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

IN THE MATTER OF,
JARED BRENT MUIR,
RESPONDENT.

MOTION TO STRIKE AFFIDAVIT OF
JARED BRENT MUIR

CASE NO. SD- 13-0008

COMES NOW the undersigned Assistant Attorney General, Paul G. Amann, and hereby respectfully submits the following Motion to Strike the Affidavit of Jared Brent Muir.

STATEMENT OF FACTS

1. On May 2, 2013, Respondent Muir submitted an affidavit in his own behalf in this matter.
2. Paragraph 7 of that Affidavit states, "Furthermore, Leffler, knowing that I wasn't involved with the transactions between US Tiger and the Petitioner's [sic], told me that he would make sure that everything against me was dropped."

STATEMENT OF LAW

Rule 12(f) of the Utah Rules of Civil Procedure states, "Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by

these rules, upon motion made by a party within twenty days after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. ”

ARGUMENT

Respondent’s affidavit, in order to be considered, must meet evidentiary sufficiency. Paragraph 2 of Respondent’s Affidavit states, “I am fully competent to testify regarding the matters related herein, which are based upon my personal knowledge.” Paragraph 3 of Respondent’s Affidavit states, “If called upon to testify, my testimony would establish the facts averred in this Affidavit.

In Paragraph 7, Respondent claims, “Furthermore, Leffler, knowing that I wasn’t involved with the transactions between US Tiger and the Petitioner’s [sic], told me that he would make sure that everything against me was dropped.” Respondent is not competent to testify as to Leffler’s knowledge. Only Leffler is competent in that regard. If Respondent seeks to adduce such testimony, he must do so by means of an Affidavit from Leffler.

Moreover, Respondent’s assertion regarding his claims about what Leffler told him are pure hearsay about which Respondent also cannot testify. Again, the advised course would be an Affidavit from Leffler.

In the matter of *Treloggan v. Treloggan*, the Utah Supreme Court held that affidavits on information and belief revealed no evidentiary facts, but merely reflected affiant’s unsubstantiated opinions and conclusions, and thus were insufficient to raise an issue of material fact. 699 P.2d 747 (Utah 1985). The Court stated, that an affidavit, “[M]ust be made on personal knowledge of the affiant, and set forth facts that would be admissible in evidence and show that the affiant is competent to testify to the matters stated therein. Statements made merely on information and belief will be disregarded.” *Id.* at 748 citing, *Walker v. Rocky Mountain Recreation Corp.*, 508 P.2d 538 (1973). The *Treloggan* Court notes that it cited *Walker* with approval in *Jones v. Hinkle*, 611 P.2d 733 (Utah 1980).

The *Treloggan* court was addressing a matter wherein Rule 56(e) was germane. Its holding applies with equal force in these proceedings. There is no provision in the Utah Rules of Civil Procedure, the Utah Administrative Code or the Utah Administrative Procedures Act which

allows affidavits based on another's knowledge or based on hearsay.

Respondent's Affidavit is infirm and therefore subject to this motion to strike.

CONCLUSION

Wherefore, Petitioner moves this Court to Strike Respondent's Affidavit and Order that, any affidavits submitted must conform to Utah law.

RESPECTFULLY SUBMITTED this 10th day of May, 2013.



PAUL G. AMANN
Assistant Attorney General
Counsel for the Securities Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of May, 2013, I served a true and correct copy of the foregoing MOTION TO STRIKE AFFIDAVIT OF JARED BRENT MUIR, via email, as agreed upon during the March 18, 2013 hearing, to the following:

Jalyn Peterson
Counsel for Respondent
jalyn@seblegal.com

and hand-delivered a true and correct copy to:

Ann M. Skaggs
Department of Commerce
160 East 300 South, Second Floor
Salt Lake City, Utah 84111



Maria Skedros