

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
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:

MARK JAMES SAIN,

Respondent.

ORDER TO SHOW CAUSE

Docket No. SD-12- 00710

It appears to the Director of the Utah Division of Securities (Director) that Mark James Sain (Sain or Respondent) has engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.* (the Act). Those acts and practices are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over Respondent and the subject matter is appropriate because the Division alleges that Respondent violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENT

2. Sain is a resident of the State of Utah, with a last known address of 1385 Amesbury Circle, Salt Lake City, Utah 84121. Sain has never been licensed with the Division.

GENERAL ALLEGATIONS

3. From approximately March 2012 to June 2012, Sain offered and sold an investment to K.E., a Utah resident, and collected a total of \$75,000.
4. The investment contract Sain sold to K.E. is a security under § 61-1-13 of the Act and applicable case law.
5. Sain made misstatements and omitted material facts in connection with the offer and sale of securities to K.E.
6. K.E. lost \$72,467 in principal alone.

1st Investment Contract

7. K.E. became interested in investing in Alivamax Worldwide, LLC¹ (Alivamax) when he

¹ Alivamax Worldwide, LLC is a Utah limited liability company as of December 24, 2008. Select Connection, Inc. is listed as Alivamax' Manager. Alivamax' status is active as of January 30, 2012.

was approached by Beau Dorius, who Sain had already approached about becoming an owner in Alivamax. K.E. viewed ownership in Alivamax as an investment opportunity.

8. On March 15, 2012, K.E. met with the proposed owners of the company in Salt Lake County, Utah. During the meeting, Sain said that K.E. would have a 25% ownership interest in the company with a \$50,000 investment. Sain told K.E. that there was no risk involved with the investment because expenses incurred in the business could not be paid without the consent of all five owners.
9. On March 22, 2012, K.E. met again with the owners at the Alivamax office in Salt Lake County to sign an ownership contract. At that meeting, Sain told the owners that the only outstanding debt that Alivamax had was \$15,000.
10. Although he never saw any of the company's legal documents, K.E. was promised that not one penny would be disbursed by the company without the consent of all the owners.
11. Sain made the following statements about a potential \$50,000 investment with Alivamax by K.E.:
 - a. The investment was safe:
 - b. K.E. would have signatory authority on Alivamax's accounts and have access to accounting documents;
 - c. That \$15,000 would be used to repay a prior investor, Patel Family Investments, LLC,

and that Alivamax would be debt-free after that point;

- d. Sain would use the company's funds for the working capital of the business; and
 - e. K.E.'s money would not be used without the consent of all the owners.
12. Based on Sain's statements, K.E. invested \$50,000, via five different cash payments to Avilamax's secretary Pamela Hunt, sometime between March 22 and March 26, 2012. The cash was deposited into Alivamax's bank account at Zions Bank by Sain.
13. In exchange for the \$50,000 investment, K.E. received an operating agreement dated March 22, 2012.
14. Using a source and use analysis, Sain used K.E.'s \$50,000 investment funds from March 22 to approximately June 7, 2012, in the following manner:
- a. \$15,737.40 used to repay previous investors (not Patel Family Investments, LLC.);
 - b. \$723.00 paid to Beau Dorius;
 - c. \$1,532.85 paid back to K.E.
 - d. Two checks totaling \$3,66,71 written to Mark Sain;
 - e. \$12,925 transferred to Sain's Chase credit card;
 - f. \$5,157.96 spent on business expenses;
 - g. \$1,828.64 transferred to Sain's American Express credit card; and
 - h. \$8,434.44 spent on miscellaneous expenses.

15. To date, K.E. has received \$1,533 from his \$50,000 investment.

2nd Investment Contract

16. In approximately mid-April, 2012, while in Salt Lake County, Sain told K.E. he needed additional money for a new compensation matrix.

17. On April 16, 2012, K.E. wired an additional \$25,000 to Sain's Zions Bank account with the promise from Sain that K.E. would receive an additional 10% ownership interest in the company.

18. After Sain received K.E.'s additional \$25,000, he decided instead to divide the remaining 10% ownership interest between himself, Dorious and K.E.

19. Sain told K.E. that his additional \$25,000 would be treated as an investment in the company, and that Sain would repay K.E. \$1,000 per month for one year, with a balloon payment after one year for the remaining balance.

20. K.E. and Sain agreed that K.E.'s additional \$25,000 investment would be used to upgrade the matrix compensation model of the company.²

21. To date, K.E. has only received \$1,000 from his \$25,000 additional investment.

² On April 20, 2012, Sain transferred \$27,000 to a company called "By Design" who was contracted to upgrade the matrix compensation model of the company.

CAUSES OF ACTION
Securities Fraud under § 61-1-1 of the Act

22. In connection with the offer and sale of a security, Respondent, directly or indirectly, made false statements including, but not limited to, the following:
- a. That the company had no debt outside of Patel Family Investments, LLC, when in fact Alivamax did have other debt;
 - b. That Sain was going to repay Patel Family Investments, LLC's prior investment, when in fact the check written to Dinesh-Patel on March 20, 2012, in the amount of \$13,988.67, was voided and never sent;
 - c. That K.E. would have access to the financial documents of the company, but he was actually denied access to the financial statements of Alivamax;
 - d. That K.E. would receive signatory authority on the company's bank accounts, which he never received;
 - e. That the incurred expenses of the business would not be paid without the consent of all the owners, when in fact Sain made multiple withdrawals and expenditures without the consent of the other owners;
 - f. That K.E.'s money would be used only as working capital for the company, when in fact Sain used K.E.'s investment funds for personal and other purposes; and
 - g. That K.E.'s investment was guaranteed to be safe.

23. In connection with the offer and sale of a security, Respondent, directly or indirectly, failed to disclose material information which was necessary to make the statements not misleading, including, but not limited to, the following:
- a. The business and operating history for Alivamax, and Sain;
 - b. Financial statements regarding the company;
 - c. Risk factors pertaining to K.E.'s investment;
 - d. That Alivamax had founding partners who were supposed to be receiving 3% of the company's sales;
 - e. Whether the investment was a registered security or exempt from registration;
 - f. Whether or not Sain was licensed to sell securities; and
 - g. What Sain did with K.E.'s initial \$50,000 investment.
24. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act;
25. Respondent violated § 61-1-1 of the Act by making misstatements of material facts and by omitting material facts in connection with the offer and sale of a security.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on **February 6, 2013**, at **9:00 a.m.**, at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents may show cause, if any they have:

- a. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-1 and 61-1-3, or any other section of the Act;
- c. Why respondents should not be barred from being licensed in any capacity in the securities industry in the State of Utah; and
- d. Why Respondents should not be ordered to pay to the Division a fine amount to be determined by the Utah Securities Commission after a hearing in accordance with the

provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investors.

DATED this 12th day of December, 2012.


KEITH WOODWELL
Director, Utah Division of Securities



Approved:



D. SCOTT DAVIS
Assistant Attorney General
K.W.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

MARK JAMES SAIN,

Respondent.

NOTICE OF AGENCY ACTION

Docket No.

15-12-00710

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 facts on which this action is based are set forth in the accompanying Order to Show Cause. The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. 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 Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause 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 Order to Show Cause, 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
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0358

An initial hearing in this matter is set for **February 6, 2013** at the Division of Securities, 2nd

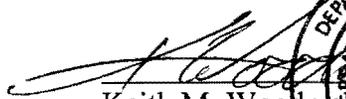
Floor, 160 E. 300 S., Salt Lake City, Utah, at **9:00 A.M.** The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

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 Order to Show Cause, 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 Jennie Jonsson, 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. Jonsson and the Utah Securities Commission. 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 Order to Show Cause should be directed to D. Scott Davis, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0358.

Dated this 12th day of December, 2012


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 17th day of December, 2012, I mailed, by certified mail and regular mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Mark James Sain
1385 Amesbury Circle
Salt Lake City, Utah 84121

Certified Mailing # 7007 0220 0001 0004 8229


Executive Secretary