

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
Telephone: 801 530-6600

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

IN THE MATTER OF:

**BRYCE LEE KARL dba KARL
HOSPITALITY, INC.,**

Respondent.

STIPULATION AND CONSENT ORDER

Docket No.

10-12-0012

The Utah Division of Securities (Division), by and through its Director of Enforcement, Dave Hermansen, and Bryce Lee Karl (Respondent), doing business as Karl Hospitality, Inc. (Karl Hospitality), hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act, Utah Code Ann. §61-1-1, *et seq.*, as amended (the Act).
2. On or about February 16, 2011, the Division initiated an administrative action against Respondent by filing a Notice of Agency Action (NOAA) and Order to Show Cause

(OSC). The NOAA and OSC were then re-filed on April 26, 2012.

3. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order (Order). If entered, the Order will fully resolve all claims the Division has against him pertaining to the OSC.
4. Respondent admits that the Division has jurisdiction over him and the subject matter of this action.
5. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce him to enter into this Order, other than as described in this Order.
7. Respondent is represented by Spencer Austin of Parsons Behle & Latimer, and is satisfied with his advice and representation in this matter.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENT

8. Respondent was, at all relevant times, a resident of the state of Utah. Respondent has never been licensed as a broker-dealer agent, issuer agent, or investment adviser representative in Utah. Respondent also operated under Karl Hospitality, which is not a registered entity in the state of Utah.

GENERAL ALLEGATIONS

9. From October 2008 to March 2009, Respondent offered and sold securities to at least two investors, in or from Utah, and collected a total of \$50,000.
10. Respondent made material misstatements and omissions in connection with the offer and sale of a security to the investors below.
11. The investors lost all \$50,000 of their investment funds.

INVESTORS J.H. AND C.H. (HUSBAND AND WIFE).

12. In or about October 2008, a friend referred J.H. and C.H. to Respondent as someone who could help them invest in the food service industry.
13. In or about October 2008, Respondent contacted J.H. by telephone to discuss an investment opportunity in Karl Hospitality. Respondent called from Utah while J.H. was out of town on business.
14. During the conversation, Respondent stated that he had acquired rights from Five Guys Enterprises, LLC (Five Guys) to open multiple franchises in Wyoming, Idaho, and Canada and was raising capital through his company, Karl Hospitality, to start those franchises.¹
15. Between October 2008 and March 2009, approximately three meetings took place in Draper, Utah between Respondent and J.H.
16. During the meetings, Respondent made the following statements about a potential

¹Five Guys is a limited liability company operating a restaurant franchise that sells hamburgers and french fries. On January 24, 2011, counsel for Five Guys told the Division that Respondent had been in negotiations with Five Guys to be a franchisee restaurant. Five Guys had assured Respondent that he would be a franchisee once Respondent signed the necessary paperwork and provided the necessary funds to purchase the franchise rights. Respondent never signed the paperwork or submitted the funds.

investment in Karl Hospitality:

- a. Respondent intended to raise \$10 million from a “handful” of investors;
 - b. The minimum investment was \$100,000, but Respondent would do J.H. and C. H. a favor and allow them to invest \$50,000.
17. Based on Respondent’s statements, J.H. and C.H. invested \$50,000 in Karl Hospitality.
18. On March 13, 2009, J.H. and C.H. met with Respondent in Salt Lake City, Utah to sign a subscription agreement to purchase preferred shares in Karl Hospitality.
19. Respondent and J.H. signed a document entitled “Subscription for Preferred Shares.” The agreement stated the following terms:
- a. The closing date for the shares was March 20, 2009;
 - b. The preferred shares were voting shares and were “retractable by the holder upon 60-days’ written notice to the Corporation for 3 years from their date of issue at a retraction price of USD\$1.00 per share;”
 - c. J.H. and C.H.’s shares were part of a larger offering of preferred shares of up to three million shares at \$1.00 per share;
 - d. The investment funds would be used to carry “out [Karl Hospitality’s] business plan and for general corporate purposes;”
 - e. On the closing date, investors would receive stock certificates; and
 - f. Time was of the essence.
20. Also included in the agreement was a “Representation Letter” which identified J.H. to be an accredited investor. Respondent told J.H. the document was standard legal jargon and discouraged J.H. from reading the document in its entirety before signing. J.H. signed

the agreement although he was not an accredited investor.

21. On or about March 13, 2009, J.H. transferred \$50,000 from his Wells Fargo bank account to Karl Hospitality's bank account, also with Wells Fargo.
22. Respondent did not deliver the preferred share certificates to J.H. and C.H. on, before, or any time after March 20, 2009.
23. On or about April 2010, J.H. made a written request for return of the funds in sixty days, pursuant to the subscription agreement. Respondent did not return the funds.
24. On or about September 17, 2010, J.H.'s attorney sent a written request for the funds to be returned. Respondent did not return the funds.
25. Respondent and Karl Hospitality still owe J.H. and C.H. \$50,000.
26. Using a source and use analysis of Karl Hospitality's bank records, Respondent used the majority of the \$50,000 investment funds in the following manner:
 - a. \$10,000 used to purchases horses and property for Respondent;
 - b. \$12,269 used to pay various individuals;
 - c. \$8,800 transferred to an unknown account;
 - d. \$12,126 paid to RBM Lumber, Inc.; and
 - e. \$5,000 transferred to Respondent's personal account and primarily used to pay bank fees and personal expenses.

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

27. The Division incorporates and re-alleges paragraphs 1 through 26.
28. In connection with the offer and sale of a security to the investors, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:

- a. J.H. and C.H.'s investment funds would be used for corporate purposes, when in fact, Respondent used the funds for personal expenses and other non-corporate purposes;
 - b. Respondent had already obtained rights to be a franchisee of Five Guys, when in fact, Respondent had no reasonable basis for making this statement.
29. In connection with the offer and sale of a security to the investors, 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. Respondent has an outstanding warrant for his arrest for larceny in Colorado;
 - b. Respondent was in default to previous investors;
 - c. What would happen with the funds if Respondent failed to raise the necessary capital;
 - d. Respondent's prior debt collection proceedings;
 - e. Some or all of the information typically provided in an offering circular or prospectus regarding Karl Hospitality, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. Suitability factors for the investment;
 - iv. Track record to investors;
 - v. Karl Hospitality and Respondent's business experience and operating history;
 - vi. Nature of competition;

- vii. Whether the investment is a registered security or exempt from registration; and
- viii. Whether Respondent was licensed to sell securities.

II. THE DIVISION'S CONCLUSIONS OF LAW

- 30. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act.
- 31. In connection with the offer and sale of a security to the investors, Respondent, directly or indirectly, made false statements regarding the security, and/or failed to disclose material information necessary to make the statements not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

- 32. Respondent neither admits nor denies the Division's findings and conclusions, but consents to the sanctions below being imposed by the Division.
- 33. Respondent represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.
- 34. Respondent agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.
- 35. Respondent agrees that he will be barred from (i) associating² with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities

²“Associating” includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. “Associating” does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationship or business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah.

industry in Utah.

36. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent agrees to pay a fine of \$52,500.00 to the Division. The fine will be offset by restitution paid to the investor(s). In this case, Respondent has already paid \$50,000 in restitution, leaving a \$2,500.00 fine payable to the Division. This fine shall be paid within thirty days of the entry of the Order.
37. If the Division finds that Respondent materially violates any term of this Order, thirty days after notice and an opportunity to be heard before an administrative officer solely as to the issue of a material violation, Respondent consents to a judgment ordering the entire fine immediately due and payable.

IV. FINAL RESOLUTION

38. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. He further acknowledges that if the Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
39. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.
40. This 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 this Order in any way.

Utah Division of Securities

Date: Jan 29, 2013
By: [Signature]
Dave Hermansen
Director of Enforcement

Respondent

Date: Jan 22, 2013
By: [Signature]
Bryce Lee Karl

Approved:

[Signature]
D. Scott Davis
Assistant Attorney General
D.W.

[Signature]
Spencer Austin
Attorney for Bryce Lee Karl

ORDER

IT IS HEREBY ORDERED THAT:

41. The Division's Findings and Conclusions, which are neither admitted nor denied by the Respondent, are hereby entered.
42. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
43. Respondent is hereby barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.
44. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent agrees to pay a fine of \$52,500.00 to the Division. The fine will be offset by restitution paid to the investor(s). In this case, Respondent has already paid \$50,000 in restitution, leaving a \$2,500.00 fine payable to the Division. This amount shall be paid within thirty days of the entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

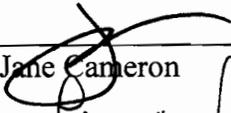
DATED this 28 day of March, 2013.



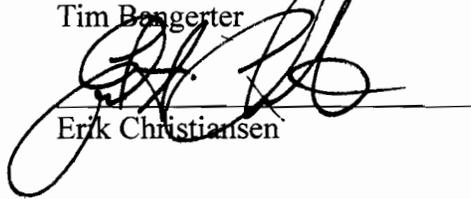
Brent Baker



Tim Bongertter



Jane Cameron



Erik Christiansen



Laura Polacheck

Certificate of Mailing

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

Spencer Austin
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, Utah 94111

Certified Mail # 70070220 00010064 2562



Executive Secretary