

FILED DISTRICT COURT
Third Judicial District
MAR 18 2009
SALT LAKE COUNTY
By _____ Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
	:	
Plaintiff,	:	CRIMINAL INFORMATION
	:	
vs.	:	
	:	
DERRICK S. BETTS,	:	Case No: <u>091902210</u>
DOB: March 12, 1971	:	
	:	
GREGORY KENT HOWELL,	:	Case No. _____
DOB: January 12, 1972	:	
	:	Judge _____
Defendant.	:	

The undersigned, DIANA PARRISH, upon oath, states on information and belief
that the defendants have committed the following crimes:

(DERRICK BETTS)
SECURITIES FRAUD
a second degree felony (3 counts)

THEFT
a second degree felony (2 counts)

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony (1 count)

(GREGORY K. HOWELL)
SECURITIES FRAUD
a second degree felony (3 counts)

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony (1 count)

COUNT 1
SECURITIES FRAUD
a second degree felony
(Betts & Howell)

Commencing on or about January 2006, in the State of Utah, Salt Lake County and elsewhere, the defendants, in connection with the offer or sale of a security, directly or indirectly, to **GLADYS AND DANIEL MATTHEWS**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

COUNT 2
THEFT, a second degree felony
(Betts)

Commencing on or about October 2006, the defendant obtained or exercised unauthorized control over the property of **GLADYS AND DANIEL MATTHEWS**, with a

purpose to deprive them thereof. The value of the property is or exceeds \$5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 3
SECURITIES FRAUD
a second degree felony
(Betts & Howell)

Commencing on or about October 2006, in the State of Utah, Salt Lake County and elsewhere, the defendants, in connection with the offer or sale of a security, directly or indirectly, to **ISABELLE MILLER**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

COUNT 4
THEFT, a second degree felony
(Betts)

Commencing on or about November 2006, the defendant obtained or exercised unauthorized control over the property of **ISABELLE MILLER**, with a purpose to deprive her thereof. The value of the property is or exceeds \$5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 5
SECURITIES FRAUD
a second degree felony
(Betts & Howell)

Commencing on or about November 2006, in the State of Utah, Salt Lake County and elsewhere, the defendants, in connection with the offer or sale of a security, directly or indirectly, to **PETER GIBBONS and ELSE DONNELL**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

COUNT 6
THEFT, a second degree felony
(Betts)

Commencing on or about January 2007, the defendant obtained or exercised unauthorized control over the property of **PETER GIBBONS and ELSE DONNELL**, with a purpose to deprive them thereof. The value of the property is or exceeds \$5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 7
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony
(Betts & Howell)

Commencing on or about June 2006, the defendants **BETTS AND HOWELL** have

engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. § 76-10-1601. The defendants: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 6 above, in which they participated as a principal, or they used or invested, directly or indirectly, any part of that income, or the proceeds of the income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or establishment or operation of, any enterprise; (2) through a pattern of unlawful activity acquired or maintained, directly or indirectly, any interest in or control of any enterprise; or (3) was employed by, or associated with any enterprise and conducted or participated, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity. The unlawful activity included three or more violations of securities fraud and theft. This is a violation of Utah Code Ann. §76-10-1601 and § 76-10-1603(5) (1995), et seq. a second degree felony.

DATED this 18 day of March, 2009.

Diana Parrish
DIANA PARRISH, Affiant

SUBSCRIBED AND SWORN to before me on this
18 day of March, 2009.

[Signature]
JUDGE, Third Judicial District Court



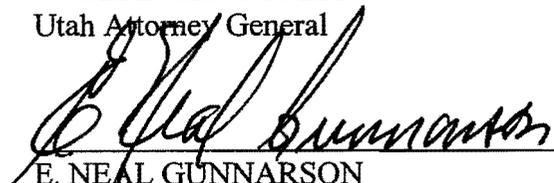
This CRIMINAL INFORMATION is based upon evidence from the following witnesses:

1. Peter Gibbons
2. Else Donnell
3. Isabelle Miller
4. Daniel Matthews
5. Gladys Matthews
6. Warren Brandow
7. Jack Blout
8. And Others.

AUTHORIZED for presentment and filing this 17 day of March,
2009.

MARK L. SHURTLEFF
Utah Attorney General

By:



E. NEAL GUNNARSON
Assistant Attorney General

FILED DISTRICT COURT
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SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

DERRICK S. BETTS,
DOB: March 12, 1971

GREGORY KENT HOWELL,
DOB: January 12, 1972

Defendants.

:
: **AFFIDAVIT OF**
: **PROBABLE CAUSE**
:
:
: Case No. 091902210
:
: Case No. _____
:
: Judge _____

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

I, DIANA PARRISH, being first duly sworn upon oath, depose and state as follows:

1. I am a certified law enforcement officer of 27 years and am currently employed as a Securities Compliance Investigator for the Utah Department of Commerce, Division of Securities. Prior to my employment with the Division of Securities, I was employed by

the Utah Attorney General's Office as an investigator and the South Salt Lake Police Department in various capacities. I am currently investigating possible violations of communications fraud statutes and related criminal code violations by DERRICK S. BETTS and GREGORY KENT HOWELL.

2. The facts set forth in this affidavit are based upon the results of an investigation during which I have collected and reviewed records from witnesses and other sources. I have received information from Peter Gibbons, Else Donnell, Isabella Miller, Daniel Matthews, Gladys Matthews, Warren Brandow, Jack Blount and others.

PARTIES

3. DERRICK S. BETTS at all pertinent times maintained a residence in Utah.
4. BETTS's last known address is 1860 Fieldstone Lane, Heber City, Utah 84032.
5. Utah court records reveal that BETTS has been sued many times between 1996 and the present resulting in more than \$20,000 in judgments. The majority of the judgements appear to be satisfied.
6. United States Federal court records reveal BETTS filed for Chapter 13 bankruptcy protection on June 26, 1998; the case was terminated April 3, 2000.
7. Utah Division of Securities records reveal BETTS has never been licensed as a broker-dealer, agent, investment adviser, or investment adviser representative in Utah.

8. Utah Division of Real Estate's records reveal BETTS is licensed as a Principal Lending Manager for Mconnects, license number 5503976-PLM0. Prior to July 7, 2008, BETTS was the Principal Lending Manager for Springwater Capital, LLC.
9. Springwater Capital, LLC (Springwater) is a Utah limited liability company. Springwater registered with the Utah Division of Corporations, Department of Commerce on October 24, 2006. Springwater lists its address as 388 W. Center Street, Orem, Utah 84057. Springwater's status with the Division of Corporations is "Active." Mark D. Eddy is listed as Springwater's registered agent. BETTS and Cory C. Williams are listed as managers. Utah Division of Securities records show no registration, exemption from registration, or any notice filing in any manner for Springwater. Springwater, as posted on its website www.springwaterc.com, is a loan broker who can "lock a loan" in less than ten minutes and process the application in as little as two weeks.
10. GREGORY KENT HOWELL is an individual who at all pertinent times resided in Utah.
11. HOWELL's last known address is 9545 South Stornoway, South Jordan, Utah 84095.
12. Utah Division of Real Estate's records reveal HOWELL was licensed as a Mortgage Lender Agent from June 21, 2002 through June 30, 2008 when his license lapsed for failure to file for renewal. According to HOWELL's website, www.gkhrealestate.com, HOWELL "has been involved in real estate for 14 years."
13. Utah Division of Securities records reveal HOWELL has never been licensed as a broker-dealer, agent, investment advisor, or investment advisor representative in Utah.

14. Utah court records reveal HOWELL was a defendant in a law suit filed July 22, 2005. That suit resulted in a \$17,450 judgment against HOWELL's co-defendant.
15. Utah court records reveal HOWELL was charged with securities fraud on December 20, 2007. The case is pending.
16. Fruitland Development Group, LLC (Fruitland) is a Utah limited liability company. Fruitland registered with the Utah Division of Corporations, Department of Commerce on November 3, 2006. Fruitland's address is 914 Rosebud Court, Draper, Utah. Fruitland's status with the Division of Corporations is "Delinquent" as of December 19, 2007. BETTS is listed as Fruitland's registered agent and manager. HOWELL is listed as Fruitland's manager. Utah Division of Securities records show no registration, exemption from registration, or any notice filing in any manner for Fruitland.
17. GKH Real Estate Services, LLC (GKH) is a Utah limited liability company. GKH registered with the Utah Division of Corporations, Department of Commerce on September 17, 2004. GKH lists its address as 9545 South Stornoway Circle, South Jordan, Utah. GKH's status with the Division of Corporations is "Active." HOWELL is listed as GKH's registered agent and member.
18. Hidden Meadow LLC is a Utah limited liability company. Hidden Meadow registered with the Utah Division of Corporations, Department of Commerce on August 25, 2006. Hidden Meadow's status is "Active." H. Taylor Thayne is the registered agent and a member and Warren F. Brandow, III is a member. Hidden Meadow's business address is

2359 W Hwy. 40, Roosevelt, Utah. Hidden Meadow is the developer of The Hidden Meadow Subdivision located in Duchesne County, Utah south of Fruitland, Utah.

19. Somersby Investments, LLC is a Utah limited liability company. Somersby registered with the Utah Division of Corporations, Department of Commerce on July 25, 2006. Somersby's business address is 10 Pinebrook Drive, Park City, Utah 84098. Somersby's status with the Division of Corporations is "Expired" as of November 7, 2007. John E. Schofield is listed as Somersby's registered agent and only member.

SECURITIES FRAUD

20. Between November 2006 and January 2007, BETTS and HOWELL solicited five investors from California, Florida, and Nevada to invest \$800,000 in BETTS and HOWELL's company, Fruitland, for the acquisition of the Hidden Meadow Subdivision located in Duchesne County, Utah.
21. BETTS and HOWELL communicated to the investors, among other things, that the investors would make a substantial profit on their investment and that there was little or no risk of losing their principal. BETTS and HOWELL memorialized their agreements with investors in one of three ways, by email, in a Memorandum of Understanding, or in a Consent of LLC Managers agreement.
22. In general, BETTS and HOWELL told investors they would become members of Fruitland and would receive the return of their principal within a period of a few months and a percentage of Fruitland's profit some time in the future. Instead BETTS used the

investors' funds to personally invest in Alpha Bay Corporation and for other expenses unrelated to the acquisition of the Hidden Meadow Subdivision including \$20,000 paid to GKH, HOWELL's company.

23. BETTS and HOWELL failed to disclose to the investors, among other things, that there were other investors and BETTS and HOWELL's history of law suits, judgments and tax liens.
24. When investors requested the return of their principal, BETTS and HOWELL told investors their funds had been released to the seller of the Hidden Meadow Subdivision and became unrecoverable when the purchase of the property could not be completed.

COUNT 1
SECURITIES FRAUD, a second degree felony
(BETTS & HOWELL)

25. On January 7, 2006, California residents Gladys and Daniel Matthews purchased the Platinum Program from National Real Estate Investors (NRI), a company that provided real estate investment training, seminars, and coaching.¹ The coach NRI provided to the Matthews was HOWELL. During the spring 2006, HOWELL began weekly coaching sessions with the Matthews by telephone. At the end of 2006, HOWELL told the Matthews of an investment opportunity with BETTS. HOWELL said he had invested with BETTS in the past and never lost any money. HOWELL said the worst he and

¹National Real Estate Investors, LC registered with the Utah Division of Corporations on June 26, 2002. NRI's address is 2230 N. University Pkwy, Bldg. 5, Provo, Utah.

BETTS had done was to make 20% profit and they usually made 50% profit. HOWELL said an investment with BETTS was safe and recommended the Matthews talk to BETTS about investing in one or more of the several projects in which BETTS was involved. HOWELL provided the Matthews with contact information for BETTS.

26. Daniel Matthews phoned BETTS. BETTS said he had a land development project, the Hidden Meadow Subdivision, and he was looking for a private investor to help him purchase the partially developed property. BETTS said once he acquired the property he would secure financing, complete the development, and sell the lots at a substantial profit. BETTS said if the Matthews invested, they would get their initial investment back within 60 days and within one or two years the Matthews would double their money.
27. BETTS provided the following information about the investment via email and phone calls.
 - a. BETTS would form a company, Fruitland, specifically for the development of the Hidden Meadow Subdivision.
 - b. BETTS, HOWELL, and the Matthews would be members of Fruitland.
 - c. Many people were interested in purchasing Hidden Meadow's lots once they were developed.
 - d. The market was so hot that BETTS wanted to hold onto one of the lots for himself.

- e. The location of the property was very desirable.
 - f. When Daniel Matthews said he was considering a \$300,000 investment, BETTS said he could only offer a promissory note at 12% interest; however, if Mathews invested \$400,000 or more, BETTS could offer the return of principal in 60 days and double the investment in one or two years.
28. BETTS failed to provide the information normally found in a prospectus or offering document, including but not limited to the following:
- a. Financial statements for Fruitland or any of BETTS' companies;
 - b. How Fruitland was capitalized;
 - c. BETTS and HOWELL's track record to investors;
 - d. Risk;
 - e. Suitability factors for the Matthews as investors;
 - f. The involvement of Fruitland's principals, BETTS and HOWELL, in legal proceedings including bankruptcy, violation of state or federal laws, liens, judgments, law suits, etc.; and
 - g. Whether the investment was a security or if BETTS or HOWELL were licensed to sell securities.
29. On November 7, 2006, BETTS sent the Matthews an email in which he wrote "Fruitland . . . is the buyer of the property. Our proposal would be to make you a partner in the company for the capital you would contribute to the project. Depending on your

exit strategy and level of personal involvement, you could be paid back within 90 to 120 days or wait until the profits are fully realized before the disbursements are issued (more money returned, but it takes longer).” BETTS included pre sales information for the Hidden Meadow lots.

30. On November 9, 2006, BETTS sent the Matthews an email in which he wrote, “We are currently working on the renderings and marketing materials which we will use to increase the asking price and create further demand for the lots.” BETTS wrote that the worst case would be if some of the “reservations tell us to go fly a kite, and we either sell at the current price, or if the demand is as we expect it to be, say thanks anyway and bring in a new buyer.”
31. Based on HOWELL’s recommendation and the information provided by BETTS and information emailed / faxed by BETTS and HOWELL, the Matthews decided to invest \$500,000.
32. Daniel Matthews said he and his wife invested for profit and had no managerial responsibilities with regard to Fruitland. Matthews said he authorized his investment in Fruitland to be used for the purchase of a specific property, the Hidden Meadow Subdivision, and for no other purpose.
33. Daniel Matthews is certain BETTS knew \$300,000 of the \$500,000 he invested came from Matthews retirement account as evidenced by a November 13, 2006, email Matthews sent to BETTS in which Matthews wrote his “IRA custodian has requested . . .

changes to the agreement.” Matthews believes BETTS knew \$200,000 of the money he and his wife invested came from a home equity line of credit.

34. On November 14, 2006, BETTS emailed Daniel Matthews wiring instructions for sending money to Springwater Capital’s account and HOWELL faxed a document titled “Consent of LLC Manager.” Paragraph one of the document states, “In consideration of \$200,000, Daniel Matthews (DM) will receive a four (4%) percent profits only interest in Fruitland Development Group LLC (FDG).” Also on November 14, 2006, HOWELL faxed a “Consent of LLC Manager” document for the Matthews’ \$300,000 investment. Paragraph one of this document states, “In consideration of \$300,000, Umpqua Bank Custodian FBO Daniel Matthews IRA #1MD0090 (IRA) will receive a six (6%) percent profits only interest in Fruitland Development Group, LLC (FDG).” Both documents were signed by BETTS and HOWELL and dated November 13 and November 14, 2006 respectively.
35. On or about November 15, 2006, the Matthews wired \$200,000 from their account at Wells Fargo Bank to Springwater Capital’s account at Bank of the West.
36. On November 16, 2006, Daniel Matthews flew to Salt Lake. Matthews said he drove to Fruitland with HOWELL and BETTS to tour the Hidden Meadow property. HOWELL and BETTS did not provide any additional details about the investment during the trip. Matthews flew back to California the same day.

37. On November 17, 2006, Daniel Matthews emailed BETTS, "Thanks for taking the time to show me around yesterday. That eased my mind and gave me more confidence in the project . . . The \$300 should be wired today." BETTS responded, "I very much enjoyed our time together. I look forward to a prosperous future together."
38. On November 17, 2006, Daniel Matthews caused \$300,000 to be wired from his account at Polycomp to Springwater Capital's account at Bank of the West.
39. On or about January 7, 2007, Daniel Matthews spoke to HOWELL and asked HOWELL for a copy of the final purchase contract. HOWELL said there was a problem with the property involving water. Daniel Matthews also emailed BETTS to ask for a copy of the final purchase contract for Hidden Meadow Subdivision.
40. On February 6, 2007, Daniel Matthews spoke to HOWELL who said the Hidden Meadow Subdivision deal had not closed because of an issue involving irrigation pipes.
41. After 60 days, Daniel Matthews said he began asking BETTS and HOWELL for the return of his principal.
42. BETTS told Daniel Matthews that he gave Matthews' money to the owner of the Hidden Meadow Subdivision. BETTS said the deal fell through and he was unable to recover the money from the owner. BETTS said the money was "lost" when he couldn't complete the transaction.
43. On or about April 20, 2007, Matthews sent BETTS an email in which he wrote, "I invested \$500k into the deal, and you never closed on the property, so I don't understand

what happened to the money. Is there any money remaining? If not, what was it spent on prior to closing?" BETTS responded via email:

. . . The \$500k that you put into the project was used as a deposit with the Sellers and was released to them based on our ability to acquire financing . . . What happened, that ended up messing everything up, was that our then partner, John Schofield, had lied to us . . . about the property. We got to the closing table, and learned that the current first lien holder was unwilling to subordinate to our new lender, causing the deal to fail. John Schofield had stated on several occasions that the 1st lien holder would subordinate and that he had spoken with him and verified that information . . .

Obviously, these problems caused our funding to turn tail and run, and as a result, left us holding the bag . . . I am in the process of filing a \$1.2M + lawsuit against Mr. Schofield and his Real Estate Brokerage, Caldwell Banker . . . this process will take a very long time . . . the bottom line is, that I should have been more careful about all the details . . .

COUNT 2
THEFT, a second degree felony
(BETTS)

44. Bank records reveal none of the Matthews money was used for the acquisition of the Hidden Meadow Subdivision.
45. Bank records reveal the Springwater Capital's account at Bank of the West is owned by BETTS and Serena Betts who are the signatories. The account was opened on October 24, 2006 with \$2,000 from another account owned by BETTS and Serena Betts, Axis

Investment Group, LLC (Axis).² There were only three deposits made into this account after it was opened.

11/17/2006	Deposit Isabelle Miller	\$150,000
11/15/2006	Wire Daniel Matthews	\$200,000
11/17/2006	Wire Daniel Matthews	<u>\$300,000</u>
	Total investor deposits to Springwater	\$650,000

46. In addition there were \$181 in bank charges and \$6,500 was transferred back to Axis.
47. By December 31, 2006, the balance of the account had been reduced to \$319 as detailed below:

Three wires were made to Alpha Bay totaling	\$500,000
One wire was made to Alliance Title	\$ 25,000
Check 9901 was issued to GKH, HOWELL's company	\$ 20,000
One wire was made to Equity Title Insurance Trust	<u>\$100,000</u>
	\$645,000

48. Jack Blount is the President of Alpha Bay. Blount said on or about October 2006, BETTS signed a contract with Alpha Bay to invest ten million dollars.³ Blount said BETTS invested about \$800,000 and then defaulted. During September 2008, Blount said he and his Vice President of Finance, Mike Thorup, met with BETTS. During the meeting BETTS said he never had the ten million but said he thought he would get the money from a real estate deal on which he held an option.

²Axis Investment Group, LLC registered with the Utah Division of Corporations on September 10, 2004. BETTS is the registered agent. Serena Betts and Stacy Betts are members.

³Blount said Alpha Bay was represented by Wilson, Sonsini, Goodrich, & Rosati. BETTS and Springwater were represented by Michael Starkwater.

49. Alliance Title appears to be a company located in California. Attempts to locate a working phone number for Alliance Title have failed and it appears from an article found on the internet that Alliance Title may be out of business.
50. Equity Title is a Utah company. Casey Buhler is employed by Equity Title. Buhler said \$100,000 was wired to Equity Title's trust account on November 30, 2006 by Springwater Capital. The money was a down payment for a buyer, John Schofield, who was in the process of purchasing property in Park City, Utah. Buhler said the deal failed and Equity Title returned the \$100,000 to Springwater Partners on December 5, 2006. Bank records reveal \$100,000 was wired from Equity Title to Springwater Partners' account on December 6, 2006. The following day \$99,980 was transferred to Axis Investment Group taking the account balance to \$123,322.19. The following day, December 7, 2006, \$100,000 was withdrawn from the account in cash.
51. The Matthewes' loss is \$500,000.

COUNT 3
SECURITIES FRAUD, a second degree felony
(BETTS & HOWELL)

52. Isabelle Miller, a Florida resident, said she learned of an investment opportunity with Springwater and BETTS from her investment coach, HOWELL. On or about October or November 2006, Miller said she flew to Utah where she met HOWELL and BETTS. BETTS said they were trying to purchase the Springwater Subdivision fast and needed \$250,000. BETTS said once they acquired the property they had 50% of the lots sold and

contractors ready to start building. BETTS said Miller's money would be held in escrow until the deal closed and if the deal did not close, Miller would get her money back.

BETTS said Miller's money would never be at risk and she would double her money in 60 or 90 days. Miller said she, BETTS and HOWELL drove to property located in Fruitland, Utah and toured the property.

53. On or about November 2006, Miller said she received the first page of a Real Estate Purchase Contract for the Hidden Meadow Subdivision in Fruitland, Utah. The buyer on the document was listed as Fruitland Development Group. The offer was to purchase the property for \$3,500,000 with a deposit of \$250,000 earnest money. Miller said she also received a document title Addendum No. 3.c, a counter offer dated October 20, 2006, which states "Earnest Money of \$250,000 is fully refundable and returnable to Buyer . . ." The spaces at the bottom of the pages of these documents for the Seller's and Buyer's initials are blank.
54. On or about November 2, 2006, Miller received a fax from BETTS with instruction to issue a check to Springwater Capital. BETTS wrote:

Fruitland Development Group Llc [sic] is the buyer of the property. Our proposal is to make you a 5% owner of the property until such time as you are repaid your ownership interest at a level of \$300,000. It is anticipated that this payout will take 90 days to complete, but be prepared to have it take up to 120 days.

55. On or about November 6, 2006, Miller mailed a check drawn on her business account to Springwater Capital at 914 Rosebud Court, Draper, Utah.⁴
56. Later HOWELL told Miller that BETTS allowed Miller's money to be released from escrow and it became unrecoverable when the land deal fell apart.

COUNT 4
THEFT, a second degree felony
(BETTS)

57. Bank records reveal that on November 17, 2006, Miller's investment check was deposited into Springwater Capital's account at Bank of the West. The account is owned by BETTS and Serena Betts who are the signatories.
58. None of Miller's money was held in an escrow account and none of Miller's money was used for the purchase of the Hidden Meadow Subdivision (see Count 2 for use of funds).
59. Miller's loss is \$150,000.

COUNT 5
SECURITIES FRAUD, a second degree felony
(BETTS and HOWELL)

60. Nevada residents Peter Gibbons and Else Donnell (husband and wife) said HOWELL was their NRI investment coach, mentor, and someone they talked to about investment opportunities. Gibbons and Donnell said they had other coaches before HOWELL but

⁴Miller's business is Lakeside Properties of Central Florida, Inc.

after complaining to NRI about those coaches, they were assigned HOWELL who they were told was a “superior mentor” and “investment guru.”

61. Gibbons and Donnell said HOWELL presented them with a real estate investment opportunity during phone coaching sessions on or about November 2006. HOWELL said he and BETTS needed money to save a property from falling out of escrow. HOWELL described the property and its location. HOWELL said he was the project manager of the investment opportunity and BETTS was the detail and finance guy. HOWELL said he was capable of handling a project of this size and he had successfully managed the development of a golf course in Nevada. HOWELL said he had invested with BETTS in the past. HOWELL said BETTS owned a finance company and described BETTS as a mover and a shaker.
62. During phone conversations with Gibbons and Donnell, HOWELL and BETTS represented they negotiated the purchase of property, the Hidden Meadow Subdivision, in the township of Fruitland, Duchesne County, Utah. HOWELL and BETTS said their personal net worth was adequate to purchase the property but that each of them had committed to other ventures which created short term illiquidity. HOWELL and BETTS promised to double Gibbons and Donnell’s investment of \$150,000 in 90 days if they invested and give them a 5% ownership interest in their company, Fruitland Development. HOWELL and BETTS said there was no risk of Gibbons and Donnell losing their principal because their investment would be secured by real property and

HOWELL and BETTS would receive a trust deed after the closing. HOWELL and BETTS said if the purchase failed to close, Gibbons and Donnell would get their money back. Gibbons and Donnell agreed to invest and mailed two checks totaling \$150,000 to Meridian Escrow on or about November 2006.

63. Gibbons and Donnell said they invested for profit and had no managerial responsibilities with regard to Fruitland and Hidden Meadow. Gibbons and Donnell said they had no prior knowledge that their money would be pooled with funds from other investors and, in fact, believed they were the only investors.
64. Gibbons and Donnell said prior to investing, HOWELL and BETTS provided minimal information about the Hidden Meadow Subdivision or Fruitland Development including most of the information normally found in a prospectus. Gibbons and Donnell said they did not receive: Financial Statements for Hidden Meadow or Fruitland; Information about competition; Information on others investing in Hidden Meadow or Fruitland; The involvement of BETTS, HOWELL, or Fruitland in any legal proceedings including civil; suits, bankruptcy, liens, judgments, and violations of state or federal laws; Conflicts of interest that might exist; Whether the investment was registered or exempt from registration; and whether HOWELL or BETTS were licensed to sell securities.
65. After investing, Gibbons and Donnell said HOWELL and BETTS provided documents for the Hidden Meadow Subdivision which showed many lots were pre sold in a

document titled Hidden Meadow Pre-Sales Reservations. HOWELL and BETTS said the pre sales guaranteed Gibbons and Donnell the return of their principal.

66. On or about November 14, 2006, Gibbons and Donnell drove to Fruitland, Utah to look at the property. Gibbons said he was referred to John Schofield for directions to the property. During the conversation about directions, Schofield said he was a partner in Fruitland, something Gibbons had not been previously told by either HOWELL or BETTS.
67. Gibbons said he and Donnell drove to the Hidden Meadow subdivision where they saw an entry marker, streets staked and that ground had been broken. Gibbons and Donnell said they left Fruitland and drove to Salt Lake where they met BETTS behind a car dealership somewhere in Salt Lake County. At the meeting, BETTS told Gibbons and Donnell that everything was going well with their investment and their money was secure in an escrow account.
68. On or about December 12, 2006, Gibbons said he received a phone call from BETTS. BETTS said he had negotiated a reduction in the price of the property and used his own money to meet the earnest money requirements. Therefore, BETTS said he no longer needed Gibbons and Donnell's money. BETTS said Meridian Title had returned Gibbons and Donnell's investment checks to him (the checks were payable to Meridian but had not been negotiated by Meridian). BETTS said he would return the checks. BETTS said Gibbons and Donnell could remain member owners in Fruitland by reinvesting their

money. BETTS said they would use Gibbons and Donnell's money to improve Fruitland's bottom line and make Fruitland's account look healthy. Gibbons and Donnell received copies of the voided checks they wrote to Meridian.

69. On or about December 18, 2006, Gibbons and Donnell issued two replacement checks for \$75,000 each to Fruitland Development Group, LLC and sent the checks to BETTS: Check 0104 dated December 16, 2006 drawn on Donnell's account at US Global Investors and check 1205 dated December 16, 2006 drawn on Gibbons account at US Global Investors. The checks were deposited into Fruitland's account at Bank of the West in Sandy, Utah.
70. Gibbons and Donnell said the \$150,000 they sent to BETTS was specifically for improvements to the property and they did not authorize the use of their investment for any other purpose. On December 18, 2006, Gibbons emailed BETTS and HOWELL a document titled Modification of Memorandum of Understanding in which Gibbons documented the changes discussed verbally. Paragraph one of the document states Fruitland "... seeks to reallocate Gibbons' Donnell's capital contribution from earnest money to cash reserves, in the interest of maintaining a positive balance sheet to aid in obtaining favorable financing for the project" and paragraph three states Fruitland "... agrees to use the reallocated \$150,000 from Gibbons & Donnell as cash on hand for FDC, for any expenditure which may be directly necessary for the furtherance of the

Hidden Meadow development, applying a fiduciary standard of care . . .” Gibbons’ copy of the document is signed by BETTS and HOWELL.

COUNT 6
THEFT, a second degree felony
(BETTS)

71. Bank records reveal that Fruitland Development Group’s account at Bank of the West had a zero balance when Donnell and Gibbons checks were deposited on January 4, 2007. On January 11, 2007, a bank debit was made to the account for \$150,000. The Fruitland account was never used again.
72. Bank records reveal that \$150,000 was transferred from Fruitland’s account to Springwater Capital’s account on January 11, 2007 increasing the account balance to \$150,325. Between January 11, 2007 and May 15, 2007 the following debits were made to the account leaving \$375 in the account:

01/12/2007	\$ 5,000	Axis
01/16/2007	\$80,000	Axis
01/18/2007	\$45,000	Axis
01/24/2007	\$10,000	Doug Merritt, Earnest Money
02/12/2007	\$ 2,250	Axis
04/24/2007	\$ 2,500	Kimberly J. LeMarie
04/27/2007	\$ 4,350	Axis
05/11/2007	\$ 600	Axis
05/15/2007	<u>\$ 250</u>	Axis
	\$149,950	

73. In total, \$137,450 was transferred to Axis between January 12, 2007 and May 15, 2007. The following is a list of debits made to the Axis account during this period: Alpha Bay;

Zion's Bank for the benefit of Hidden Metal, LLC; Serena Betts; R.B. Hansen; Stacy Betts; Capital One; Alger Electric; Green Point Mortgage; and for expenses related to property in Utah and California and other business activities.

74. Gibbons and Donnell's loss is \$150,000.

COUNT 7
PATTERN OF UNLAWFUL ACTIVITY, a second degree felony
(BETTS & HOWELL)

75. Commencing on or about June 2006, BETTS engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. §76-10-1603. BETTS: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 6 above, in which he participated as principal, or he used or invested, directly or indirectly, any part of that income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or establishment or operation of, any enterprise; (2) through a pattern of unlawful activity acquired or maintained, directly or indirectly, any interest in or control of any enterprise; or (3) was employed by, or associated with any enterprise and conducted or participated, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity. The unlawful activity included three or more violations of securities fraud. This is a violation of Utah Code Ann. §76-10-1603(5), a second degree felony.

SUMMARY

76. Based on my review of the evidence there is probable cause to believe that BETTS committed the crimes of:

SECURITIES FRAUD
a second degree felony, 3 counts

THEFT
a second degree felony, 3 count

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count

77. Based on my review of the evidence there is probable cause to believe that HOWELL committed the crimes of:

SECURITIES FRAUD
a second degree felony, 3 counts

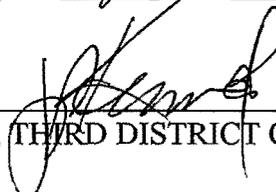
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count

DATED this 18 day of March, 2009.

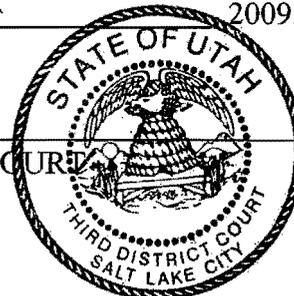


DIANA PARRISH, Affiant

SUBSCRIBED AND SWORN before me this on this
18 day of March, 2009.



JUDGE, THIRD DISTRICT COURT



FILED DISTRICT COURT
Third Judicial District
MAR 18 2009
SALT LAKE COUNTY
By _____ Deputy Clerk 

E. NEAL GUNNARSON, Bar No. 1273
Assistant Attorney General
MARK L. SHURTLEFF, Bar No. 4666
Utah Attorney General
5272 South College Drive, #200
Murray, Utah 84123
Telephone: (801) 281-1221
Facsimile: (801) 281-1224

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH, : Bail \$ 25,000.00
 :
 Plaintiff, :
 : **WARRANT OF ARREST**
 vs. :
 :
 GREGORY KENT HOWELL, : Case No: 091902210
 DOB: January 12, 1972 :
 :
 Defendant. : Judge: _____

THE STATE OF UTAH TO ANY PEACE OFFICER IN THE STATE OF UTAH,
GREETINGS:

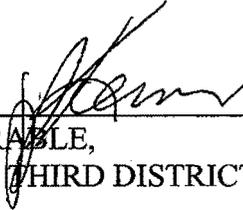
An Information, upon oath, having been this day made before me by Investigator Diana Parrish, and it appearing from the Information, or affidavit filed with the Information, that there is probable cause to believe that the public offense(s) of: **Securities Fraud, a second degree felony, 3 counts; and, Pattern of Unlawful Activity, a second degree felony, 1 count,** has

been committed, and that the defendant, GREGORY KENT HOWELL, has committed these offenses,

YOU ARE THEREFORE COMMANDED to arrest the above named defendant forthwith and bring the defendant before this court, or before the nearest or most accessible magistrate for setting bail. If the defendant has fled justice, you shall pursue the defendant into any other county of this state and there arrest the defendant. The offenses listed above are felonies.

Bail is set in the amount of \$ 25,000.

DATED this 18 day of March, 2009.



HONORABLE,
JUDGE, THIRD DISTRICT COURT



Defendant's Last Known Address:

9545 South Stornoway
South Jordan, UT 84095