

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

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

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**IN THE MATTER OF:**

**MARKHAM L. CALDWELL,  
CRD#2837882**

**Respondent.**

**STIPULATION AND CONSENT ORDER**

**Docket No. SD-13-0015**

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The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave R. Hermansen and the Respondent, Markham L. Caldwell (“Respondent” or “Caldwell”), 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 Tara L. Isaacson and is satisfied with the legal representation he has received.

#### **I. FINDINGS OF FACT**

8. Caldwell is an insurance agent licensed in Utah.
9. From 1997 through 2002 Caldwell was licensed in Utah as a broker-dealer agent with several broker-dealer firms.
10. Caldwell has taken and passed the FINRA Series 6 and 63 examinations.
11. 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.
12. Caldwell was criminally charged with a third degree felony for sale of an unregistered security pertaining to the events described in paragraph 11. 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.

13. Since 2002, Caldwell has not been licensed in the securities industry in any capacity.
14. During the period relevant to this action, Caldwell was affiliated as an insurance agent with Horizon Financial and Insurance Group, Inc.<sup>1</sup> (“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

15. 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”).
16. In addition to selling insurance, Randall, through the Horizon entities and Horizon Notes, purported to offer private placement securities investments<sup>2</sup> in commercial and residential property development and rentals, as well as an automobile loan business for individuals with poor credit.

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<sup>1</sup>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.

<sup>2</sup>The Horizon Notes were purportedly sold in reliance on Rule 506 of Regulation D of the 1933 Securities Act.

17. The Horizon entities operated as a Ponzi scheme run by Randall<sup>3</sup> 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

18. 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.
19. The Horizon Notes are securities under the Act.
20. 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.
21. On or about October 23, 2007, after meeting with Caldwell, the surviving beneficiaries invested \$703,771 in Horizon Notes.
22. 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.

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<sup>3</sup>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>

23. 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.<sup>4</sup>

## **II. CONCLUSIONS OF LAW**

24. 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.

## **III. REMEDIAL ACTIONS/SANCTIONS**

25. Respondent neither admits nor denies the Division's findings and conclusions, but consents to the sanctions below being imposed by the Division.
26. Respondent represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.
27. 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.
28. Respondent agrees that he will not seek licensure or apply to be licensed by the Division as a broker-dealer agent, investment adviser or investment adviser representative, nor licensing as an agent for any issuer soliciting investor funds, nor licensing in any other capacity in the securities industry in the State of Utah at any time in the future.
29. Within ten (10) days following entry of the Order, Respondent agrees to disgorge to the

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<sup>4</sup>Randall declared a personal Chapter 11 bankruptcy on December 20, 2010. Following a September 2011 hearing in which Randall admitted commingling monies among the Horizon entities, a Trustee (the "Trustee") was appointed. The Trustee subsequently filed a Chapter 11 bankruptcy for each of the Horizon entities, all of which were consolidated with the Randall bankruptcy proceeding to be administered by the Trustee as a single bankruptcy estate.

Division the \$7,000 commission he received for sale of the Horizon Notes. The Division will forward those monies to the Trustee for distribution to investors as part of the bankruptcy estate.

30. 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 \$5,000 to the Division, which shall be paid within ten (10) days following entry of the Order.
31. Respondent agrees that he will provide truthful testimony and cooperation, including production of documents and providing information informally without the necessity of a subpoena or other process, in any state or federal investigation (including investigations conducted by or actions filed by the Trustee) involving Randall, the Horizon entities, and any individuals under investigation as a result of their affiliation with Randall and/or the Horizon entities.

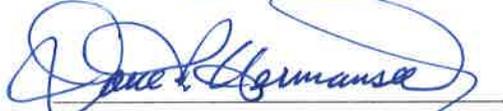
#### **IV. FINAL RESOLUTION**

32. 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.
33. 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,

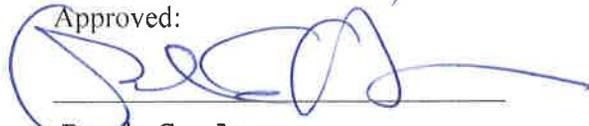
arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.

34. 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.
35. Respondent acknowledges that a violation of this Order is a third degree felony pursuant to Section 61-1-21(1)(b) of the Act.

Dated this 6<sup>th</sup> day of MAY, 2013

  
\_\_\_\_\_  
Dave R. Hermansen  
Director of Enforcement  
Utah Division of Securities

Approved:

  
\_\_\_\_\_  
Paul G. Amann  
Assistant Attorney General

Dated this 3<sup>rd</sup> day of May, 2013

  
\_\_\_\_\_  
Markham L. Caldwell

Approved:

  
\_\_\_\_\_  
Tara L. Isaacson  
Counsel for Respondents

## ORDER

### IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by the Respondent, 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. Respondent shall not seek licensure or apply to be licensed by the Division as a broker-dealer agent, investment adviser or investment adviser representative, nor licensing as an agent for any issuer soliciting investor funds, nor licensing in any other capacity in the securities industry in the State of Utah at any time in the future.
4. Within ten (10) days following entry of the Order, Respondent shall disgorge to the Division the \$7,000 commission he received for sale of the Horizon Notes. The Division will forward those monies to the Trustee for distribution to investors as part of the bankruptcy estate.
5. 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 \$5,000 to the Division within ten (10) days following entry of the Order.
6. Respondent shall provide truthful testimony and cooperation, including production of documents and providing information informally without the necessity of a subpoena or other process, in any state or federal investigation (including investigations conducted by or actions filed by the Trustee) involving Randall, the Horizon entities, and any individuals under investigation as a result of their affiliation with Randall and/or the Horizon entities.

**BY THE UTAH SECURITIES COMMISSION:**

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013

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Brent Baker

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Tim Bangerter

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Jane Cameron

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Erik Christiansen

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Laura Polacheck

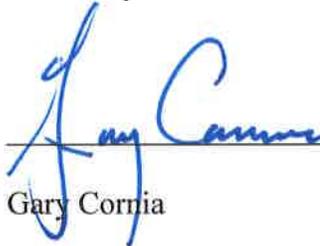
**BY THE UTAH SECURITIES COMMISSION:**

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

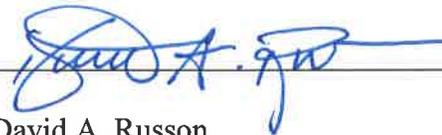


Gary Cornia

Erik Christiansen



Brent Baker



David A. Russon

**Certificate of Mailing**

I certify that on the 30<sup>th</sup> day of May, 2013, I mailed, by certified mail, a true and correct copy of the fully executed Stipulation and Consent Order to:

Tara L. Isaacson  
BUGDEN & ISAACSON, LLC  
445 East 200 South, Suite 150  
Salt Lake City, UT 84111  
Counsel for Respondent

Certified Mail # 7007 0220001 0064 7307



Maria Lohse  
Executive Secretary

7007 0220 0001 0064 7307

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Bugden & Isaacson, LLC	
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Salt Lake City, UT 84111	
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