

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
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:**

**BLUE DIAMOND II, LLC  
DAVID RYAN BARLOW**

**Respondents.**

**ORDER TO SHOW CAUSE**

Docket No. ~~11-12-0001~~

Docket No. ~~11-12-0002~~

It appears to the Director of the Utah Division of Securities (Director) that Blue Diamond II, LLC and David Ryan Barlow (Respondents) have 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 Respondents and the subject matter is appropriate because the Division alleges that they 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 RESPONDENTS**

2. Blue Diamond II, LLC (Blue Diamond) is a Utah limited liability company, registered on October 24, 2007. Blue Diamond's current status is expired as of February 1, 2010. David Barlow is the registered agent. Magnus Opus, Ted Mellon (Mellon), and Martinez Design Associates are members of Blue Diamond. Blue Diamond has never registered with the Division.
3. David Ryan Barlow (Barlow) was, at all relevant times, a resident of the state of Utah. Barlow has never been licensed in the securities industry in any capacity.

### **GENERAL ALLEGATIONS**

4. Between September 2007 and October 2007, Respondents offered and sold promissory notes to investors, in or from Utah, and collected a total of \$333,333.
5. Promissory notes are securities under the Act.
6. Respondents made material misstatements and omissions in connection with the offer and sale of securities to the investors identified below.
7. Respondents engaged in an act, practice, or course of business, which operated as a fraud or deceit upon the investor identified below.

### **INVESTORS K.H. AND J.M.**

8. K.H. and J.M. were neighbors to Barlow and they had invested with him previously<sup>1</sup>.
9. In or about September 2007, Barlow told K.H. and J.M. that he had another investment opportunity for them that would make some “quick money”.
10. Barlow said that he wanted to keep the investment opportunity separate from Fortius Fund, so he asked K.H. and J.M. to meet with him in his home to discuss it.
11. From September 2007 to October 2007, K.H. and J.M. met with Barlow in his home in Alpine, Utah at least three different times.
12. Barlow invited his attorney, Steve Black, to also attend the first meeting.
13. During the first meeting, Barlow discussed Gil Martinez (Martinez) and Martinez’ portfolio. Barlow claimed that he and Martinez would be partnering on the investment project.
14. During the meeting, Barlow made the following statements about a potential investment:
  - a. Martinez’ partner, Ted Mellon (Mellon), would be starting a new real estate development business with Barlow called Blue Diamond;
  - b. Martinez was a real estate developer in California with a good reputation;
  - c. Martinez was doing multiple development projects around the world;
  - d. Mellon would be involved in the business aspect of Blue Diamond, while Barlow would be the marketer and in charge of finding potential properties which could be developed;

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<sup>1</sup> The previous investment was with Barlow and his company Fortius Fund. This investment was investigated by the Division and resulted in an Order to Show Cause being filed by the Division against Barlow, et al., for securities fraud. *In re: Fortius Fund et. al.*

- e. Blue Diamond was looking for short term real estate investments;
  - f. Blue Diamond needed \$333,333 in start-up capital until long-term capital could be obtained;
  - g. The funds were needed for expenses to start projects, travel and other business expenses;
  - h. Blue Diamond would need the funds for about six months;
  - i. Blue Diamond would close a project soon and once that happened, Blue Diamond would repay K.H. and J.M. their principal;
  - j. Blue Diamond would pay 18% per annum, or \$5,000 per month, on the principal;
  - k. In addition to the \$5,000 per month return, Blue Diamond would also pay K.H. and J.M. \$1 million once the first project closes or within three years at the latest; and
  - l. In exchange for the funds, Blue Diamond would provide a promissory note.
15. K.H. and J.M. told Barlow that they did not have the minimum required funds to invest. Barlow then discussed the possibility of K.H. and J.M. using their home equity and leveraging it to invest.
16. K.H. and J.M. said they could only leverage their home equity if they would have the funds returned soon.
17. In response to K.H. and J.M.'s concerns, Barlow made the following statements:
- a. The funds would be repaid;
  - b. Barlow would personally guarantee the funds;

- c. The investment was “very safe”;
  - d. The investment carried no risk;
  - e. The investment funds would be held in a Wells Fargo Bank account;
  - f. There was a good chance the funds would not be used; and
  - g. Barlow would control all of the money.
18. During the second meeting, J.M. and Black discussed the promissory note and addressed revisions that J.M. wanted.
19. On October 25, 2007, K.H., J.M., Barlow, and Black met for the third time.
20. During the third meeting, Barlow gave K.H. and J.M. a signed copy of the revised promissory note. According to the note, Barlow signed as President of Magnus Opus Corp (a member-manager of Blue Diamond) and as a personal guarantor.
21. The promissory note stated the following terms:
- a. Blue Diamond would pay K.H. and J.M. interest at a rate of 18% per annum;
  - b. Blue Diamond would pay K.H. and J.M. an additional \$1 million; and
  - c. The initial term was sixty days, but the term may be extended for two additional sixty-day periods so long as Blue Diamond was current on payments.
22. Based on Barlow’s statements, K.H. and J.M. decided to invest \$333,333 with Barlow.
23. On or about October 26, 2007, K.H. and J.M. gave Barlow a cashier’s check for \$333,333 while at K.H. and J.M.’s home in Alpine, Utah.
24. After the investment, Barlow extended the term of the note by sixty days on two occasions

and paid K.H. and J.M. \$10,000 each time he did so.

25. On or about December 4, 2009, J.M. sent a letter to Barlow, Martinez, and Mellon requesting her funds be returned.
26. Bank records show that on October 26, 2007, Barlow deposited \$333,333 into Blue Diamond's Wells Fargo Bank account, which opened the account balance. Barlow was the only authorized signatory on the account.
27. Based on a first in, first out analysis, bank records indicate that Respondents used K.H. and J.M.'s funds in the following manner:
  - a. \$192,000 transferred to Fortius Fund companies;
  - b. \$1,250 paid to Black; and
  - c. Various other expenses that may include interest payments to K.H. and J.M.
28. K.H. and J.M. have been paid \$92,000 from their investment and are owed \$241,333 in principal alone.

#### CAUSES OF ACTION

##### **First Cause of Action** **Securities Fraud under § 61-1-1(2) of the Act**

29. The Division incorporates and re-alleges paragraphs 1 through 28.
30. The promissory notes sold by Respondents are securities under § 61-1-13 of the Act.
31. In connection with the sale of securities to investors K.H. and J.M., Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. K.H. and J.M.'s investment funds would be used for separate investment projects

from Fortius Fund, when in fact, \$192,000 of their investment funds went to Fortius Fund companies;

- b. Barlow would personally guarantee the investment, when in fact, Barlow had no reasonable basis for making such a statement; and
- c. The investment was safe and carried no risk, when in fact, Respondents had no reasonable basis for making such a statement.

32. In connection with the sale of securities to investors K.H. and J.M., Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made in the investment contracts not misleading:

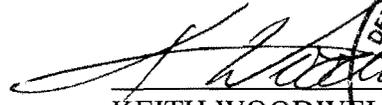
- a. Respondents would use the majority of K.H. and J.M.'s funds for purposes other than promised;
- b. Some or all of the information typically provided in an offering circular or prospectus regarding Respondents, such as:
  - i. Financial statements;
  - ii. Risk factors;
  - iii. Total number of investors;
  - iv. Suitability factors for the investment;
  - v. Whether the promissory notes were registered; and
  - vi. Whether Respondents were licensed to sell securities.

## ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents 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 **Wednesday, February 6, at 9:00 a.m.**, at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2<sup>nd</sup> 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, or any other section of the Act; and
- c. 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 investor.

DATED this 26<sup>th</sup> day of December, 2012.

  
KEITH WOODWELL  
Director, Utah Division of Securities



Approved:



D. SCOTT DAVIS

Assistant Attorney General

J.N.

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
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**IN THE MATTER OF:**

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**Respondents.**

**NOTICE OF AGENCY ACTION**

Docket No. 11-12-0001

Docket No. 11-12-0002

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, 2<sup>nd</sup> 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, 5<sup>th</sup> 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, 2<sup>nd</sup>

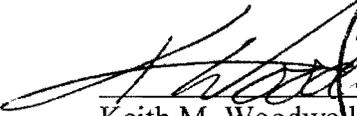
Floor, 160 E. 300 S., Salt Lake City, Utah, at **9:00 A.M.** The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

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 26<sup>th</sup> day of December, 2012

  
Keith M. Woodwell  
Director, Division of Securities



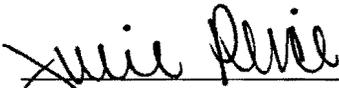
**CERTIFICATE OF MAILING**

I, Julie Price, hereby certify that on the 2nd day of January 2013, I mailed, by certified mail and regular mail, a true and correct copy of the forgoing **Order to Show Cause and Notice**

**of Agency Action** to:

Blue Diamond II, LLC  
David Ryan Barlow  
883 S. Healey Court  
Alpine, UT 84004

Certified Receipt #: 7007 0220 0001 0064 8335

  
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Julie Price  
Administrative Secretary