an investment  
4 advisor representative. Deny the rest of allegation.

5  
6 **Division Investigation**

- 7 3. Admit that SKG, initiated the process to become a State (in this case Utah)  
8 licensed investment advisor as part of the requirement of Dodd-Frank Wall  
9 Street Reform and Consumer Protection Reform Act of 2010. SKG has not  
10 completed the switch to State as yet and is waiting for approval from one last  
11 remaining state before SKG files the papers to withdraw from US SEC.
- 12 4. Deny that Kithany was not licensed investment adviser representative. Kithany  
13 believes that he was licensed.
- 14 5. Admit to the contact from the Division. Deny that Kithany had not filed a Form  
15 U4. Kithany had filed a Form U4 and a copy was provided to the Division. Deny  
16 that Kithany was not licensed as an investment advisor representative with  
17 SKG.
- 18 6. Admit that Kithany explained that he thought he was properly licensed and had  
19 been submitting fees for licensing through the Central Registration Depository  
20 (CRD) system since 2002. Admit that Kithany had paid all fees requested by  
21 CRD system at each year renewal time continuously. Kithany believed he was  
22 properly licensed and had paid all required fees. Deny rest of the paragraph.
- 23 7. Admit that US SEC examined SKG's Salt Lake Office. Admit that US SEC

1 thought that another employee other than Respondent should be licensed in  
2 Utah. Admit that US SEC made no mention of Kithany's licensing status  
3 implying Kithany was properly licensed.

4 8. Admit that Kithany has taken and passed the examination to become a  
5 Chartered Financial Analyst (CFA). This provided a waiver for FINRA Series  
6 65, Uniform Investment Adviser Law Examination. Admit that Kithany has  
7 continuously maintained his CFA designation since 1999.

8 9. Denies that Kithany was not licensed as investment advisor representative.  
9 Admit that Kithany filed new Form U4 on-line on the CRD electronic system.  
10 Previously, Form U4 was a paper form. State of Utah had Kithany's paper U4  
11 on file since 2002.

12

13 **Unlicensed Activity**

14 10. Kithany denies that he acted as investment advisor representative from 2003 to  
15 2012 without being properly licensed. Kithany believed that he was properly  
16 licensed.

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18 **FIRST CAUSE OF ACTION**  
19 **Unlicensed Investment Adviser Representative Under 61-1-3 of the Act**

20

21 11. Kithany denies that he violated the Act by acting as investment adviser  
22 representative while unlicensed. Kithany believed that he was properly  
23 licensed.

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25

1 **FIRST AFFIRMATIVE DEFENSE**

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3 All allegations not herein specifically admitted or otherwise responded to are  
4 denied.

5 **SECOND AFFIRMATIVE DEFENSE**

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7 Respondent has been the only employee of SKG for most of the existence of SKG.  
8 Respondent and SKG are one and the same for all practical purposes – one man  
9 operation.

10 **THIRD AFFIRMATIVE DEFENSE**

11  
12 Respondent has been filing all Federal and State regulatory agency Filings since  
13 the year 1991. Respondent has never missed a single Filing which required it to be  
14 censured or fined.

15 **FOURTH AFFIRMATIVE DEFENSE**

16  
17 Respondent has been filing on IARD/CRD system which is central depository for  
18 all Federal and State regulatory Filings. State of Utah and the Division has been receiving  
19 Notice Filing since 2003 on time and without fail. The Division has been aware of  
20 respondent's registration status at all time. Never once, the Division brought any case  
21 against the Respondent. This implies that everything was okay with registration.

22 **FIFTH AFFIRMATIVE DEFENSE**

23  
24 Respondent has been examined by US SEC four times during the last 20+ years  
25 and two times during the period under this case. US SEC is and would be in constant  
26 communication with the Division with respect to any deficiency. The Division has admitted  
27 to this aspect as such. Never once, the Division brought any deficiency under this case to  
28 the Respondent's attention. This implies that everything was okay with registration.

29 **SIXTH AFFIRMATIVE DEFENSE**

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31 The Division once called the Respondent about the Registration status of one of  
32 the employee. The Division never mentioned the Respondent is not properly registered.  
33 Once again, this implies that everything was okay with registration.

34 **SEVENTH AFFIRMATIVE DEFENSE**

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36 The Division itself is at fault in this case for not bringing the alleged deficiency to  
37 Respondent's notice at many instances it had the opportunity.

1 **EIGHTH AFFIRMATIVE DEFENSE**

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3 Respondent has personally filed all the regulatory Filings himself with no outside  
4 help but with significant help from staff at the Division and US SEC. In all interactions with  
5 the Division, Respondent has never presented himself as someone not following the rules  
6 and regulations and has always been extremely cooperative.

7 **NINTH AFFIRMATIVE DEFENSE**

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9 Respondent reserves the right to assert other and additional affirmative defenses  
10 that may become known or discovered through the discovery process and/or as this case  
11 proceeds.

12 **REQUEST FOR RELIEF**

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14 Respondent requests that Petition to Censure and Fine Licensee be dismissed.

15  
16 Dated this 25<sup>th</sup> day of November 2012.

17  
18   
19 Subhash S. Kithany  
20 Respondent

1 **CERTIFICATE OF MAILING**  
2

3 I certify that on 25<sup>th</sup> day of November 2012, I mailed, by placing a true and correct  
4 copy in separate envelope, with postage fully prepaid, for each address named below and  
5 depositing each in the US Mail at Sugarhouse Post office in Salt Lake City, Utah on date  
6 indicated above.

7 Original to:

8 Administrative Court Clerk  
9 c/o Julie Price  
10 Utah Division of Securities  
11 160 E 300 South, 2<sup>nd</sup> Floor  
12 Box 146760  
13 Salt Lake City, Utah 84114-6760  
14

15 Copy to:

16 D. Scott Davis  
17 Assistant Attorney General  
18 160 E 300 South, 5<sup>th</sup> Floor  
19 Box 140872  
20 Salt Lake City, Utah 84114-0872  
21

22 Copy to:

23 Subhash S. Kithany  
24 977 East Wilson Avenue  
25 Salt Lake City, Utah 84105-3324  
26  
27  
28  
29

  
Subhash S. Kithany  
Respondent