

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:

JEFFREY KAHN, CRD# 4830345

Respondent.

STIPULATION AND CONSENT ORDER

Docket No. SD-13-0014

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Kenneth O. Barton, and the Respondent, Jeffrey Kahn ("Respondent" or "Kahn"), 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 ("Act"), Utah Code Ann. §61-1-1, *et seq.*
2. On or about February 5, 2013, the Division initiated an administrative action against Respondent by filing an Order to Show Cause.
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 Respondent pertaining to the Order to Show Cause.
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 Respondent to enter into this Order, other than as described in this Order.
7. Respondent is represented by attorney Jeremy C. Reutzel and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

8. RJR Investment Service, LLC ("RJR"), IARD#148843, is an investment adviser with its place of business in Salt Lake City, Utah. From December 11, 2008 to August 13, 2012,¹ RJR was notice filed in Utah as a federal covered investment adviser. RJR is currently licensed in Utah as a state covered investment adviser.
9. Jeffrey Kahn ("Kahn"), CRD# 4830345, was the president and a member of RJR. Kahn has never been licensed as an investment adviser representative in Utah.
10. Richard T. Budge ("Budge"), CRD# 1262979, is the Chief Executive Officer ("CEO") of RJR, and has been licensed in Utah as an investment adviser representative since December 15, 2008.

Application for Licensure and Division Investigation

11. On May 9, 2012, RJR initiated the process to become a Utah licensed investment

¹Following the August 2, 2012 approval of its application to become a state licensed adviser in Utah, RJR withdrew its federal registration.

adviser.²

12. During the review of RJR's application, it was discovered that Kahn was not licensed as an investment adviser representative of the federal covered investment adviser.
13. The Division contacted RJR to determine, among other things, why Kahn was not licensed as an investment adviser representative.
14. RJR incorporated as a limited liability company in Utah in October 2008. From October 2008 through December 2008, RJR conducted organizing activities, including registering with the United States Securities and Exchange Commission ("SEC") as a federal covered investment adviser and notice filing in Utah. RJR began operations as an investment adviser as of January 1, 2009.
15. Kahn and Budge were former employees of a bank's trust company that was closing the Utah business unit effective December 31, 2008. At the trust company, Budge and Kahn had client relationships whose accounts totaled approximately \$29 million in assets under management. A majority of the trust company clients affected by the closure transferred their accounts to RJR for investment advisory services beginning in January 2009.
16. RJR did not do mass advertising or seminars to attract new clients. Most clients were referred, without compensation, from existing clients that came from the trust company.
17. From December 11, 2008 to August 13, 2012, Kahn managed the relationships with most of the former trust company clients, met quarterly with clients, delivered quarterly

² The Dodd-Frank Wall Street Reform and Consumer Protection Reform Act of 2010 required that federal covered investment advisers that manage less than \$100 million in assets "switch" to state jurisdiction. RJR's application with Utah was in accordance with that requirement. Investment advisers that no longer qualified to remain registered with the SEC were required to complete the switch process and withdraw from the SEC by June 28, 2012.

statements and presented written investment recommendations prepared by Budge, discussed written investment recommendations with the clients, and relayed client objections or approvals to Budge. Kahn also met with potential clients to discuss RJR's services.

18. During the course of an investigation undertaken by the Division while reviewing RJR's investment adviser application, RJR provided an accounting of its clients identifying the source of the client, the person who solicited the account, the person who offered RJR's services, the person that negotiated the investment adviser's contract, and the person who delivered RJR's ADV Part 2 disclosure brochure. A majority of RJR's clients on the list were attributed to Kahn.
19. Kahn was reimbursed from RJR for expenses, including mileage, entertainment, home office, and cell phone. RJR then recorded Kahn's reimbursed expenses as operating expenses of the firm.
20. Kahn received compensation from RJR that was equal to one-third of the monthly revenue RJR generated from investment advisory fees on accounts under management less RJR's operating expenses for the month.
21. Budge met with the Division a number of times in June 2012 to discuss investment adviser representative licensing requirements and to affirm that Kahn needed to be licensed. Thereafter, Budge informed Kahn that Kahn needed to be licensed.

Bank and Trust Referral Agreement

22. In mid-June 2012, RJR became aware of a referral fee agreement Kahn negotiated on or about March 8, 2012 with a bank and trust company ("bank and trust"). Under the

agreement, Kahn was to refer new clients to the bank and trust for wealth management or custodial services to be provided by the bank and trust. Client assets would be placed in either a custodial account or a self-directed IRA account.

23. On March 8, 2012, an Executive Vice President for the bank and trust addressed a “letter of acknowledgment and approval of a referral arrangement between you” and the bank and trust to Kahn, President of RJR³. Material provisions of the arrangement included:
- a. A one-time only cash payment made up-front for 20% of the expected annual gross fee revenue⁴ on a new wealth management or custodial account established with the bank and trust.
 - b. A one-time only cash payment made up-front for 20% of the expected annual increase in gross fee revenue due to a deposit to an existing account. The increase in the fee must be at least \$100 in order to be paid.
 - c. The agreement was for a non-employee, independent contractor status, for purposes of federal income and withholding tax, and therefore, no individual or corporate taxes were to be withheld from any payment. An Internal Revenue Service (“IRS”) Form W-9 was provided to report the Taxpayer Identification number.
 - d. Any and all payments under the plan would be disclosed in advance to the

³ The acknowledgment letter was addressed to Kahn as President of RJR at Kahn’s home address in Provo, Utah and not the principal office and place of business of RJR in Layton, Utah.

⁴ Gross fee revenue is defined as the expected revenue collected in the next twelve calendar months by the bank and trust for custodial, tax, base, and/or minimum fees, based on the market value of the account as reflected the time the account is funded on the bank’s accounting system.

customer(s) or principal(s) who own, control, or have an interest in the accounts.

The customer would be required to approve of the proposed payment. A copy of the customer signed disclosure and approval would be provided to the bank and trust before any payment would be processed.

- e. An attached Schedule A listed the possible initial accounts to be included under the arrangement if approved by the customer. Schedule A listed seventeen (17) account names with total market account value of \$3,125,770 as of January 31, 2012.
 - f. Kahn acknowledged and accepted the agreement as President of RJR on March 16, 2012.
24. Kahn completed the IRS W-9 form with: 1) his individual name, 2) no business name, 3) federal tax classification as an individual/sole proprietor, and 4) taxpayer identification number as his individual social security number and signature dated March 15, 2012.
25. On April 30, 2012, Kahn obtained client J.B.'s signature on a "Disclosure of Referral Payment" acknowledgment form. The form informed client J.B. that RJR was a separate entity from the bank and trust, and that RJR had an agreement that stipulated a portion (20%) of "the expected first year fee collected on your account is paid to RJR/Jeffrey Kahn as a referral fee. This referral payment is also paid on additional deposits made into the account. This payment has absolutely no effect on your total fee whatsoever, but we wish to make full disclosure of this to you."
26. After learning of Kahn's activities, on July 31, 2012, RJR delivered a letter to the bank and trust canceling the March 16, 2012 agreement. RJR stated the reasons for

cancellation were:

- a. RJR's Form ADV Part 2 specifically states RJR does not accept direct or indirect referral fees,
 - b. Mr. Kahn may not have been legally able to either sign a fee-sharing contract or participate in its benefits, and
 - c. Mr. Kahn did not inform the other RJR principals of the existence of the contract, and instead, acted on his own using RJR's name.⁵
27. RJR, Budge, and Kahn were not able to come to an agreement regarding Kahn taking the applicable exams and becoming licensed as an investment adviser representative. RJR and Budge then took steps to disassociate Kahn from the investment adviser. Kahn was removed as an officer of RJR and as an active member of the LLC, and placed on "inactive status" until he became licensed.
28. On July 2, 2012, Kahn contacted the Division for information to take the Series 65 examination and the process for becoming licensed. To date, Kahn has not sought to be licensed with RJR or another investment adviser.

Unlicensed Activity

29. Kahn acted as an investment adviser representative from 2008 to 2012 without being properly licensed.
30. Kahn had clients that exceeded the *de minimis* tests, and on a regular basis met with and solicited clients for RJR.
31. In addition, Kahn acted as an unlicensed investment adviser from March 2012 to July

⁵Kahn represents that in February 2012 he disclosed his proposed plans with the bank and trust to one of the other two members of RJR.

2012 by negotiating and entering an agreement to receive referral fees from the bank and trust without properly being licensed.

II. CONCLUSIONS OF LAW

32. Respondent Kahn violated Section 61-1-3(3) of the Act by acting as an investment adviser representative from 2008 to 2012 while unlicensed. In addition, Kahn's activities pertaining to the bank and trust agreement constitute further unlicensed activity in violation of Section 61-1-3(3) of the Act.
33. By negotiating and executing a contract on behalf of RJR to benefit himself personally without the knowledge, consent or approval of the other principals or designated official of RJR, Kahn violated Section 61-1-2(1)(b) of the Act.

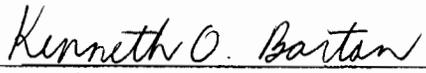
III. REMEDIAL ACTIONS/SANCTIONS

34. Respondent admits to acting as an unlicensed investment adviser representative and neither admits nor denies the Division's other findings and conclusions. He agrees to the sanctions below being imposed by the Division for the purpose of resolving this action.
35. Respondent represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete to the best of his knowledge.
36. 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.
37. Pursuant to Utah Code Ann. Section 61-1-20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent shall pay a fine in the amount of \$7,000 to the Division, which shall be paid within thirty (30) days following entry of the Order.

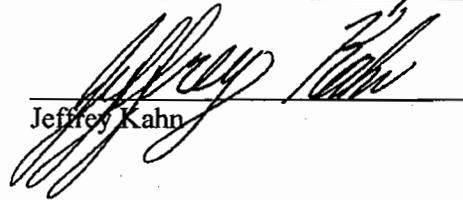
IV. FINAL RESOLUTION

38. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondent 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.

Dated this 22 day of May, 2013


Kenneth O. Barton
Director of Licensing and Compliance
Utah Division of Securities

Dated this 22 day of May, 2013


Jeffrey Kahn

Approved:


Paul G. Amann
Assistant Attorney General

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, of which Respondent admits to acting as an unlicensed investment adviser representative but neither admits nor denies the Division's other Findings and Conclusions, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Pursuant to Utah Code Ann. Section 61-1-20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent shall pay a fine in the amount of \$7,000 to the Division within thirty (30) days following entry of the Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this _____ day of _____, 2013

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

ORDER

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BY THE UTAH SECURITIES COMMISSION:

DATED this _____ day of _____, 2013

Brent Baker

Tim Bangerter

Erik Christiansen

Gary Cornia

David A. Russon



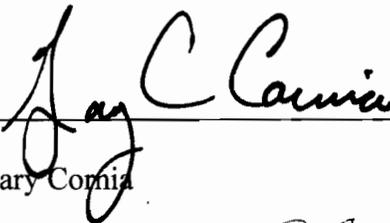
BY THE UTAH SECURITIES COMMISSION:

The foregoing Stipulation and Consent Order is hereby accepted, confirmed and approved by the Utah Securities Commission.

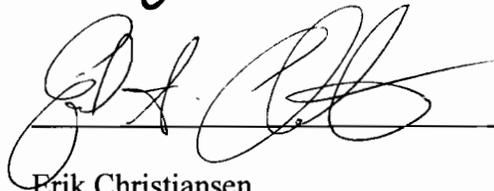
DATED this 30 day of may, 2013.



Tim Bangerter



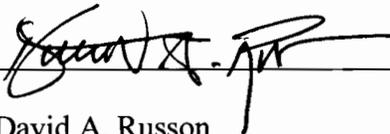
Gary Cornia



Erik Christiansen



Brent Baker



David A. Russon



Certificate of Mailing

I certify that on the 30th day of May, 2013, I mailed, by certified mail, a true

and correct copy of the fully executed Stipulation and Consent Order to:

Jeremy C. Reutzel
BENNETT TUELLER JOHNSON & DEERE
3165 East Millrock Drive, Suite 500
Salt Lake City, UT 84121

Certified Mail # 7007 0220 001 0064 7284



Maria Lohse
Executive Secretary

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Sent To	Jeremy C. Reutzel
Street, Apt. or PO Box	Bennett Tueller Johnson & Deere
City, State	3165 East Millrock Drive, Suite 500
	Salt Lake City, UT 84121

PS Form 3800, August 2006 See Reverse for Instructions

