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: **MARKHAM L. CALDWELL,** **CRD#2837882** **Respondent.**	**ORDER TO SHOW CAUSE** **Docket No.** SD-13-0015

It appears to the Director ("Director") of the Utah Division of Securities ("Division") that Respondent Markham L. Caldwell ("Caldwell"), CRD#2837882, has engaged in acts and practices that violate the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.* Those acts and practices are more fully described herein. Based upon the Division's investigation into 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 FACTS

1. Caldwell is an insurance agent licensed in Utah.

2. From 1997 through 2002 Caldwell was licensed in Utah as a broker-dealer agent with several broker-dealer firms.

3. Caldwell has taken and passed the FINRA Series 6 and 63 examinations.

4. According to records contained in the Central Registration Depository ("CRD"), in 2002

Caldwell's employment was terminated for selling a private securities offering, in the form of promissory notes, without the prior approval of his employing broker-dealer, Park Avenue Securities, LLC, CRD#46173.

5. Caldwell was criminally charged with a third degree felony for sale of an unregistered security pertaining to the events described in paragraph 4. He paid restitution and the charges were later dismissed as part of a plea in abeyance. Caldwell's conduct as described above also resulted in a fine and suspension of Mr. Caldwell's securities license by the Division.

6. Since 2002, Caldwell has not been licensed in the securities industry in any capacity.

7. During the period relevant to this action, Caldwell was affiliated as an insurance agent with Horizon Financial and Insurance Group, Inc.[1] ("insurance agency"), a general insurance agent for Union Central Life Insurance Company. The insurance agency was owned and controlled by Dee Allen Randall ("Randall").

Dee Randall and the Horizon Companies

8. Caldwell and others referred insurance clients to Randall, who offered private placement securities investments in "Horizon Notes" which, as used herein collectively refers to promissory notes issued by various companies owned and controlled by Randall. Those companies include, but are not limited to, Horizon Auto Funding, LLC, Horizon Financial Center I, LLC, and Horizon Mortgage and Investment, Inc. dba Independent Financial & Investment (collectively referred to at times as "the Horizon entities").

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[1]This entity was also known as or affiliated with other entities controlled by Randall, Horizon Financial & Insurance Agency, LLC, and Utah Horizon Financial & Insurance Agency, LLC.

9. In addition to selling insurance, Randall, through the Horizon entities and Horizon Notes, purported to offer private placement securities investments[2] in commercial and residential property development and rentals, as well as an automobile loan business for individuals with poor credit.

10. The Horizon entities operated as a Ponzi scheme run by Randall[3] in which investor monies were routinely and freely commingled and transferred among the various Horizon entities. New investor monies were used to pay interest to prior investors, or for personal use, including the payment of sales compensation to agents, including Caldwell.

Referral to Randall

11. Caldwell referred one insurance client to Randall, who met with Randall and invested $300,000 in a Horizon Note in 2002. The client received a number of interest payments on her note.

12. The Horizon Notes are securities under the Act.

13. When the client passed away in August 2007, Randall encouraged Caldwell to recommend that the beneficiaries of the decedent's estate invest $703,771 in insurance monies in Horizon Notes. Randall told Caldwell he would pay Caldwell a 1% commission for the investment through the insurance agency.

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[2]The Horizon Notes were purportedly sold in reliance on Rule 506 of Regulation D of the 1933 Securities Act.

[3]On December 18, 2012, the Division filed an Order to Show Cause against Randall and the Horizon entities, which action is currently pending. For additional information, see: http://securities.utah.gov/dockets/12007901.pdf

14. On or about October 23, 2007, after meeting with Caldwell, the surviving beneficiaries invested $703,771 in Horizon Notes.

15. On December 13, 2007, Caldwell received a check from the insurance agency designated as a "Commission Bonus" in the amount of $7,000. In an interview with the Division, Caldwell acknowledged the payment was received for the sale of the Horizon Notes and not for the sale of any insurance sold through the insurance agency.

16. Interest payments due to investors under the Horizon Notes began to arrive late in 2009 or 2010, and payments to most investors ceased entirely in 2010.

FIRST CAUSE OF ACTION
Unlicensed Agent Under § 61-1-3 of the Act

17. At no time was Caldwell licensed to offer or sell securities such as the Horizon Notes. In soliciting the investor and receiving compensation for the sale of the Horizon Notes, Caldwell acted as an unlicensed agent in violation of Section 61-1-3(1) of the Act.

REQUEST FOR RELIEF

The Director, pursuant to Utah Code Ann. § 61-1-20, hereby orders the Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202 and 63G-4-204 through -209, and held before the Division. As set forth in the Notice of Agency Action accompanying this Order, Respondent is required to file a written response with the Division, and an initial hearing on this matter has been scheduled for March 20, 2013 at 9 a.m. The initial hearing will take place at the Division of Securities, 2nd floor, 160 East 300 South, Salt Lake City, Utah. The purpose of the initial hearing is to establish a scheduling order and address any preliminary matters. If Respondent fails to file a written response or appear at the

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Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 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: **MARKHAM L. CALDWELL, CRD#2837882** **Respondent.**	**NOTICE OF AGENCY ACTION** **Docket No.** SDH12-0015

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

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

initial hearing, findings may be entered, a permanent Order to Cease and Desist may be issued, and a fine may be imposed against Respondent, as provided by Utah Code Ann. §§ 63G-4-206 or -209.

At the Order to Show Cause hearing, Respondent may show cause, if any he has:

1. Why Respondent should not be found to have engaged in the violations of the Act alleged by the Division in this Order to Show Cause;

2. Why Respondent should not be ordered permanently to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-3 or any other section of the Act;

3. Why Respondent should not be ordered to pay a fine to the Division in the amount of $12,000.

Dated this 5th day of February, 2013

Keith M. Woodwell
Director, Utah Division of Securities

Approved:

D. Scott Davis
Assistant Attorney General

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) 366-0310

An initial hearing in this matter has been set for March 20, 2013 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9 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 Jonnson, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6706. This adjudicative proceeding will be heard by Ms. Jonnson and the Utah Securities Commission. At any hearings, the Division will be represented by the Attorney General's Office. 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) 366-0310.

Dated this 5th day of February, 2013

Keith M. Woodwell
Director, Division of Securities

DEPARTMENT OF COMMERCE
GREAT SEAL OF THE STATE OF UTAH
DIVISION OF SECURITIES

Certificate of Mailing

I certify that on the 11th day of February, 2013, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Markham L. Caldwell

6262 Willow Creek Rd.

Mountain Green, UT 84050

Executive Secretary