COPY

Laurie L. Noda (No. 4753)
Assistant Attorney General
Mark Shurtleff (No. 4666)
Utah Attorney General
Commercial Enforcement Division
Box 140872
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
Telephone: (801) 366-0310
Counsel for Plaintiff Division of Securities

IN THE FIFTH JUDICIAL DISTRICT COURT

IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

THE STATE OF UTAH, Department of Commerce, Division of Securities, **Plaintiff,** **vs.** **WALNUT STREET SECURITIES, INC. ROY N. HAFEN; RICHARD W. MACK; CAROLE A. TURNER ; and KELLY G. BRADY; BUCKINGHAM, LLC dba VIDEO VENUE; VEDETTE, LLC;** **Defendants.**	**COMPLAINT** **CIVIL NO.** 050500310 **JUDGE** Shumate

The STATE OF UTAH Department of Commerce, Division of Securities, (hereinafter the "Division" or "State"), by and through its counsel of record, Laurie L. Noda, complain and allege as follows:

A. JURISDICTION AND VENUE

1. The Division brings this action under the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-20. The Act authorizes the Director of the Division of Securities ("Director") to bring an action in district court to enjoin unlawful practices in violation of the Act, to enforce compliance with the Act, and to obtain appropriate remedial orders from the Court.

2. The unlawful acts and practices alleged in this Complaint occurred in Washington County and elsewhere in the State of Utah. Venue is proper in this Fifth District Court because the causes of action arose in Washington County. Utah Code Ann. § 78-13-7.

B. DEFENDANTS

3. Walnut Street Securities, Inc., ("WSS"), is a broker-dealer that has been licensed by the Division from October 28, 1985 to the present. WSS maintains its principal place of business at St. Louis, Missouri. WSS operated a branch office location at 1935 Vine Street, Suite 170 in Salt Lake City, Utah.

4. Roy N. Hafen ("Hafen"), was a WSS broker-dealer agent. Hafen was licensed in Utah as a broker-dealer agent for WSS from April 6, 2000 until February 7, 2002.

5. Hafen's license was temporarily suspended by the Division on February 5, 2002 by means of an emergency order. The emergency order alleged that Hafen effected securities transactions away from his broker-dealer and failed to comply with a request for information from the Division.

6. WSS permitted Hafen to resign from his association with WSS February 7, 2002. Hafen is not currently associated with any other broker-dealer.

7. Richard W. Mack ("Mack"), was designated as branch manager for the Salt Lake City branch office of WSS, and was the direct supervisor over Hafen. Mack qualified with the NASD as a general principal.

8. Carole A. Turner ("Turner"), is an individual who at all relevant times was a WSS Regional Compliance Director. Turner was also qualified with the NASD as a general principal. Turner received and approved Hafen's 2000 and 2001 outside business activities forms in her capacity as the Regional Compliance Director. In this capacity, Turner had and exercised supervisory authority over Hafen.

9. Kelly G. Brady ("Brady"), a resident of Utah County, Utah, is an individual who solicited funds for Video Venue, a DBA of Buckingham, LLC. ("Video Venue"). Brady is not employed by, or affiliated with, WSS.

10. Video Venue is a limited liability company based in Oklahoma actively engaged in business operations in Washington County, Utah. The Video Venue project was represented by Hafen as the production, sale and implementation of a patented screen system whereby advertising would be delivered to gas station customers while pumping fuel.

11. Vedette, LLC ("Vedette") is an Oklahoma limited liability company actively engaged in business operations in Washington County, Utah which owned the technical rights to the Video Venue process.

C. BACKGROUND

12. In November 2001, the Division received an investor complaint that Hafen was acting as an agent for Red Mountain Investment Company, LLC ("Red Mountain") and Video Venue by selling investments for those companies.

13. Red Mountain was registered in Utah on January 10, 2001. Corporate records list Brady as the manager and registered agent of Red Mountain. Hafen represented to some investors that Red Mountain owned patents and other essential rights necessary for the successful operation of the Video Venue project.

14. Brady began accepting monies for Video Venue in late 1999 and at that time was still accepting funds from investors for his factoring operations. Factoring is a type of financial service whereby a firm sells or transfers title to its accounts receivable to a factoring company which then acts as a principal and not an agent in the collection of the receivable. Many of those factoring investments went into one of several bank accounts used to fund the development of Video Venue.

    a. Investors providing money to Brady thought their funds would be used in the purchase and collection of trade receivables. Some investors stated that Brady did not mention Video Venue at the time Brady took their investments,.

    b. Brady and Hafen told other Video Venue investors:

        1. Video Venue was in need of short-term operating capital to continue the development and installation of its gas pump video advertising screens.

        2. Investors would receive a five percent per-month return on their money.

3. The loan period would be for no more than 90 days.

4. Before the end of the 90 day period, the company's long-term financing, which had already been contractually secured, would arrive and pay off all short-term loans.

5. Investors were also promised that for every $300,000 invested in the company, the investor would receive a one percent equity ownership interest in Video Venue.

c. Brady and Hafen solicited new investors into Video Venue from early 2000 until late 2001.

15. On February 5, 2002, Division auditors attempted to meet with Hafen to discuss his involvement with Red Mountain and Video Venue. Hafen disclosed to Division auditors that he had done consultant work and received compensation from Red Mountain.

16. Hafen disclosed that he had personally invested in Red Mountain and had knowledge of many investors in St. George, Utah.

17. Hafen refused to comply further with the examination and refused to provide the Division with the names of investors.

18. Hafen subsequently stated that he would not provide immediate access to his business records but would comply and provide investor lists and information regarding his involvement and knowledge of Red Mountain and Video Venue if given an additional week. The requested documentation was never provided.

19. On February 5, 2002, the Division issued an emergency order to suspend Hafen's broker-dealer agent license for effecting transactions away from his broker-dealer and failing to comply with the Division's request for information.

20. On February 7, 2002, WSS permitted Hafen to resign to avoid being terminated.

D. ALLEGATIONS

COUNT ONE

The Offer and Sale of Unregistered Securities

Brady & Hafen

The allegations contained in paragraphs 1 through 20 are hereby incorporated and re-alleged as if fully set forth herein.

21. Beginning on a date uncertain, but at least from early 2000, Brady and Hafen offered or sold, either directly or indirectly to Utah residents, securities in Red Mountain and Video Venue.

22. The investments offered and sold by defendants are securities under §61-1-13(24) of the Act.

23. At no time have any of the securities of Video Venue offered and sold by defendants been registered nor had defendants filed for an exemption from registration with the Division as required by Utah Code Ann. §61-1-7.

24. Defendants have violated Utah Code Ann.§ 61-1-7.

COUNT TWO

Misrepresentations or Omissions of Material Fact

Brady & Hafen

The allegations contained in paragraphs 1 through 24 are hereby incorporated and re-alleged as if fully set forth herein.

25. Defendants Brady and Hafen offered or sold securities in Red Mountain and Video Venue to individuals in this state in violation of the antifraud provisions of the Utah Uniform Securities Act, Utah Code Ann. §61-1-1(2), in that they made false statements of material fact and omitted to state material facts which, in the light of the circumstances under which they were made, were necessary to make their other statements not misleading.

26. The false statements of Brady and Hafen include, but are not limited to, the following:

    a. Representing to investors that they would receive outright ownership interests in Video Venue equal to one percent for every $300,000 invested. In reality, under Video Venue's Operating Agreement, Brady could not add other members to the LLC without the consent of all existing members.

    b. Falsely stating that investor funds would be used to pay Video Venue's ongoing operational expenses when in fact, a large portion of investor funds was used to make payments to prior investors or diverted for personal/family purposes.

    c. Representing to investors that there was no risk of loss to their principal.

    d. Providing financial statements of Buckingham to some investors which materially misstated outstanding short-term loans as capital contributed to the entity.

27. The false statements of Brady include but are not limited to the following:

a. Representing to investors that they would receive a stated percentage in Video Venue itself when in fact he was actually offering the stated percentage of his 50 percent interest in Video Venue. Brady failed to disclose to investors that the actual ownership interests they would receive would equal only half the promised amounts.

28. In connection with the offer and sale of securities in Video Venue, Brady and Hafen omitted the following material information:

a. Neither Brady nor Hafen disclosed to investors that Brady was paying commissions to Hafen out of investor funds.

b. Failing to disclose that Video Venue was in default on numerous contracts when offering new investors a five percent per month return with a required commitment of 30 to 90 days.

c. Failing to disclose to investors that Video Venue had no system of accounting controls on any of the investor funds sent to Video Venue's home office in Florida.

d. Failing to disclose the business risks faced by the company or the investment risks being assumed by the investor.

e. Failing to disclose the business and operating history of Video Venue.

f. Financial statements of the company.

g. The identity of the principals in the investment along with a description of their experience in this type of investment.

h. The number of other investors and the amount of money being raised from investors.

i. The track record of the company in repaying the investment.

j. Current capitalization of the issuer.

k. Minimum capitalization needed for the company's business plan to succeed.

l. An explanation of the disposition of any investments received if the minimum capitalization was not met.

m. Nature of the competition in the type of business in which Video Venue operated.

n. The existence and extent of any conflicts of interest.

o. The expected use of investment proceeds by Video Venue.

p. That the investment was a "ponzi" scheme in that funds from new investors were used to pay off loans of earlier participants.

q. That the securities being offered and sold were not registered with the State of Utah as required.

29. Defendants Brady and Hafen have violated Utah Code Ann. § 61-1-1(2).

COUNT THREE

Fraudulent or Deceptive Practices, and Courses of Business

(All Defendants)

The allegations contained in paragraphs 1 through 29 are hereby incorporated by and re-alleged as if fully set forth therein.

Brady & Hafen

30. Defendants Brady and Hafen offered or sold the identified securities to individuals in this state in violation of the antifraud provisions of the Utah Uniform Securities Act, Utah Code Ann. §61-1-1(3) in that defendants engaged in acts, practices, and courses of business which operated as a fraud or deceit on other persons. The defendants' acts, practices, and courses of business which operated as a fraud or deceit include, but are not limited to, the following:

a. The pattern of misrepresentations and omissions referred to in paragraphs 25 through 28, above.

b. Operating a "ponzi" type investment program whereby money from new investors was used in part to pay obligations to prior investors.

31. Defendant Hafen violated the antifraud provisions of the Utah Uniform Securities Act, Utah Code Ann. §61-1-1(3) in that he engaged in acts, practices and courses of business which operated as a fraud or deceit on other persons by:

a. Engaging in securities activities not recorded on the books and records of his registered broker-dealer.

b. Failing to disclose to WSS the extent of his outside business activities.

<u>Broker-Dealer Failure to Supervise</u>

<u>WSS, Mack & Turner</u>

32. Defendants WSS, Mack and Turner failed to detect a number of "red flags" concerning Hafen's conduct behavior including but not limited to:

a. Hafen's failure to timely report his outside business activities with Red Mountain/Video Venue and another business by the name of Employ/Ease which was described by Hafen as an employee leasing company whereby he provided benefits by selling insurance products.

b. The outside business activity form Hafen filed with WSS stated that the company was seeking to obtain a substantial loan ($20 million) from an offshore bank, Central Atlantic Bank, in (sic) "Ategia" (Antigua).

c. Hafen had not completed an outside business activity form for Hafen Financial.

d. Hafen used unapproved, non-WSS advertising.

33. Defendants WSS, Mack and Turner violated the antifraud provisions of the Utah Uniform Securities Act, Utah Code Ann. §61-1-1(3) in that they engaged in acts, practices and courses of business which operated as a fraud or deceit on other persons. The defendants' acts, practices, and courses of business which operated as a fraud or deceit include, but are not limited to the following:

a. Failing to adopt, implement, and follow adequate supervisory and compliance procedures when presented with indications Hafen was engaging in questionable outside business activities when they knew or should have known of Hafen's discrepancies in reporting the nature of his outside business activity.

b. Failing to reasonably supervise Hafen with a view to preventing and detecting violations of the securities laws.

c. Failing to conduct an inspection of Hafen's office as required by the WSS compliance manual. On November 8, 2001, WSS conducted an inspection of Hafen's office. Although WSS's compliance manual required WSS to conduct annual inspections of the offices of representatives who are in un-registered offices physically detached from the branch, the 2001 annual office inspection was the only inspection of Hafen's office. WSS failed to conduct the 2000 office inspection.

d. Failing to adequately review outside business activity forms submitted by Hafen.

e. Failing to investigate Hafen's failure to report outside business activities prior to engaging in the activity.

f. Failing to investigate adequately the discrepancy between the verbal representation of Hafen that he was a salesman for Video Venue and the outside business activity form that reported he was a consultant receiving $75,000 in fees;

g. Failing to update Hafen's U-4 Form to reflect the outside business activities he reported.

h. Failing to ensure that the supervisory persons assigned oversight of Hafen's activities diligently exercised their supervisory and compliance responsibilities.

i. Failing to maintain books and records sufficient to document that adequate efforts were made to inquire into the outside business activities of WSS's agent Hafen.

j. Failing to detect that Hafen was engaged in the offer of securities that were not registered and failing to take adequate steps to prevent further harm resulting from his conduct.

k. Failing to detect that Hafen was "selling away".

l. Failing to document any discussions regarding Hafen's earning a greater income from a source other than his securities business when Hafen finally disclosed the outside business he was engaged in.

m. Failing reasonably to carry out the policies and procedures of WSS's compliance manual.

34. Defendants WSS, Turner, Mack, Brady and Hafen have violated Utah Code Ann. §61-1-1(3).

REQUEST FOR RELIEF

Wherefore, Plaintiff prays for a judgment in favor of Plaintiff and against Defendants as follows:

35. That Defendants be adjudged to have violated the Utah Uniform Securities Act.

36. That this Court issue a Permanent Injunction as follows:

a. That Defendants and their agents be permanently enjoined from engaging in any acts, practices, or omissions which would constitute violations of the Utah Uniform Securities Act, Title 61, Chapter 1, Utah Code Ann., or any rule or order thereunder.

b. That Defendants be required to pay restitution to the involved parties in an amount to be determined at trial.

c. That Defendants be required to pay a fine in an amount to be determined at trial.

d. That Plaintiff be awarded attorney's fees, costs and expenses reasonably incurred in the preparation and prosecution of this action.

e. Such other and further relief as this Court may deem equitable and just.

Dated this 9th day of February, 2005.

MARK SHURTLEFF
UTAH ATTORNEY GENERAL

Laurie Noda

Laurie L. Noda
Assistant Attorney General
Commercial Enforcement Division

CERTIFICATE OF MAILING

I certify that on the 14TH day of FEBRUARY, 2005,

I mailed, certified mail, return receipt requested, a copy of the foregoing to:

Walnut Street Securities, Inc.
P.O. Box 66839
St. Louis, MO 63166

Certified Mail #

7004 2510 0003 7273 7635

Kelly G. Brady
1809 Red Mountain Drive
Santa Clara, UT 84766

Certified Mail #

7004 2510 0003 7273 7673

Roy N. Hafen
3074 Santa Clara Drive
Santa Clara, UT 84765

Certified Mail #

7004 2510 0003 7273 7642

PAMALA RADZINSKI
Executive Secretary

Richard W. Mack
1935 East Vine Street
Suite 170
Salt Lake City, UT 84121

Certified Mail #

7004 2510 0003 7273 7659

Carole A. Turner
Walnut Street Securities, Inc.
8340 North Thornydale
Suite 110
Tucson, AZ 85741-1162

Certified Mail #

7004 2510 0003 7273 7666