

**Utah Securities Commission
January 24, 2013
Room 451 – 2:00 pm**

Agenda

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|----|---|------------------|
| | Welcome/Call to Order | Erk Christiansen |
| 1. | Approval of October 29, 2012 Minutes | Erk Christiansen |
| 2. | Director's Report | Keith Woodwell |
| | a. Update on Budget | |
| | b. Update on Division Staffing | |
| 3. | Investor Education Update | Karen McMullin |
| 4. | Section Reports | |
| | a. Licensing & Compliance Section | Dave Hermansen |
| | b. Corporate Finance Section | Benjamin Johnson |
| | c. Enforcement Section | Dave Hermansen |
| 5. | Education and Training Fund Report | Benjamin Johnson |
| | a. Grant Request-AARP of Utah | Laura Polacheck |
| 6. | Request from Administrative Rules Committee | Erk Christiansen |
| 7. | Consideration and Approval of Proposed Orders | |
| | a. Jonathon R. Watts | Dave Hermansen |
| | b. Craig Tanner Daly | Dave Hermansen |
| | Joshua Carl Johnson | |
| | c. Glen A. Larsen d.b.a | Dave Hermansen |
| | Financial Advisory Services | |
| | Glen A. Larsen | |
| | d. Subhash. S. Kithany | Dave Hermansen |
| | e. Michael Scott Jolley | Dave Hermansen |
| | f. Dennis John Rowley | Dave Hermansen |
| | g. Craig Eldon Taylor dba | Dave Hermansen |
| | The Mall Hop and Smoothie Beach | |



In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Julie Price, ADA Coordinator, Division of Securities, P O Box 146760, 160 E 300 S, Salt Lake City, Utah 84114-6711, Phone (801) 530-6436, at least three working days prior to the meeting.

SECURITIES COMMISSION MEETING MINUTES

October 29, 2012

Securities Staff Present

Keith Woodwell, Division Director
Benjamin Johnson, Corporate Finance Director
Dave Hermansen, Licensing & Compliance Director
Dee Johnson, Investor Education Director
Thomas Brady, Enforcement Director
Scott Davis, Assistant Attorney General
Jennie Jonsson, Administrative Law Judge
Heidie George, Securities Examiner
Kristi Wilkinson, Securities Investigator
Nadene Adams, Administrative Assistant
Julie Price, Board Secretary

Commissioners Present

Laura Polacheck, AARP Utah
Tim Bangerter, Bangerter Financial Group
Erik Christiansen, Parsons Behle & Latimer
Brent Baker, Clyde Snow & Sessions
Jane Cameron, Zions Bank

Public Present

Preston Cochrane
Rose Poulsen
Ray Martinez

Minutes: A motion was made and seconded to approve the July 19, 2012 minutes. The motion to approve the meeting minutes was passed unanimously.

Director's Report: Director Woodwell gave an update on the Investor Education Fund. The balance is down to \$350,000.00. The balance decrease is due to the ARS Settlements that were paid out last fiscal year. The Division will reduce in some of their expenses to compensate for the decreasing fine revenues coming into the education fund. This includes moving some employees paid that are currently being paid out of this fund to the general fund and finding room in the general budget to reduce some of the expenses coming out of the Investor Education Fund. This might have an impact on the amount of grant requests that the Division can make going forward. Director Woodwell indicated that there are still some other fines that should be coming in during the coming months, but nothing of the magnitude of the ARS fines the Division was getting over the last several years.

The Division is now fully staffed. Kristi Wilkinson has filled the investigator position in the Enforcement Section and Heidie George filled the examiner position in the Licensing/Compliance Section.

Director Woodwell addressed a question that came up in the last commission meeting in

regards to the number of people visiting the Securities website. The Division of Securities website averages about 9,000 – 10,000 visits per month. This shows that the Red Flags campaign has made a difference. The Division has determined that the home page is visited the most often with U4 Form, Form D, and Online Database pages rounding out the top four. There has been some discussion of creating our own investor education website. This has been put on hold until the Division can determine if there will be enough left over in the Investor Education fund to do a series of television and billboards ads. The Division is in the process of determining its next public service campaign. The overall theme connecting all of the Division's investor education campaigns will be: "Check Before you Invest". This theme will be tied to a new logo and our expo displays will carry the same theme.

The Division has received a request from the Legislative's Administrative Rules Review Committee. The request stems from a case settled by the Division several years ago. The individual who was the subject of the action has recently complained to the Division that when people Google his name, the pleadings in the Division's administrative action come up as one of the first things in the Google search. The Administrative Rules Review Committee wanted the Division to address three issues; whether or not the Division should make the pleadings from our administrative cases inaccessible in general internet searches; whether or not there should be some sort of expungement process for administrative proceedings; whether or not modification is needed to the administrative rule that addresses the factors the Division considers when determining the amount of an administrative fine. Commissioner Polacheck commented that it would be a disservice if this information isn't available to the public. Commissioner Cameron said that it is up to the investor to check things out but that this information needs to be available; Commissioner Christiansen said that it is poor policy to leave people in the dark and it's better to error on the side of public disclosure. There was unanimous support by the Commission to continue to make these documents searchable.

Director Woodwell addressed the third issue brought up by the Legislative Administrative Rules Committee in regards to administrative fines. The Division has prepared a modified draft of Administrative Rule R164-31-1. The Division added language to the rule that would more directly link the size of fines to the investor losses including any restitution. The rule amendment also lists the costs that the Division incurred during the investigation or proceeding as a factor to be considered in determining the amount of a fine. Director Woodwell is in agreement with the Administrative Rules Review Committee on these revisions.

Action: Laura Polacheck made a motion to approve the proposed amendment to R164-31-1 to Administrative Rule Fine Amounts. The motion was seconded and carried.

Investor Education Update: Karen McMullin indicated that since August 1st of this year, the Division has done 24 events in which there were 3,000 in attendance. This is up 30% from last year. The Division has done a total of 61 presentations compared to 40 last year. Mrs. McMullin gave an update on the new expo display that has been ordered. It will include three reversible double-sided aluminum stands with two replacement skins and two iPad kiosks. The iPads purchased for these displays will also be used by Division staff members on audits that are conducted. Mrs. McMullin has provided training to staff members on how to use the new iPads.

Ms. McMullin spoke of future events that the Division has coming up as well as several agencies that the Division will be partnering with to do investor education events. The Division is also looking into combing investor education alerts into a booklet instead of handing out flyers and also customizing jump drives with this information.

Licensing & Compliance Section Report: Dave Hermansen indicated the Licensing & Compliance section has increased the number of field audits to five. Two or three of them had significant problems which his staff is looking into. There are three cases where an Order Show Cause has been issued and several that still need to be drafted. There are two cases that involve criminal activity on licensees. One has been referred to the Attorney General's Office while the other is with Salt Lake County.

Corporate Finance Section Report: Benjamin Johnson reported that there has been a significant decrease over the past two years in three categories; registrations, 506 filings, and state-level exemptions. Registrations are down 2.5%; state-level exemptions are down 38%; and 506 filings are down 13.5%. On the 506 front, after their last meeting in July, the SEC put out its initial release on rules relating to the JOBS Act. The Commission laid out areas where they wanted comments and are hoping to build an effective rules structure with the comments that come in.

Enforcement Section Report: Tom Brady reported his section is back on track. His section is fully staffed. Kristi Wilkinson is now a full-time investigator in the Enforcement Section. Matt Edwards, another new investigator in the Enforcement Section is also doing a great job.

The Enforcement Section has 56 open investigations and has 6 to 7 closed investigations with actions. There is a back log of ten administrative actions that need to be prepared and filed.

The Division is trying to create better relationships with other agencies; mostly federal. There is more joint investigative work being done. There is also an increase in communication and involvement in the local securities task force.

Education Fund Expenditure Report: Benjamin Johnson reviewed the updated expenditure report for the Education and Training Fund and discussed line items that were being requested by the Division for Commission approval. This included expert witness support expenses, furniture and office remodeling expenses, and invoices from the PSA campaign.

Action: Jane Cameron made a motion to approve the Education Fund Expenditure Report. The motion was seconded and carried.

Consideration of Grant Request

Working in Support of Education (WISE): Director Woodwell presented this grant request. The Commission reviewed this grant and put it to a vote.

Action: Jane Cameron made a motion to approve the grant. The motion was seconded and carried.

Junior Achievement: Director Woodwell presented this grant request. The Commission reviewed this grant and put it to a vote.

Action: Jane Cameron recused herself. Laura Polacheck made a motion to deny the grant. The motion was seconded and carried.

EverFi/AAA Credit Foundation: Ray Martinez from EverFi presented this grant request. The

Commission reviewed this grant and put it to a vote.

Action: Jane Cameron recused herself. Tim Bangerter made a motion to approve the grant. The motion was seconded and carried.

Approval of Stipulation and Consent Orders

DJW Investments, LLC and Darren Dennis White: Tom Brady reported that on June 6, 2008, the Division issued an Order to Show Cause and Notice of Agency Action against the Respondent. A prehearing conference was held on August 4, 2008, in which Mr. White appeared on behalf of both Respondents. Mr. White requested additional time to obtain legal counsel and certain records before being required to respond. The Division stipulated to a September 8, 2008, deadline for a response. The Respondents failed to file their response as required. Therefore, the presiding officer finds that proper factual and legal bases exist for entering a default order against the Respondents.

The Respondents, directly or indirectly, made false statements to investors. The Respondents also directly or indirectly, failed to disclose material information that was necessary in order to make representations made not misleading, in connection with the offer and sale of securities.

The respondents are to cease and desist from engaging in any further conduct in violation of Utah Code and pay a \$750,000.00 fine

Action: Tim Bangerter made a motion to approve the Order on Motion for Default. The motion was seconded and carried.

Colby J. Sanders: Tom Brady reported that from September 2006 to December 2007, the Respondent offered and sold securities to investors, in or from Utah, and collected \$1,549,457.00. The Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investors. The investors lost \$1,510,532.00 in principal alone.

The Respondent will cease and desist from violating the Utah Uniform Securities Act, be barred from associating with any broker-dealer or investment adviser licensed in Utah, barred from acting as an agent for any issuer soliciting investor funds in Utah, pay a \$30,000.00 fine, and cooperate with the Division in future investigations.

Action: Brent Baker made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Fruitland Development Group, LLC. And Derrick S. Betts: Tom Brady reported that between November 2006 and January 2007, the Respondents solicited investments in Fruitland Development Group, LLC totaling \$800,000.00 from at least five investors. The Respondents told investors their money would be used to purchase a subdivision in Duchesne County, Utah, which would later be developed and sold. The Respondents told investors they would become a member of Fruitland and received their principal investment within a few months, in addition to a return on their funds in anywhere from 60 days to two years. The investors lost all of their money. The Respondents made misstatements of material facts and by omitting to state material facts in connection with the offer and sale of a security.

The Respondents will cease and desist from violating the Utah Uniform Securities Act, Mr. Betts will be barred from the securities industry in Utah, cooperate with the Division in any future investigations, and agrees to pay restitution if ordered in the criminal case.

Action: Laura Polacheck made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Fortius Group, LLC, Fortius Fund, LLC, Powder Ridge Land, LLC, Powder Ridge Developer I, Ltd., Powder Ridge Management, Inc., Chamonix Capital I, LLC, Amsterdam Capital XII, LLC, and David Ryan Barlow: Tom Brady reported that on May 9, 2012, the Division issued an Amended Order to Show Cause against the Respondents. The Notice of Agency Action accompanying the Order to Show Cause set a hearing for July 11, 2012. The hearing was continued to September 5, 2012 at 10:00 A.M. At the hearing, the Division was represented by the Office of Attorney General and Division staff. The Respondents failed to appear nor did any party or counsel appear on the Respondent's behalf. The Division moved for Entry of a Default Judgment.

The Respondents failed to disclose material information which was necessary in order to make statements made not misleading in connection with the offer and sale of securities to investors.

The Respondents are ordered to cease and desist from engaging in any act or practice constituting a violation of any act and pay a \$377,000.00 fine.

Action: Jane Cameron made a motion to approve the Final Order by Default. The motion was seconded and carried.

Danielle L. Archuleta: Tom Brady reported that between June 2007 and August 2007, the Respondent offered and sold an investment contract in an investor and collected a total of \$300,000.00. The Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investor. The investor lost \$205,000.00 of her principal.

The Respondent is ordered to cease and desist from violating the Utah Uniform Securities Act, be barred from the securities industry in Utah, and pay a \$500.00 fine.

Action: Brent Baker made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Insane Asylum Skateboards, Inc. and David Curtis Allen: Tom Brady reported that from December 2009 and March 2011, the Respondents offered and sold stock to investors and collected at least \$47,352.00. The Respondents made material misstatements and omissions in connection with the offer of securities to the investors. The investors lost \$45,852.00 of their principal.

The Respondents will cease and desist from violating the Utah Uniform Securities Act and Mr. Allen is barred from the securities industry in Utah.

Action: Laura Polacheck made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Ronald Dean Udy: Tom Brady reported that on August 28, 2012, the Division issued a Notice of Agency Action. A response to the accompanying Order to Show Cause was due by October

2, 2012. A prehearing conference was held on October 4, 2012. At the hearing, the Division was represented by the Office of Attorney General and Division staff. The Respondent failed to file a response to the Division's Order to Show or make any effort to participate in the proceeding. The Division moved for Entry of a Default Judgment.

The Respondent directly or indirectly, failed to disclose material information that was necessary in order to make representations made not misleading, in connection with the offer and sale of securities. The Respondent also directly or indirectly, made false statements to investors in connection with the offer and sale of securities.

The Respondent is ordered to cease and desist from violating Utah Code Annotated 61-1 et seq. and pay a \$107,500.00 fine

Action: Tim Bangerter made a motion to approve the Order on Motion for Default. The motion was seconded and carried.

Maverick Mining Company, Inc. and Mark K. Bowman: Tom Brady reported that on August 3, 2012, the Division issued a Notice of Agency Action. A response to the accompanying Order to Show Cause was due by September 7, 2012. A prehearing conference was held on October 4, 2012. At the hearing, the Division was represented by the Office of Attorney General and Division staff. The Respondents failed to file a response to the Division's Order to Show or make any effort to participate in the proceeding. The Division moved for Entry of a Default Judgment.

The Respondents directly or indirectly, failed to disclose material information that was necessary in order to make representations made not misleading, in connection with the offer and sale of securities. The Respondents also directly or indirectly, made false statements to investors in connection with the offer and sale of securities.

The Respondents are ordered to cease and desist from violating Utah Code Annotated 61-1 et seq. and pay a \$156,250.00 fine.

Action: Laura Polacheck made a motion to approve the Order on Motion for Default. The motion was seconded and carried.

Joshua Lehi Trent dba, Acta Non Verba, LLC. Tom Brady reported that in or about February 2010, the Respondent offered and sold securities to investors and collected at least \$20,000.00. The Respondent made material misstatements and omissions in connection with the offer and sale of securities to investors. The investors lost all \$20,000.00 of their investment funds.

The Respondent will cease and desist from violating the Utah Uniform Securities Act, be barred from the securities industry in Utah, cooperate in any future investigations and/or prosecutions relevant to this matter, and pay a \$25,000.00 fine.

Action: Erik Christiansen and Brent Baker recused themselves. Laura Polacheck made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

The McKinley Fund, LLC, Altamont Global Partners, LLC, Philip Leon, and John G. Wilkins: Benjamin Johnson reported that on August 15, 2012, the Division issued a Notice of Agency Action. A response to the accompanying Order to Show Cause was due by September 19, 2012. A prehearing conference was held on October 4, 2012. At the hearing, the Division

was represented by the Office of Attorney General and Division staff. The Respondents failed to file a response to the Division's Order to Show or make any effort to participate in the proceeding. The Division moved for Entry of a Default Judgment.

The Respondents directly or indirectly, failed to disclose material information that was necessary in order to make representations made not misleading in connection with the offer and sale of securities.

The Respondents are ordered to cease and desist from violating Utah Code Annotated 61-1 et seq. and pay a \$5,000.00 fine

Action: Laura Polacheck made a motion to approve the Order on Motion for Default. The motion was seconded and carried.

VYSN Capital, LLC. And Shawn Blaine Smart: Tom Brady reported that from February 2007 to April 2007, the Respondents participated in the offer and sale of securities to at least two investors and collected no less than \$200,000.00. The investors' \$200,000.00 in principal was used by the Respondents for purposes not disclosed to the investors. The Respondents made material misstatements and omissions in connection with the offer of securities to the investors. They made untrue statements of material fact and omitted to state material facts which were necessary in order to make representations made not misleading, in connection with the offer and sale of securities. VYSN also transacted business in Utah as an agent without a license.

The Respondents will cease and desist from violating the Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state. VYSN is order to pay a \$100,000.00 fine.

Action: Brent Baker recused himself. Jane Cameron made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Scheduling of Upcoming Commission Meetings: Commissioner Christiansen spoke about scheduling upcoming meetings. They will continue to be scheduled the fourth Thursday of every other month.

Next Meeting: January 24, 2013

Laura Polacheck made a motion to adjourn the meeting. The motion was seconded and carried.

Approved: _____
Erik Christiansen, Chairman

Date: _____

Utah Division of Securities
 Education Fund Expenditure Request
 2nd and 3rd Qtr. FY 2013
 Expenses as of Jan. 15, 2013

Description	Prior Approved Balances 10/29/12	Amounts Spent By Division To 01/15/13	Remaining Balances 01/15/13	Requests For Commission Authorization 01/24/13	Total Approved Balances As of 1/24/13
Public Investor Education					
AAA Fair Credit	0.00	0.00	0.00	0.00	0.00
Jump Start Coalition	0.00	0.00	0.00	0.00	0.00
AARP Grant	0.00	0.00	0.00	0.00	0.00
Westminster College	0.00	0.00	0.00	0.00	0.00
Utah State University	0.00	0.00	0.00	0.00	0.00
Junior Achievement	0.00	0.00	0.00	0.00	0.00
Pamphlets, Books, etc.	1,457.00	0.00	1,457.00	0.00	1,457.00
TV/Radio Spots	11,726.00	0.00	11,726.00	0.00	11,726.00
Utah Securities Assoc.	0.00	0.00	0.00	0.00	0.00
WISE Financial	0.00	0.00	0.00	0.00	0.00
Miscellaneous / Presentations	<u>5,279.00</u>	<u>231.30</u>	<u>5,047.70</u>	<u>0.00</u>	<u>5,047.70</u>
SUB TOTAL	\$18,462.00	\$231.30	\$18,230.70	\$0.00	\$18,230.70
Industry Education					
Mountain West Capital Network	0.00	0.00	0.00	0.00	0.00
Wayne Brown Institute	0.00	0.00	0.00	0.00	0.00
Pamphlets, Books, etc.	0.00	0.00	0.00	0.00	0.00
Industry Outreach	83.81	0.00	83.81	0.00	83.81
Miscellaneous / Presentations	<u>1,000.00</u>	<u>0.00</u>	<u>1,000.00</u>	<u>0.00</u>	<u>1,000.00</u>
SUB TOTAL	\$1,083.81	\$0.00	\$1,083.81	\$0.00	\$1,083.81
Investigation & Litigation					
Enforcement Investigation & Litigation	30,000.00	11,828.87	18,171.13	11,828.87	30,000.00
Licensing Investigation & Litigation	30,000.00	20,429.94	9,570.06	20,429.94	30,000.00
Registration Examination Expense	5,000.00	873.95	4,126.05	873.95	5,000.00
Expert Witnesses	20,000.00	10,857.75	9,142.25	10,857.75	20,000.00
Training	5,000.00	43.20	4,956.80	43.20	5,000.00
Computers	3,512.62	1,136.00	2,376.62	0.00	2,376.62
Software	917.80	10.67	907.13	0.00	907.13
Cellular Charges	3,000.00	1,754.32	1,245.68	1,754.32	3,000.00
Office Equipment & Supplies	6,000.00	3,232.93	2,767.07	3,232.93	6,000.00
Subscriptions & Publications	2,000.00	840.95	1,159.05	840.95	2,000.00
Remodel and Furniture	11,173.92	0.00	11,173.92	0.00	11,173.92
Enforcement Database Maintenance	7,000.00	0.00	7,000.00	0.00	7,000.00
Employees/Law Clerk/Transcriptionis	<u>25,000.00</u>	<u>14,437.92</u>	<u>10,562.08</u>	<u>14,437.92</u>	<u>25,000.00</u>
SUB TOTAL	\$148,604.34	\$65,446.50	\$83,157.84	\$64,299.83	\$147,457.67
GRAND TOTAL	\$168,150.15	\$65,677.80	\$102,472.35	\$64,299.83	\$166,772.18

Education Fund Balance as of 1/09/2013: \$326,041.23

Approval:

_____	_____	_____	_____
Division Director	Date	Commission Chair	Date
_____	_____	_____	_____
Executive Director	Date		



STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

**Application for Grant from the Securities Investor
Education and Training Fund**

Applicant	AARP Utah
Amount Requested	\$20,000
Date	January 22, 2013

AARP Utah ("Applicant") hereby requests a grant from the Utah Division of Securities ("Division") in the amount of \$20,000 to be paid from the Securities Investor Education and Training Fund, created by Utah Code Ann. §61-1-18.7 ("Fund").

Applicant's charitable or educational mission is: AARP Utah seeks to inform and educate the public about a variety of issues to help them live their best lives possible, including a number of consumer protection issues. We have been fortunate to have the Utah Securities Division present ways to avoid becoming a fraud victim as part of our "Staying Sharp/Fraud Forums" we hold around the state. It is one of our most popular and effective programs, reaching thousands of people per year both in person and through tele-town hall meetings. Our funding for these presentations has been diminished by a change in direct mail policy by our national office, so we must now pay directly for invitations sent to members. This will increase our cost for these programs by several thousand dollars.

We value greatly the relationship we have with both the Brain Institute at the University of Utah and the Utah Securities Division. Director Keith Woodwell has been the primary presenter, adding considerable credibility to the message and helping program participants learn about the mission of the

Division to protect Utah investors. This includes not only an overview of common fraud schemes in the state, but information about how to check out an investment before actually investing in it. We are certain this information deters people from becoming victims and educates them about when to report a suspicious investment offer.

Applicant acknowledges that grants from the Fund can only be made for the purposes outlined in statute. These purposes include:

1. "education and training of Utah residents in matters concerning securities laws and investment decisions, by publications or presentations;" and
2. "education of registrants and licensees under [the Utah Uniform Securities Act], by . . . sponsorship of seminars or meetings to educate registrants and licensees as to the requirements of [the Act]." See Utah Code Ann. §61-1-18.7(5).

Applicant's activities include the following programs which meet above statutory purposes of the Fund: As described above, our Fraud Forums help Utah residents. _____

Applicant acknowledges that the requested grant can only be approved by the Division upon the concurrence of the Utah Securities Commission, created under Utah Code Ann. §61-1-18.5 ("Commission"), and the Executive Director of the Utah Department of Commerce.

The point of contact for Applicant is:

Name: Laura Polacheck

Title: Communications Director

Address: AARP Utah, 6975 Union Park Center, Suite 320, Midvale, UT 84047

Phone No.: 801-567-2643

Email: lpolacheck@aarp.org

Recipient's tax identification number is: 95-1985500

AARP Utah (Laura Polacheck)

Dated: January 22, 2013

Applicant

Questions/Requests from the Chair of the Administrative Rules Review Committee, Sen. Howard Stephenson, from the Oct. 19, 2012 committee hearing:

- What can be done to disconnect the documents relating to previous Division of Securities enforcement actions from internet searches for people who were involved in “small” or “minor” violations (those not involving fraud) that were settled through stipulations and consent orders, and where the subject of the previous action has a clean record since the time of the stipulation and consent order?
 - Particular concern for those cases dating back to the time period (2005-2008) reviewed in the Legislative Performance Audit of the Division.
 - Information regarding these people could still be accessed through a search in the Division’s Online Database, but could not be accessed through a general internet search (e.g., Google, Bing, Yahoo). Similar to court records accessible only through the courts database.

- Asked the Securities Commission to look at the fines that were imposed during this time period. If any of the fines were excessive, what remedy should be made to those who were subject to excessive fines?
 - Asked if we would need help with statutory authority to make restitution to those who were fined excessive amounts.

- In determining fine amounts in the future, should restitution and sanctions be separated into separate amounts? In this way the amount of restitution sought through an administrative fine would not be capped, but the amount of the sanction could be capped.
 - Offered help if we need statutory authority to bifurcate the fine into a restitution amount and a penalty amount.
 - Suggestion from Legislative Auditor that fine amounts be split into three categories: 1) restitution; 2) penalty; and 3) cost recovery for the Division’s investigative costs.

ADMINISTRATIVE RULES REVIEW COMMITTEE

Friday, October 19, 2012 – 1:00 p.m. – Room C445 State Capitol

STEPHENSON: Sen. Howard A. STEPHENSON: Senate Chair
LEVAR: Thad LeVar, Deputy Director, Utah Department of Commerce
CHAIR ODA: Rep. Curtis Oda, House Chair
OSTERSTOCK: Tim Osterstock, Audit Manager, Legislative Auditor General's Office

This transcription starts at 2:07:15

LEVAR: Thank you Senator. Thad LeVar, Deputy Director of the Utah Department of Commerce. You asked me to address what has been done since the legislative audit. I'll start with. . . you know this legislative audit was released in 2008. I'm happy to say that by the Summer of 2008, or by the end of 2008, we had implemented all of the recommendations of the audit except for the ones which required legislative action, which happened in 2009. Implementing those audit recommendations and changing the culture of that division has been an ongoing process that we tasked new Division Director Keith Woodwell with. So in terms of the audit recommendations, we feel they were all implemented. In terms of looking at individual cases, I can speak generally for Keith, and I apologize that Keith couldn't be here today. But I can tell you that one of the tasks he has done since the audit in addition to making the recommendations going forward, he has spent substantial time with people who have had previous cases, sitting down talking with them, trying to evaluate what the circumstances of these cases were. What should have happened. In terms of press releases, one of the immediate things we did, immediately in response to the legislative audit, we took down any press releases that were for filed but not adjudicated cases. In the past the Division had been issuing press releases when they filed a case. Not when it was concluded and adjudicated. So we immediately took down all the ones that had not been adjudicated. And there were some press releases that as Mr. Woodwell came into the Division that were even for adjudicated cases, he felt that the press releases were written somewhat inaccurately. Some had been taken down. Obviously some are still remaining. Our practice of issuing press releases obviously has changed since 2009 and we're not as active doing that anymore. But I can tell you generally Keith has spent significant time with parties who had older cases trying to delve into what happened with their cases; what was done, what was appropriate, and what wasn't. I'm not prepared to speak to any specific cases but I can tell you generally that's been a priority for the Division.

STEPHENSON: Thank you. I sent you I think about six specific instances where people who had been involved in small things that were subject to a stipulation agreement and ah, where their links are still out there. And I don't want to mention them by name because it would just add more injury to them. But I just wanted from those examples alth. it's a pretty simple thing to disconnect from internet searches those kinds of PDFs that are on your website. And I just wondered if, if there's anything that could be done in that regard. Where it's been five years now, the people are in, are practicing in the securities business. They have a clean record. And the violations were minor. They were not serious fraud. If there were any of their customers who wanted to turn in

their instruments they could do so. Some wished they hadn't because of what happened to the stock market. But, the agent ended up paying for any differential in the cost of surrender and what that the person, what that instrument actually made. If those things had been taken care of, isn't there an appropriate process by which you could remove that link?

LEVAR: Thank you for the question. I think I can answer the question with a little background. Our Securities Act does have a statutory mandate that we maintain all administrative filings and orders in a database available to the public. And historically that's been done through the online database since it was created. And I don't know what year, what year things started to be put online but it was before my time with the Department. And the way they're currently drafted, the Securities Act and the Utah Administrative Procedures Act and the Governmental Records Access and Management Act, don't give us any forum for taking records off the books. Once an order is issued its

STEPHENSON: I'm not asking to take any records off your books . . .

LEVAR: . . . certainly

STEPHENSON: But there's, there's a simple thing that can be done to disconnect the search engines from that so that if somebody wants to search that person's record they can formally enter your website and do that. As opposed to having it out there for everybody to see when they try to find their phone number or address.

LEVAR: Yes. And to date the Division of Securities database has not had that feature. It has been an open website that does not require a log in. The portal through, as you stated, the portal through the database is not the only way to access those files and records that are on the database. The policy in the past has been to make this database as easy as possible for the public to view and search and find on the premise that our message to the public is often "Check before you invest." Particularly less sophisticated, more vulnerable investors.

Now the issue of whether the database should be firewalled off and you sent me some code that could be one potential way to do that – if there's a way to firewall it off so that there's only one portal into it through the Division database where it couldn't be accessed through other internet searches. From what you sent me it looks like that's probably technologically possible. And we are certainly happy to that that issue to our Securities Commission. One of the things that happened following the legislative audit is that the statute was modified changing our Securities Advisory Board to a Securities Commission. And they're our primary stakeholder on enforcement actions. And we'd be happy to go to the Commission and vet the issue of whether that database should be walled off to internet searches so the only way to get to it is through our website and through our database. But it's not something we've done. And that's not the way the database is set up currently.

STEPHENSON: Yeah. I appreciate you being willing to take that to the Commission. I think it's a much simpler process than walling off anything to the public. I know that any

website. the link can be made such that when you go to the website you can see it. When you do a search you can't see it unless you go officially to the website searching that person's name. It's a pretty simple procedure. And I would ask that you look at that.

In fact, I would ask that you have the Commission look at -or whoever is appropriate in making this decision - look at the damages that are still being incurred by those persons who were subject to the excesses noted in the audit. And maybe even those I know that the audit didn't mention names because it didn't want to impose further harm to those individuals who were the victims of the excesses. But I think that it would be important for the agency to look at what can be done to ensure that the red letter isn't on the forehead of those persons who had minor infractions and are now doing business still in the state. And have not had complaints. And have not had violations alleged against them.

It just seems that I know that the court system doesn't have all of these court documents available on any search engine. You have to actually go into the court system to see that kind of stuff. And I think that maybe a similar thing should be had with the way these documents are available to the public.

Can you answer me when you removed some of the press releases, were those permanently destroyed or were they, I mean, taken down entirely? Because you had mentioned that it's not the practice to get rid of records. Do you know how that was done?

LEVAR: The press releases were removed from the website. They are still in our possession at the Department of Commerce in our archives so they can be accessible through a GRAMA request. But they're no longer on our website servers.

STEPHENSON: Ok. Um. I imagine there's a lot of people who are out there wondering how they're going to get their name cleared from this permanent search threat. And I imagine they could approach the agency individually. But I would ask that you look if there's a way to collectively handle this.

I would also like to ask if you would look at the fines that were imposed. And see if any of them were excessive and what remedy should be made. Because some people ended up paying in excess of \$100,000 or more in fines for what would appear to be minor infractions. Something that FINRA looking at the very same infractions imposed no fine. Or a fine of a few hundred dollars instead of a few hundred thousand dollars. I know that 2006 and '07 and '08 are a while ago. But still it . . . I would just ask that you look at that and see if there's something appropriate that should be done.

LEVAR: Yes, thank you Senator. And this goes to a question you asked previously that I don't think I answered. There was following the legislative audit, and let me find my copy of that rule . . . we did implement an administrative rule based on the FINRA guidelines for how we administer administrative fines. And the audit did find that there wasn't a codified practice of "this is what you consider". So in terms of the audit going forward, you know, the primary basis of establishing a fine amount is the

amount of investor losses. And typically we credit fines back if restitution is made to investors.

STEPHENSON: Can you give us that code, or that . . . rule number?

LEVAR: Yes. R164-31-1.

STEPHENSON: R 164-

LEVAR: R164

STEPHENSON: 164

LEVAR: -31

STEPHENSON: -31

LEVAR: -1

STEPHENSON: -1

LEVAR: Now in terms of going backward. What I can say without speaking on a case by case basis, as I said before Mr. Woodwell when he came into the Division spent several years and still does spend time when people come to him and believe that they had a case that wasn't handled properly. He's engaged in negotiations and worked with everybody who has come to him. And still is willing to do so. In terms of the other side of that issue with public access to the older records. At this point I can say we will take that to our Commission to talk about whether to maintain the database in its current form or to modify the coding somewhat in the way you've described. And we'll have that discussion with our Commission.

STEPHENSON: Thank you very much. Would you be able to explain why the last press releases shown on the website were 2009? And there's none for 2010 or 2011 shown on that page?

LEVAR: To my best recollection and I didn't research this before the meeting, I apologize on this specific issue, to my recollection when the legislative audit was happening, the immediate step we did was take down press releases for cases that had not been adjudicated. It has been the practice to issue press releases when a case was issued before it was final. We immediately took those down I think for a period of time we continued to sometimes issue press releases when cases were final and adjudicated. It appears that we continued to do that into 2009. At some point around there the Department and the Division made the decision to just not issue as many press releases. At this point and looking at that website, there may be a disconnect because we do regularly issue press releases along the lines of 'these are the top ten scams were seeing right now. We encourage investors to watch out for these top ten scams'. We issue those on a regular basis.

STEPHENSON: Good.

LEVAR: There must be some disconnect because that not, that site not showing anything since 2009. I don't know why that's not showing up there. But that's been more of the practice since 2009, is to issue general consumer alert releases.

STEPHENSON: Good. I think that's really an important function of your agency. And those alerts ought to be somewhere so that people can see them easily and not have to go from different places on the website. And they ought to be searchable too on the internet. On Google or whatever so that people can really know if their are scam offers out there that ought to be aware of.

I'm looking at your guidelines for assessment of administrative fines right now. And I'm trying to figure out what ahh, when it says they . . . I don't see just scanning through it, that there's a designation for a range? Can you help describe what that rule decided?

LEVAR: This rule establishes the factors that should be considered. Now one of the things that's happened since the legislation that went into place in 2009, this rule was written to accompany that legislation that since 2009 all fines whether they're through an adjudicated case or whether they're through a stipulation and consent order are approved by the Securities Commission. So every fine goes before the Commission before it's implemented. We did not in this rule put in fine ranges. In many of our other areas for example, DOPL has a lot of administrative rules where they say first offense for these things, or this range, second offense is this range. We have not done that in the securities arena and one reason for that is the first factor we usually look to is investor losses. And offering credit on fines for restitution back to the investors. And the amount of investor losses can range from case to case. So we haven't put a fine schedule because the category B1b: Harm to Other Persons Resulting Either Directly or Indirectly From the Violation, is where we consider those losses. And it's the same with the statute. The statute in the securities law does not set a schedule or an amount for administrative fines. There is a lot of discretion and since 2009 that discretion has been exercised by the Commission.

STEPHENSON: As we noted in the audit the district court was limited at the time and maybe still is to \$500 per infraction.

LEVAR: Yes.

STEPHENSON: This, this type of description that you have in the rule now seems to indicate that there's not dollar caps on any types of infractions. Is that correct?

LEVAR: That is correct. We have not established dollar caps. Now in the district court realm, the court can issue fines but the court can also order restitution. And in the Division, administratively we don't have authority to order someone to pay restitution. But we do have authority to impose a fine and give credit against the fine for restitution. So the smaller fines in the courts usually accompany a larger restitution order that we're not able to do administratively.

STEPHENSON: Well would it be appropriate for you then to bifurcate the fines so that you set a cap on the fine that the agency would receive or that the state would receive and the amount and not have a cap on the amount of restitution. So that you've clearly shown that there's a restitution component and a fine component.

LEVAR: At this point I can say that's another issue we can take to our Commission. Any changes to the rule now go through the Securities Commission. But we will take that to them as well.

STEPHENSON: I think that would be good to have in rule because it then the legislature and the public could know which parts of that fine were going for the punishment of what was happening. And which parts were being paid to the victims of the fraudulent person. Does that make sense? Would that... be appropriate?

LEVAR: Yes. And we do track that on fine collections. Most of our fine collections are when we document that they have paid restitution back to the victims.

STEPHENSON: OK. That. I think that would be helpful. And maybe that, too, would be good in your review of those fines that were deemed in the audit to be excessive back in, in those days that the audit refers to. That would be a good evaluation if you were to determine which components of the current fine schedule are for the fine itself and which parts are pay restitution. Which you note the court's, the district court's limit of \$500 doesn't include the restitution component. It'd be nice to have those bifurcated I think.

LEVAR: Certainly. And I can't speak to the older cases that it's a little more complicated going back. But I know that we've been, we've been open to discuss those with parties and try to work out arrangements. It's, I don't know that we could do anything by administrative rule to deal with orders that have already issued and gone out. But, we've been open to working with people and talking to them about it.

STEPHENSON: OK. Um, if you need authority in the statute let us know. Both for making restitution to those who were wrongly fined or excessively fined. And ah, also if you need statutory authority to bifurcate the fine component from the restitution component. I think we would like to know that so that we can assist with that if necessary.

LEVAR: We'll review that with our attorneys in the Attorney General's office and with the Commission.

STEPHENSON: Good. I really appreciate Mr. LeVar being here and responding to this. And he's also going to be responding to the next issue. But I think there may be questions or comments.

CHAIR ODA: OK. Are there any? I don't see any other comments from the Committee. Did you want to cover the next issue?

STEPHENSON: Yeah, sure I'd be glad to. I don't know if Mr. Osterstock had any comments.

CHAIR ODA: Yeah, let's bring ah. . . .

STEPHENSON: . . . characterize everything accurately or if you have any clarifying comments you're welcome to make them.

CHAIR ODA: Come on up Tim so we can get this on recording and everything.

OSTERSTOCK: Tim Osterstock. I'm a _____ generals office. The only point I'd like to make is when you're talking about bifurcating, they've actually divided that fine up historically into three areas. One was an actual fine. One for restitution. And the other was for cost recouperation.

_____ *unintelligible*

CHAIR ODA: Hey Tim, is your mic on?

OSTERSTOCK: Yeah, it is.

Stephenson: Is the red light on?

OSTERSTOCK: Yeah. It was those three: Its fine, restitution and then cost recovery for the Division. So you might want to let them have that third element in there.

Stephenson: So is that called "trifurcate"?

OSTERSTOCK: Whatever you want to call it. You're the boss here.

Stephenson: Yeah Ok. That's good to know.

OSTERSTOCK: That is all.

Stephenson: That would be great to know. Thank you.

OSTERSTOCK: Thank you.

CHAIR ODA: Go ahead Senator.

Stephenson: The next issue is similar to this and this is in the DOPL licensing. I became aware of the fact that even though there wasn't this kind of audit that uncovered this. That there may be a potential need for rule making related to complaints and fines issued by the division...no, by the food. . . no. Where's my. . . ? Do we, do we have the prescription . . . which item is that?

CHAIR ODA: Its not on here. Prescription is not on here.

Stephenson: OK. And ok, that's all under one subject. I'm sorry. I remember that now. Ah, so the second item of part three on the agenda is the Division of Occupational and Professional Licensing regarding pharmacy imposition of sanctions on pharmacists.

In some cases pharmacists are committing malpractice and ought to be severely punished for that. In other cases there are minor infractions such as the label of a pharmacy - for example the address being incorrect because they moved and they're using old labels. Or that kind of thing. And other kinds of more minor things. Where people have similar web searches show up that that person has basically . . . it makes it sound like they are criminals and they've been bad players in the pharmacy industry. And it really makes it difficult for them as they continue legitimately to practice and to operate. Those kinds of records still keep coming up in the searches. So it's a similar kind of question in DOPL. What happens to the red letter that is placed on a person's forehead and continues to follow them around the rest of their lives.

LEVAR: Thank you. I don't know of any specific pharmacy cases. And obviously you wouldn't want me to discuss specific cases here today.

CHAIR ODA: That, would you bring up . . .

LEVAR: Oh, am I not close enough? [adjusts microphone]. The same rule that applies in the Division of Securities also applies in DOPL. It's always applied in DOPL. It's applied in Securities since 2009. That all fines go through the board of whatever profession. So pharmacy fines all would go through the Pharmacy Board. And again, whether it's an adjudicated case, or whether it's a stipulated settlement and agreement, those still all have to be approved by the board.

In terms of publicizing, DOPL is in a different situation. Until last year, disciplinary orders for DOPL were public records but they were only available through GRAMA requests. We maintained them and if someone made a GRAMA request we would give it out. In the Spring of 2011, the Health and Human Services Interim Committee asked DOPL to appear before it. And basically they didn't pass legislation but the Committee took a motion and charged DOPL to start publicizing those more. They wanted that Committee expressed the strong desire for DOPL to start putting these orders on the web. And so DOPL instigated a process. We built a database. And since 20. . . I don't know exactly when, but sometime during 2011 that database was created at the direction of the Health and Human Services Committee. And we've maintained it since.

It goes back two or three years. We haven't gotten all historical orders up. The Committee has encouraged DOPL to continue working to put older orders up. So a database like were talking about in Securities is relatively new in DOPL. It's not the same kind of statutory mandate that it is in Securities. But it was made at the request of that Committee.

STEPHENSON: Thank you. One of the things that I'm hearing is that even though the search engine no longer is able to link to some of these things that are long past, the minutes of the agency are still out there. So that person's name comes up in the minutes of those

proceedings that resulted in the action. And is there a way to make sure that when, if people want to see the minutes they can enter the website but it shouldn't just be something that comes up with every Google search.

LEVAR: I do not know how long we maintain minutes on the website. And again, I'm not a web developer. But you sent me some code that you felt like can make those changes. We're happy to take that code to our Department of Technology Services and Utah Interactive who runs our website. And again, with DOPL it's not a matter of vetting it with one board. You know we have 60 different boards in DOPL that all have an interest in how their minutes and their orders are publicized on the web. But that's certainly an issue that we can take to those boards. It's a little longer process to take to 60 boards. But we sometimes do that when we have an issue that comes from the legislature. And we will do that.

STEPHENSON: Good. I appreciate that. A rule for how long they're out there. I think it's important that the minutes be searchable even from just Google search. But at some point it seems that they ought to have to enter the website to see distant kinds of things that have been in a person's long past and are no longer a problem.

That's my presentation. I really appreciate Mr. LeVar and his knowledge base first of all. And his professionalism in dealing with me on this issue and answering these questions.

LEVAR: Thank you.

CHAIR ODA: Thank you Senator. Thank you Mr. LeVar for your informative information.

Transcription ends at 2:33:40

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

IN THE MATTER OF:

CAPSTONE EQUITY CAPITAL, L.L.C.
ROBERT R. TY
MICHAEL L. BLOXHAM
JONATHON R. WATTS

Respondents.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD -08-0098
Docket No. SD -08-0099
Docket No. SD -08-0100
Docket No. SD -08-0101

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Thomas Brady, and Jonathon R. Watts, hereby stipulate and agree as follows:

1. Capstone Equity Capital, L.L.C. (Capstone), Robert R. Ty (Ty), Michael L. Bloxham (Bloxham), and Jonathon R. Watts (Watts) were the subjects of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, as amended (the Act).
2. In connection with that investigation, the Division issued an Order to Show Cause against Respondents on December 4, 2008, alleging securities fraud, sale of an unregistered security,

and sale by an unlicensed agent. Criminal charges were also filed against Watts,¹ Ty,² and Bloxham³ in connection with the investigation.

3. On January 23, 2009, attorney J. Michael Coombs, on behalf of respondents Capstone, Bloxham, and Watts, filed a motion to stay proceedings of the administrative action in light of a forthcoming criminal referral. The motion was never ruled on.
4. Respondent Watts is currently represented by attorney Kimberly Trupiano and is satisfied with this representation.
5. Respondent Watts waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Watts also acknowledges that this stipulation and consent order does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
7. Respondent Watts admits the jurisdiction of the Division over him and over the subject matter of this action.

¹*State of Utah v. Jonathon R. Watts*, Case No. 091910085, Third Judicial District Court of Utah (2009). Watts later pleaded guilty to one count of securities fraud under § 61-1-1(2) of the Act, a second degree felony, one count of attempted theft, a third degree felony, and one count of pattern of unlawful activity, a second degree felony.

²*State of Utah v. Robert Razo Ty*, Case No. 091910086, Third Judicial District Court of Utah (2009). On December 29, 2009, a warrant was issued against Ty. He is believed to have fled the country to the Philippines.

³*State of Utah v. Michael Lynn Bloxham*, Case No. 091910084, Third Judicial District Court of Utah (2009). Bloxham later pleaded guilty to three counts of attempted securities fraud, a third degree felony, and two counts of attempted theft, a third degree felony.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENT

8. Watts is a resident of Salt Lake County, Utah. During the time period described herein, Watts was licensed in Utah by the Utah Division of Real Estate as a mortgage lender agent. Additionally, he served as a member and registered agent of Capstone.⁴

GENERAL ALLEGATIONS

9. From approximately November 2006 through January 2008, Respondents offered and sold an investment opportunity to at least ten Utah investors, who invested a total of at least \$974,000. A detailed narrative of the investments made by three of the ten Utah investors is included below.
10. The Respondents in general told investors their money would be invested in property in Cedar City, Utah. More specifically, some investors were told Capstone planned on developing property (a condominium project) in Cedar City, Utah, and others were told Capstone would purchase and sell property in Cedar City, Utah for a profit.
11. The Respondents gave investors documents entitled "Trust Deed Note" in return for their investments; however, the notes were unrecorded and failed to give investors any interest in real property. The terms of the notes promised various rates of interest (typically 3% per month) for a term of anywhere from thirty days to one year.

⁴ Capstone was a Utah limited liability company that registered with the Utah Division of Corporations on November 16, 2005. As of February 26, 2007, its status changed to expired. During its existence, Watts served as a member and registered agent, and Bloxham served as a member.

12. The total estimated losses experienced by the ten Utah investors are \$789,663.

Investors KN, HN, XN, and HTN

13. Investor KN and her ex-husband, HN, sold their home in Salt Lake County, Utah, in October 2006. KN and HN planned on investing the money from the sale of their home with their realtor for a real estate investment.

14. In October 2006, at the closing on KN and HN's home, the purchaser's real estate agent, Ty, told KN and HN about an investment opportunity in Capstone.

15. Ty told KN and HN the following regarding the Capstone investment opportunity:

- a. An investment in Capstone would provide KN and HN with a greater return than investing their money with their realtor;
- b. KN and HN would receive interest of 3% per thirty-day increment;
- c. The investment was guaranteed; and
- d. Ty's mother, father, and sister had invested in Capstone and were receiving monthly interest payments.

16. In November 2006, at Capstone's office in Salt Lake County, Ty introduced KN to Watts, a representative of Capstone.

17. Watts told KN the following regarding the investment opportunity in Capstone:

- a. Capstone needed money to buy land for a development project in Cedar City, Utah;
- b. Once the land was purchased, Capstone would refinance the land and take out equity

to repay KN and KN's family;

- c. KN and KN's family would receive interest of 3% every thirty days; and
 - d. The investments were short-term.
18. On or about November 2006, KN introduced her mother (XN), sister (HTN) and HN to Watts and the investment opportunity in Capstone.
19. Between November 2006 and March 2007, KN, HN, XN, and HTN (the family) made the following investments in Capstone:

<u>Date</u>	<u>Amount</u>	<u>Method</u>
11/30/06	\$120,000	Cashier's check from XN made payable to Capstone
12/07/06	80,000	Cashier's check from XN made payable to Capstone
12/07/06	90,000	Cashier's check from KN made payable to Capstone
12/13/06	80,000	Official check from XN made payable to Capstone
02/09/07	140,000	Personal check from HN made payable to Capstone
03/30/07	140,000	Personal check from HTN made payable to Capstone
Total =	<u>\$650,000</u>	

20. A large portion of the funds invested came from equity lines of credit that Ty encouraged the family to draw upon.
21. In exchange for their investments, the family received the following five documents entitled "Trust Deed Note" (the original notes) from Capstone, all of which appear to have been

signed by Watts. with the exception of the last note in March 2007, which was pre-printed with Bloxham's signature:

<u>Date</u>	<u>Principal</u>	<u>Lender</u>	<u>Terms</u>
11/30/06	\$120,000	XN	3% per 30 days, Matured on 01/15/07
12/07/06	170,000	XN	3% per 30 days. Matured on 02/08/07
12/14/06	80,000	XN	3% per 30 days. Matured on 02/12/07
02/09/07	140,000	XN	3% per 30 days, Matured on 05/04/07
04/01/07	650,000 ⁵	K2	3% per 30 days, Matured on 12/15/07

22. With the exception of the last note from April 2007, all of the notes were made payable to XN at the request of the family.
23. The March 2007 note was made payable to K2 Investment Group, LLC. On Bloxham's advice, KN, HTN, and XN registered K2 Investment Group in March 2007 as a Utah limited liability company, as a place to hold the family's investments.
24. Using the "first in first out" accounting approach, bank records reveal that the Respondents used some of the family's investment funds for things other than purchasing the property in Cedar City.
25. Bloxham and Watts were the only two individuals with signature authority on Capstone's bank account.

⁵ The \$650,000 includes the principal investments for the 11/30/06, 12/07/06, and 12/13/06 notes, plus HTN's \$140,000 investment on 03/30/07.

26. Between December 2006 and April 2008, the family received a total of \$122,166.26 in interest payments from Capstone, Paradigm Lending Solutions, or Bloxham. The payments came in the form of checks made payable to KN, XN, or K2 Investment Group.
27. The following three interest payments from Capstone to K2 Investment Group were returned for "insufficient funds": an August 8, 2007 check in the amount of \$25,000 signed by Watts; an August 24, 2007 check in the amount of \$10,000 signed by Bloxham; and an April 5, 2008 check for \$3,000 signed by Bloxham.
28. When a "Trust Deed Note" matured, KN (and often other family members) went to Capstone's office seeking payment. Each time, KN and her family were told by Watts, or later by Bloxham, that the development in Cedar City had been delayed and Capstone needed more time.
29. Bloxham gave the family the following new documents entitled "Trust Deed Note" (roll-over notes), promising to pay the family the remaining balance on their original notes:

<u>Date</u>	<u>Principal</u>	<u>Lender</u>	<u>Terms</u>
01/01/07	\$120,000	XN	3% per 30 days. Matured 03/15/07
03/30/07	\$10,000	K2	\$110,000 for 30 days. Matured 07/01/07
05/03/07	140,000	K2	\$14,500 per 60 days. Matured 06/01/07
02/20/08	660,000	K2	No interest, Matured 05/20/08

30. Each time Bloxham gave the family a roll-over note, Bloxham told them he needed more

money to extend the purchase contract for the Cedar City development until he could get permanent financing.

31. Despite their demands, KN, HN, XN, and HTN, have received no additional payments of principal or interest from any of the Respondents.
32. The Respondents still owe KN, HN, XN, and HTN, a total of \$650,000 in principal alone.

Investor LT

33. On or about June 6, 2007, LT met with Bloxham, at Bloxham's office in Salt Lake County, Utah, to discuss an investment opportunity in Capstone.
34. Bloxham told LT the following about the investment opportunity:
 - a. LT's funds would be used to purchase real estate, which would later be sold at a profit;
 - b. Others had invested in Capstone and had no problems with their investments;
 - c. LT would receive interest of 1.5% per thirty-day period,
 - d. A trust deed note would be recorded in LT's name against the purchased property;
and
 - e. LT would receive principal plus interest in one year.
35. On or about June 7, 2007, at Bloxham's office, LT invested in Capstone by handing Bloxham a cashier's check for \$50,000, made payable to Capstone Equity. LT obtained the \$50,000 from an inheritance.

36. In return for his investment, LT received a document entitled "Trust Deed Note" from Capstone; however, the note was unrecorded and failed to give LT any interest in real property. The note was dated June 6, 2007, promised interest of 1.5% per thirty-day period (18% annually), and made the balance due on June 6, 2008.
37. Using the "first in first out" accounting approach, bank records reveal that the Respondents used some of LT's money for things other than the purchase of real estate. For example, using LT's funds, the Respondents paid two different investors a total of \$30,300 in interest.
38. Between July 2007 and February 2008, LT received a total of \$6,000 in interest payments from Capstone and Paradigm Lending Solutions. The payments came in the form of checks made payable to LT.
39. After payments stopped, LT contacted Bloxham to request a return of his investment. Bloxham told LT that Bloxham would work on getting LT's money as soon as possible.
40. Despite his demands, LT has received no additional payments of principal or interest from the Respondents.
41. The Respondents owe LT \$50,000 in principal alone.

Investors LV and JV

42. On or about June 5, 2007, in Salt Lake County, Ty told LV and JV, husband and wife, about an investment opportunity in Capstone.
43. Ty told LV and JV the following about the investment opportunity:

- a. LV and JV could make a return of 3% on their invested funds;
 - b. Their money would be used to “flip” a real estate project in Cedar City, Utah;
 - c. There were fifteen other investors in the project;
 - d. Ty’s wife, sister, and his parents had all invested in the project;
 - e. Ty invested \$350,000 of his own money in the project;
 - f. Ty was receiving interest payments of \$9,000 per month; and
 - g. Ty guaranteed that Ty would “take care” of their investment.
44. According to LV and JV, they invested a total of \$140,000 in Capstone between July 2007 and February 2008, using funds obtained from a home equity loan. The funds were invested via cash, personal checks, and cashier’s checks.
45. The bank records for Capstone and Paradigm Lending Solutions reflect a total of \$95,000 in deposits that correspond to LV and JV’s investments.
46. The statements that Capstone and Paradigm Lending Solutions gave to LV and JV regarding their investments reflect a total investment of \$115,000.
47. In return for their investments, LV and JV received the following documents entitled “Trust Deed Note” from Capstone and/or Paradigm Lending Solutions, all of which appear to have been signed by Bloxham:

<u>Date</u>	<u>Principal</u>	<u>Lender</u>	<u>Terms</u>
07/11/07	\$60,000	JV	3% per 30 days. Matured on 09/11/07

07/27/07	5,000	LV	3% per 30 days, Matured on 10/31/07
07/31/07	25,000	LV	3% per 30 days, Matured on 10/31/07
08/01/07	10,000	LV	3% per 30 days, Matured on 09/01/07
08/16/07	10,000	LV	3% per 30 days, Matured on 11/28/07
01/14/08	10,000	LV	3% per 30 days, Matured on 03/15/08
Total =	<u>\$120,000</u>		

48. Between August 2007 and February 2008, LV and JV received a total of \$44,500 in interest payments from Capstone. The payments came in the form of checks made payable to LV.
49. On or about February 25, 2008, Bloxham combined all of LV and JV's investments into one document entitled "Trust Deed Note" (roll-over note) promising to pay LV principal of \$144,283.81, at the rate of 3% per 30-day period, with a maturity date of May 25, 2008.
50. Despite repeated demands, LV and JV received no additional payments of principal or interest from the Respondents.
51. The Respondents owe LV and JV a total of approximately \$115,000 in principal alone.

SECURITIES FRAUD UNDER § 61-1-1(2) OF THE ACT

52. The Division incorporates and re-alleges Paragraphs 1 – 51.
53. In connection with the offer and sale of a security to the investors, Watts directly or indirectly, made false statements, including but not limited to, the following:
 - a. Watts told KN, HN, XN, and HTN their money would be used to purchase property

in Cedar City, Utah, when in fact, the "first in first out" accounting approach revealed that Respondents used some of the funds for things other than purchasing property in Cedar City; and

- b. Watts and Ty told KN, HN, XN, and HTN that the investment was short-term, when in fact, the Respondents were having difficulty closing on the loan for the property and meeting this short-term commitment.
54. In connection with the offer and sale of a security, Watts directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations not misleading:
- a. LV and JV were not told that a prior investor initiated a civil suit against Capstone, Bloxham, and Watts on December 19, 2007 to recover funds invested in Capstone;
 - b. Using the "first in first out" accounting approach, some of the funds invested were used for interest payments to investors, miscellaneous living expenses, and other expenses not associated with developing or purchasing property in Cedar City, Utah;
 - c. None of the documents entitled "Trust Deed Note" were recorded with the county recorder's office, meaning the notes were unsecured; and
 - d. Some or all of the information typically provided in an offering circular or prospectus regarding Capstone, such as:
 - i. Capstone's business and operating history;

- ii. The principals' experience with buying, developing, and selling real estate;
- iii. Capstone's financial statements;
- iv. The market for Capstone's service(s);
- v. The nature of the competition for the service(s);
- vi. Capstone's current capitalization;
- vii. The track record of Capstone to other investors;
- viii. The number of other investors;
- ix. The minimum capitalization needed to participate in the investment;
- x. The disposition of any investments received if the minimum capitalization were not achieved;
- xi. Discussion of pertinent suitability factors for the investment;
- xii. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment;
- xiii. Agent commissions or compensation for selling the investment;
- xiv. Whether the investment is a registered security or exempt from registration;
and
- xv. Whether the person selling the investment is licensed.

SALE OF UNREGISTERED SECURITIES UNDER §61-1-7 OF THE ACT

55. The Division incorporates and re-alleges Paragraphs 1 – 51.

56. The documents entitled "Trust Deed Note" (promissory notes) offered and sold by the Respondents are securities under § 61-1-13 of the Act.
56. The securities were offered and sold in this state.
57. The securities offered and sold by the Respondents were not registered under the Act, exempt pursuant to § 61-1-14 of the Act, or notice filed pursuant to § 61-1-15.5 of the Act.
58. Based upon the foregoing, Watts violated § 61-1-7 of the Act.

SALE BY AN UNLICENSED AGENT UNDER § 61-1-3 OF THE ACT

57. The Division incorporates and re-alleges Paragraphs 1 – 51.
58. Respondent Watts offered or sold securities in Utah.
59. When offering and selling these securities on behalf of Capstone, Watts was acting as an agent of an issuer.
60. Watts has never been licensed to sell securities in Utah as an agent of this issuer, or any other issuer.
61. Based on the above information, Watts violated § 61-1-3(1) of the Act.

II. THE DIVISION'S CONCLUSIONS OF LAW

62. Based on the Division's investigative findings, the Division concludes that:
 - a. The investment opportunities offered and sold by Watts are securities under § 61-1-13 of the Act:
 - b. Watts violated § 61-1-1(2) of the Act by misstating and omitting to state material

facts in connection with the offer and sale of a security;

- c. Watts violated § 61-1-7 of the Act by selling an unregistered security; and
- d. Watts violated § 61-1-3(1) of the Act by acting as an agent of an issuer without a securities license.

III. REMEDIAL ACTIONS/SANCTIONS

- 63. Watts admits the Division's findings and conclusions and consents to the sanctions below being imposed by the Division.
- 64. Watts represents that any information he provided to the Division as part of the Division's investigation of this matter is accurate.
- 65. Watts agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.
- 66. Pursuant to Utah Code Ann. § 61-1-20(1)(f), and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, the Division imposes a fine of \$20,000 with the following provisions:
 - a. The \$20,000 fine will be held in abeyance contingent on no securities laws violations throughout the duration of Watts' probationary period set forth in *State of Utah v. Jonathon Watts*, Case No. 091910085, Third Judicial District Court of Utah (2009).
 - b. If Watts materially violates any of the terms of this Stipulation and Consent Order within the abeyance period following the entry of the Order, after notice and

opportunity to be heard before an administrative officer, the entire fine shall become immediately due.

67. Watts agrees that he will be barred from (i) associating⁶ with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.
68. Watts agrees to cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions relevant to the matter herein.
69. Watts agrees to pay restitution as ordered in the criminal case, *State of Utah v. Jonathon Watts*, Case No. 091910085, Third Judicial District Court of Utah (2009).

IV. FINAL RESOLUTION

70. Watts acknowledges that this Stipulation and Consent Order, upon approval by the Securities Commission, shall be the final compromise and settlement of this matter.
71. Watts further acknowledges that if the Securities Commission does not accept the terms of the Stipulation and Consent Order, it shall be deemed null and void and without any force or effect whatsoever.
72. Watts acknowledges that the Stipulation and Consent Order does not affect any civil or

⁶“Associating” includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. “Associating” does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationships or business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah.

arbitration causes of action that third parties may have against him rising in whole or in part from his actions, and that the Stipulation and Consent Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.

73. Watts acknowledges that a violation of this Stipulation and Consent Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.
74. The Stipulation and Consent 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 the Stipulation and Consent Order in any way.

Utah Division of Securities

Date: 11/9/12

By: Thomas A. Brady
Thomas A. Brady
Director of Enforcement

Approved:

D. Scott Davis
D. Scott Davis
Assistant Attorney General
J.S.

Respondent Watts

Date: 10/25/12

By: Jonathon R. Watts
Jonathon R. Watts

Approved:

Kimberly J. Trupiano
Kimberly J. Trupiano
Attorney for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Watts cease and desist from violating the Utah Uniform Securities Act.
3. Watts pay a fine of \$20,000. The fine will be waived contingent on no securities laws violations during the abeyance period.
4. Watts is permanently barred from the securities industry.
5. Watts cooperate with the Division in any future investigations.
6. Watts pay restitution as ordered in the criminal case, *State of Utah v. Jonathon Watts*, Case No. 091910085, Third Judicial District Court of Utah (2009).

BY THE UTAH SECURITIES COMMISSION:

DATED this ____ day of _____, 2012.

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Mailing

I certify that on the _____ day of _____, 2012, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Jonathon R. Watts
c/o Attorney Kimberly J. Trupiano
5872 S. 900 E., Ste. 260
Salt Lake City, UT 84121

Certified Mailing # _____

Executive Secretary

Kimberly J. Trupiano, Esq.
Member of the Utah and
Federal Bar Associations

TRUPIANO LAW, PC
A PROFESSIONAL LAW CORPORATION

RECEIVED

OCT 31 2012

Utah Department of Commerce
Division of Securities

October 29, 2012

Ann Skaggs
D. Scott Davis
Utah Division of Securities
160 East Broadway (300 South), # 2
P.O. Box 146760
Salt Lake City, UT 84111

SENT VIA US POSTAL SERVICE
AND EMAIL

Defendant: Jonathon WATTS
Case: Case No. SD-08-0101
Re: Stipulated Consent and Order

Dear Ms. Skaggs and Scott Davis:

Enclosed please find the signed Stipulated Consent and Order for the above referenced case.

If you have any questions, please feel free to contact our office.

Sincerely,



Lee Petersen

Paralegal to Kimberly Trupiano

lp

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

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

IN THE MATTER OF:

CRAIG TANNER DALY,
JOSHUA CARL JOHNSON,

Respondents.

STIPULATION AND CONSENT
ORDER

Docket No. SD -12-0017
Docket No. SD -12-0018

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Thomas Brady, and Craig Tanner Daly, and Joshua Carl Johnson (Respondents) hereby stipulate and agree as follows:

1. Respondents were the subject of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. In connection with that investigation, the Division issued an Order to Show Cause against Respondents on February 17, 2012, alleging securities fraud and unlicensed activity.
3. Respondents waive any right to a hearing to challenge the Division's evidence and

present evidence on their behalf. Respondents understand that by waiving a hearing, they are waiving the requirement that the Division prove the allegations against them by a preponderance of evidence, waiving their right to confront and cross-examine witnesses who may testify against them, to call witnesses on their own behalf, and any and all rights to appeal the findings, conclusions and sanctions set forth in this Stipulation and Consent Order.

4. Respondents are represented by attorney Justin R. Elswick of Heideman, McKay, Heugly, and Olsen and are satisfied with the representation they have received.
5. Respondents acknowledge that this Stipulation and Consent Order does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
6. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

7. Craig Tanner Daly (Daly) was, at all relevant times, a resident of the State of Utah. Daly has never been licensed in the securities industry in any capacity.
8. Joshua Carl Johnson (Johnson) was, at all relevant times, a resident of the State of Utah. Johnson has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

9. From July 2010 to September 2010, Respondents offered and sold investment contracts to an investor, in or from Utah, and collected at least \$165,000.
10. Investment contracts are securities under the Act.
11. Respondents made material omissions in connection with the offer and sale of securities to the investor below.
12. Investor lost \$160,800 of his principal.

INVESTOR V.C.

13. In July 2010, V.C. saw an ad on the internet from Freedom Wealth Group, LLC (FWG)¹ offering to teach investors how to FOREX trade. The ad claimed to reduce the amount of risk in FOREX trading and listed Daly as the contact.
14. V.C. contacted Daly via telephone for more information. During the conversation, Daly made the following statements about an investment in FWG:
 - a. FWG taught investors how to FOREX trade their own money;
 - b. FWG taught investors how to use the daily ONIT trade; and
 - c. The program package costs \$5,000.

¹ FWG was a limited liability company that registered with the Nevada Secretary of State's office on May 21, 2008. Jessica L. Jones, Kevin W. Jones, Matthew L. Poll, and Epicenter Trading, Inc. were listed as members. FWG registered with the Utah Division of Corporations as a foreign entity on May 11, 2011. Its status, as of June 11, 2012, is listed as delinquent. FWG has never been licensed with the Division.

15. On August 3, 2010, Daly emailed V.C. more information about the ONIT trade. In the email, Daly gave an example of one account that had earned a 225% return. Daly also stated that FWG was now "56 for 56" in successful trades on the account.
16. In an email response, V.C. asked Daly how FWG was able to make such successful trades.
17. On August 3, 2010, Daly responded with another email making the following statements:
 - a. There is a steep learning curve with FOREX trading;
 - b. Daly would never want V.C. to learn the lessons of trading with his principal;
 - c. Daly would personally do all of V.C.'s trading with short thirty-day terms in case V.C. needed his principal back;
 - d. It would be easy to return principal plus dividends each month; and
 - e. He could have V.C.'s money back with a few days' notice.
18. In another email response, V.C. told Daly that he wanted to put his money in a safe and conservative investment.
19. On August 3, 2010, Daly responded with a third email making the following statements:
 - a. Daly had managed other investments before and this would not be anything new;
and
 - b. He would try to place parameters and limits on himself as the trader in case of

initial losses. in which case Daly would pull out the funds. Daly claimed, however, that he had never had to do this.

20. On August 4, 2010, Daly sent V.C. a follow-up email stating that his example of the trade that gained 225% was due to him leveraging double what he normally leveraged. Daly is more conservative and consistent, resulting in smaller gains.
21. Shortly following the email exchange, Daly and V.C. spoke via telephone. V.C. indicated some reluctance in investing in FWG.
22. Daly then stated the following:
 - a. He was a member of the Church of Jesus Christ of Latter-day Saints (LDS);
 - b. He was a descendant of LDS apostle Bruce R. McConkie; and
 - c. He came from a long line of strong LDS heritage.
23. On or about August 10, 2010, Daly and V.C. met in Salt Lake County, Utah and signed a document titled *Investor & Advisor Agreement* to invest \$50,000 with Daly. The agreement states the following:
 - a. Daly is the "Advisor;"
 - b. Daly will give his best efforts to earn a 5% monthly return for V.C.;
 - c. Projected returns are goals and not a guarantee;
 - d. The length of the investment is two months, after which, V.C. can cancel the

agreement at any time:

- e. The agreement may be null and void after an investor loss of 25% of principal and the remaining principal will be returned to the investor; and
 - f. There are inherent risks in trading.
24. Based on Daly's statements, V.C. invested \$115,000 with Daly. On August 11, 2010, V.C. wired \$50,000 to Daly's account. Daly transferred \$48,000 of the funds to a FOREX trading account, while Daly retained \$2,000.
 25. On September 16, 2010, V.C. wired \$65,000 to Daly's account. Daly transferred \$64,000 of the funds to a FOREX trading account, while Daly retained \$1,000.
 26. V.C. has received approximately \$4,200 from Daly but is still owed \$110,800 in principal alone.
 27. Shortly after V.C.'s initial investment, V.C. wanted to invest more funds, and Daly referred V.C. to Johnson.
 28. Daly and Johnson met with V.C. to discuss another investment opportunity in FWG. Daly told V.C. that Daly and Johnson work together and discuss whether trades will be successful before trading.
 29. Johnson promised V.C. a return of 10% monthly or 120% per annum.
 30. Johnson told V.C. that the investment funds would be used for FOREX trading, similar to

V.C.'s previous investment with Daly.

31. Based on Johnson and Daly's statements, V.C. invested \$50,000 with Johnson. On August 26, 2010, V.C. wired \$50,000 to Johnson's account. Johnson transferred \$48,000 of the funds to a FOREX trading account, while Johnson retained \$2,000.
32. V.C. has not received any payments from Johnson and is still owed \$50,000 in principal alone.
33. In October 2010, V.C. met with Daly and Johnson. Daly and Johnson told V.C. that the investment was going really well.
34. On January 7, 2011, V.C. met with Daly and Johnson. Daly and Johnson told V.C. that FWG incurred some losses, the "buffer zone" was gone, and FWG could "go under."
35. On January 31, 2011, V.C. received an email from Daly stating that he and Johnson had closed the doors to their office due to losses.

SECURITIES FRAUD UNDER § 61-1-1 OF THE ACT

36. The Division incorporates and re-alleges Paragraphs 1-35.
37. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
38. In connection with the offer and sale of securities to the investor, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the

following, which was necessary in order to make statements made not misleading:

- a. Daly would retain \$2,000 of V.C.'s \$50,000 investment funds;
- b. Daly would retain \$1,000 of V.C.'s \$65,000 investment funds;
- c. Johnson would retain \$2,000 of V.C.'s \$50,000 investment funds;
- d. Some or all of the information typically provided in an offering circular or prospectus regarding FWG, Daly, and Johnson such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. The number of investors;
 - iv. Suitability factors for the investment;
 - v. Whether the investment was a registered security or exempt from registration; and
 - vi. Whether Respondents were licensed to sell securities.

UNLICENSED ACTIVITY UNDER § 61-1-3(3) OF THE ACT

39. The Division incorporates and re-alleges paragraphs 1 through 35.
40. Respondents acted as investment advisers in the offer and/or sale of securities in Utah.
41. Respondents have not been licensed in the securities industry in any capacity.
42. Respondents failed to meet the exemptions from licensure found in § 61-1-3(3)(b)-(c) of

the Act.

43. Daly received compensation of \$3,000 in the offer and/or sale of securities in Utah.
44. Johnson received compensation of \$2,000 in the offer and/or sale of securities in Utah.
45. Accordingly, each offer or sale of securities by Respondents violated § 61-1-3(3) of the Act.
46. Based on the above information, Respondents violated § 61-1-3(3) of the Act.

II. THE DIVISION'S CONCLUSIONS OF LAW

47. Based on the Division's investigative findings, the Division concludes that:
 - a. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act;
 - b. Respondents violated § 61-1-1(2) of the Act by omitting to state material facts in connection with the offer and sale of securities, disclosure of which were necessary in order to make representations made not misleading.
 - c. Respondents violated § 61-1-3(3) of the Act by transacting business in Utah as investment advisers without licenses and without qualifying for exemptions from licensure, as provided in § 61-1-3(3) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

48. Respondents neither admit nor deny the Division's findings of fact and conclusions of

law and consent to the sanctions below being imposed by the Division.

49. Respondents agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.
50. Respondents agree that they will be barred from (i) associating² with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.
51. Respondents agree to cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions relevant to the matter herein.
52. Pursuant to § 61-1-20(1)(f) of the Act and in consideration of the guidelines set forth in Utah Administrative Code Rule R164-31-1, the Division imposes a fine of \$25,900 against Daly, due in full within thirty-six months of the entry of the Stipulation and Consent Order, and a fine of \$11,616 against Johnson, due in full within twenty-four months of the entry of the Stipulation and Consent Order. If the Division finds that Daly

²“Associating” includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. “Associating” does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationship or business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah.

or Johnson materially violates any term of this Stipulation and Consent Order, thirty days after notice and an opportunity to be heard before an administrative officer solely as to the issue of a material violation, Respondents consent to a judgment ordering the entire fine immediately due and payable.

IV. FINAL RESOLUTION

53. Respondents acknowledge that this Stipulation and Consent Order, upon approval by the Securities Commission, shall be the final compromise and settlement of this matter.
54. Respondents further acknowledge that if the Securities Commission does not accept the terms of the Stipulation and Consent Order, it shall be deemed null and void and without any force or effect whatsoever.
55. Respondents acknowledge that the Stipulation and Consent Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Stipulation and Consent Order does not affect any criminal causes of action that may arise as a result of their conduct referenced herein.
56. The Stipulation and Consent 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 the Stipulation and Consent Order in any way.

Utah Division of Securities:

Date: 7/11/12

By: Thomas A. Brady
Thomas A. Brady
Director of Enforcement

Respondent Daly:

Date: July 5th 2012

By: Craig Daly
Craig Tanner Daly

Approved:

D. Scott Davis
D. Scott Davis
Assistant Attorney General
A.S.

Respondent Johnson: July 6th 2012

Date: July 6th 2012

By: Josh C Johnson
Joshua Carl Johnson

Approved:

Justin R. Elswick
Justin R. Elswick
Attorney for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondents cease and desist from violating the Utah Uniform Securities Act.
3. Respondents agree to be barred from the securities industry in Utah.
4. Respondents agree to cooperate with the Division in any future investigations.
5. The Division imposes a fine of \$25,900 against Daly and \$11,616 against Johnson.
6. Payment of the fine is due within thirty-six months of the entry of this Order for Daly and within twenty-four months of the entry of this Order for Johnson.
7. If Respondents materially violate any of the terms of this Order, the full fine amount shall be imposed and become due immediately.

DATED this ____ day of _____, 2013.

BY THE UTAH SECURITIES COMMISSION:

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Mailing

I certify that on the ____ day of _____, 2013, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Craig Tanner Daly
Joshua Carl Johnson
c/o Justin R. Elswick
Heideman, McKay, Heugly & Olsen, LLC
2696 North University Avenue, Suite 180
Provo, UT 84604

Certified Mailing # _____

Julie Price
Executive Secretary

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:

**GLEN A. LARSEN d.b.a. FINANCIAL
ADVISORY SERVICES, CRD#118496;
GLEN A. LARSEN, CRD#1743485**

Respondents.

STIPULATION AND CONSENT ORDER

Docket No. SD-12-0056

Docket No. SD-12-0057

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondents, Glen A. Larsen d.b.a. Financial Advisory Services, and Glen A. Larsen (collectively referred to at times as "Respondents"), hereby stipulate and agree as follows:

1. Respondents have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act ("Act"). Utah Code Ann. §61-1-1, *et seq.*
2. On or about September 26, 2012, the Division initiated an administrative action against Respondents by filing a Petition to Censure Licensees and Impose Fines.
3. Respondents hereby agree 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 Respondents pertaining to the Petition.

4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.
5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.
6. Respondents have read this Stipulation and Consent Order, understand its contents, and voluntarily agree 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 Respondents to enter into this Order, other than as described in this Order.
7. Respondents understand that they may be represented by counsel in this matter, understand the role that counsel would have in defending and representing their interests in this case, and hereby knowingly, freely, and voluntarily waive their right to have counsel represent them in this proceeding.

I. FINDINGS OF FACT

8. Respondent Glen A. Larsen d.b.a. Financial Advisory Services ("FAS") is a Utah sole proprietorship, which has been licensed as an investment adviser in Utah since December 1993.
9. Glen A. Larsen ("Larsen") has been licensed in the securities industry in various capacities since 1987. He has taken and passed the FINRA Series 7, 24, 63 and 65 examinations. He also holds a Certified Financial Planner ("CFP") designation from the College for Financial Planning.
10. Larsen is the president, designated official, sole employee and owner of FAS. Larsen has

been licensed in Utah as an investment adviser representative of FAS since April 1994.

11. Division staff conducted an announced examination of FAS in September 2011 and an unannounced examination in January 2012.

Division Examination

12. The Division's examinations revealed that FAS has no policies and procedures manual existing in any form and does not conduct an annual review of such policies and procedures, as required by applicable regulations.
13. Following an earlier Division examination, in September 2002 Larsen agreed in writing "to develop and implement a new client and existing client checklist compliance system in accordance with the SEC requirements." However, at the time of the Division's 2011 and 2012 examinations, Larsen could produce no evidence demonstrating that he had done so.
14. SEC Rule 204-2 requires that an investment adviser "adopt and implement written policies and procedures reasonably designed to prevent violation" of laws and regulations by the investment adviser or its supervised persons. Rule 204-2 further requires that the investment adviser review, at least annually, the adequacy of such policies and procedures and the effectiveness of the implementation. The review must be documented by maintaining appropriate records. *See* 17 C.F.R. § 275.204-2(a)(17); 17 C.F.R. § 275.206(4)-7.
15. Section 61-1-5(1) of the Act requires that an investment adviser maintain books and records "as the division by rule prescribes...." Rule R164-5-1(D)(1) of the Utah Administrative Code in turn requires that an investment adviser shall make, maintain and

preserve books and records in compliance with SEC Rule 204-2, "which is adopted and incorporated by reference."

16. FAS and Larsen's failure to a) adopt and implement written policies and procedures and b) review and document the review of such policies and procedures at least annually violates the books and records requirements of the Act.
17. In addition, although the FAS current Form ADV Part 2A¹ states that a written advisory contract will be completed following an initial client consultation, only six out of 220 clients have a written advisory contract. Section 61-1-5(4) of the Act requires that if the information contained in any document filed with the Division becomes inaccurate in any material respect, a licensee shall promptly file a correcting amendment.

II. CONCLUSIONS OF LAW

18. Respondents FAS and Larsen failed to maintain books and records as set forth above, as required under Section 61-1-5 of the Act, warranting sanctions under Section 61-1-6(2)(a)(ii)(B) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

19. Respondents neither admit nor deny the Division's findings and conclusions, but consent to the sanctions below being imposed by the Division.
20. Respondents represent that the information they have provided to the Division as part of the Division's investigation is accurate and complete.
21. Respondents agree to cease and desist from violating the Utah Uniform Securities Act.

¹Also referred to as a firm brochure, SEC Form ADV Part 2A discloses information about the investment adviser's business to clients and potential clients.

and to comply with the requirements of the Act in all future business in this state.

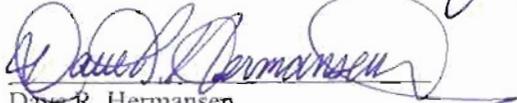
22. Respondents represent to the Division that they have engaged a compliance consultant to assist in remedying the violations described herein. Within sixty (60) days following entry of this Order, Respondents shall inform the Division in writing as to all specific actions they have taken to implement the consultant's recommendations.
23. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondents agree to pay a fine of \$1000.00 to the Division within thirty (30) days following entry of this Order.

IV. FINAL RESOLUTION

24. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. Respondents further acknowledge 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.
25. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of their conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar, this administrative action by the Division against them.
26. 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 14 day of November, 2012


Dave R. Hermansen
Director of Licensing and Compliance
Utah Division of Securities

Approved:


D. Scott Davis
Assistant Attorney General

Dated this 7 day of November 2012


Glen A. Larsen as an individual and on
behalf of Glen A. Larsen dba Financial
Advisory Services

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:

STIPULATION AND CONSENT ORDER

SUBHASH S. KITHANY, CRD #2181053

Docket No. SD-12-0060

Respondent.

The Utah Division of Securities ("Division"), by and through its Director of Licensing and Compliance, Dave R. Hermansen, and Respondent, Subhash S. Kithany (Kithany), hereby stipulate and agree as follows:

1. Kithany 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 October 24, 2012, the Division initiated an administrative action against Kithany by filing a Petition to Censure and Fine Licensee.
3. Kithany 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 him pertaining to the Petition.
4. Kithany admits that the Division has jurisdiction over him and the subject matter of this action.

5. Kithany hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Kithany has read this Stipulation and Consent Order, understand 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 him to enter into this Order, other than as described in this Order.
7. Kithany understands that he may be represented by counsel in this matter, understands the role that counsel would have in defending and representing his interests in this case, and hereby knowingly, freely, and voluntarily waives his right to have counsel represent him in this proceeding.

I. FINDINGS OF FACT

The Respondent

8. SK Group, Inc. ("SKG"), IARD#106513, is an investment adviser with its place of business in Salt Lake City, Utah. From September 1991 to July 31, 2012 SKG was a federal covered investment adviser. SKG is currently licensed in Utah as a state covered investment adviser.
9. Subhash Kithany ("Kithany"), CRD#2181053, is the president, owner, and chief compliance officer of SKG. Kithany was licensed as an investment adviser representative of SKG from April 20, 2001 until December 31, 2002, when he failed to renew his license.

Division Investigation

10. On July 31, 2012, SKG initiated the process to become a Utah licensed investment

adviser.¹ During the review of SKG's application, it was discovered that Kithany was not licensed as an investment adviser representative.

11. The Division contacted Kithany to determine why he had not filed a Form U4² since 2002, and why he was not licensed as an investment adviser representative with SKG.
12. Kithany explained that he thought he was properly licensed and had been submitting fees for licensing through the Central Registration Depository ("CRD")³ system since 2002. In reality, Kithany submitted the required fees for the firm, but not for an individual license. Kithany mistakenly believed that he had been renewing his investment adviser representative license while paying the firm's fees.
13. Kithany's mistaken belief may have also been supported by a 2008 examination of SKG's Salt Lake City office by the SEC where the agency found that another employee in the office was not licensed in Utah, but made no mention of Kithany's licensing status.
14. When Kithany initially applied for his investment adviser representative license in Utah, he relied on a waiver for the FINRA Series 65, Uniform Investment Adviser Law Examination, because he had previously taken and passed the examinations to become a

¹The 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. SKG's application with Utah was in accordance with that requirement.

²The Form U4, Uniform Application for Securities Registration or Transfer, is filed with FINRA and the Division in order for an individual to become licensed as an investment adviser representative in Utah. Investment adviser representatives of federal covered investment advisers are required to submit Form U4 to become licensed in the states in which they conduct business.

³ CRD is a computerized database maintained by the Financial Industry Regulatory Authority ("FINRA"). CRD contains employment, licensing and disciplinary information on broker-dealers, agents, investment advisers and investment adviser representatives.

Chartered Financial Analyst (CFA). Kithany provided documentation to the Division showing that he has continuously maintained his CFA designation since 1999.

15. Once Kithany realized the mistake that he was not licensed as an investment adviser representative, he immediately filed his Form U4 through the CRD and paid the fees to become licensed.

Unlicensed Activity

16. Kithany acted as an investment adviser representative from 2003 to 2012 without being properly licensed.

II. CONCLUSIONS OF LAW

17. Kithany violated Section 61-1-3(3) of the Act by acting as an investment adviser representative from 2003 to 2012 while unlicensed.

III. REMEDIAL ACTIONS/SANCTIONS

18. Kithany neither admits nor denies the Division's findings and conclusions, but consents to the sanctions below being imposed by the Division.
19. Kithany represents that the information he has provided to the Division as part of the Division's investigation is accurate and complete.
20. Kithany agrees to cease and desist from violating the Utah Uniform Securities Act, and to comply with the requirements of the Act in all future business in this state.
21. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Kithany agrees to pay a fine of \$5,000.00 to the Division payable as follows: \$1,500.00 within 30 days of the signing of this Order by the Utah Securities Commission, and \$500.00 per month on the first of each month thereafter

until paid in full.

IV. FINAL RESOLUTION

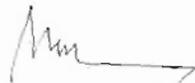
- 22. Kithany acknowledges that this Order, upon approval by the Utah Securities Commission, shall be the final compromise and settlement of this matter. He further acknowledges that if the Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
- 23. Kithany 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. Kithany 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.
- 26. 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 10 day of JANUARY, 2013


Dave R. Hermansen
Director of Licensing and Compliance
Utah Division of Securities

Approved: 

Dated this 10 day of JANUARY, 2013


Subhash S. Kithany

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 Utah Uniform Securities Act and comply with the requirements of the Act in all future business in this state.
3. Pursuant to Utah Code Ann. § 61-1-6, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent shall pay a fine of \$5,000.00 to the Division, payable as follows: \$1,500.00 within 30 days of the signing of this Order by the Utah Securities Commission, and \$500.00 per month on the first of each month thereafter until paid in full.

BY THE UTAH SECURITIES COMMISSION:

DATED this _____ day of _____, _____.

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Mailing

I certify that on the ____ day of _____, _____. I mailed, by certified mail, a true and correct copy of the fully executed Stipulation and Consent Order to:

Subhash S. Kithany
977 East Wilson Avenue
Salt Lake City, Utah 84105-3324

Certified Mail # _____

Julie Price
Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

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

IN THE MATTER OF:

MICHAEL SCOTT JOLLEY,

Respondent.

STIPULATION AND CONSENT
ORDER

Docket No. SD-12-0058

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Dave Hermansen, and Michael Scott Jolley (Respondent) hereby stipulate and agree as follows:

1. Respondent was the subject of an investigation conducted by the Division into allegations that he violated certain provisions of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, as amended (the Act).
2. In connection with that investigation, the Division initially issued an Order to Show Cause against Respondent on October 3, 2012, alleging securities fraud.
3. Respondent waives any right to a hearing to challenge the Division's evidence and

present evidence on his behalf. Respondent understands that by waiving a hearing, he is waiving the requirement that the Division prove the allegations against him by a preponderance of evidence, waiving his right to confront and cross-examine witnesses who may testify against him, to call witnesses on his own behalf, and any and all rights to appeal the findings, conclusions and sanctions set forth in this Stipulation and Consent Order.

4. Respondent understands that he has a right to be represented by counsel, and he voluntarily and knowingly waives the right to have counsel represent him in this matter.
5. Respondent acknowledges that this Stipulation and Consent Order does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
6. Respondent admits the jurisdiction of the Division over him and over the subject matter of this action.

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENT

7. Michael Scott Jolley (Jolley) was, at all relevant times, a resident of the state of Utah. Jolley has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

8. Between February and July 2008, Jolley offered and sold securities to an investor, in or from Utah, and collected a total of at least \$35,000.

9. Jolley made material misstatements and omissions in connection with the offer and sale of securities to the investor identified below.

INVESTOR C.B.

10. Jolley initially met C.B. through her son, D.S., when D.S. and Jolley worked for the same mortgage company.
11. Jolley helped C.B. in refinancing her home.
12. Using funds acquired through the refinance process, C.B. then decided to invest in a condominium project that Jolley presented to her.
13. Specifically, in May 2006, C.B. invested \$35,000 with Jolley, thereby providing short-term funding to help build the condominium complex. Jolley told C.B. that her investment would be secured by one of the units in the project.
14. Through that investment, C.B. received a return of her principal plus \$14,000 and considered the transaction to be a success.
15. Later, in February 2008, Jolley reached out to C.B. to discuss an additional investment opportunity. This investment involved Jolley's company, Red Rock Funding Group, Inc. (RRFG).¹
16. Because C.B. had already invested with Jolley and received a return, as promised, she decided to invest a second time.

¹ Red Rock Funding Group, Inc. was a Utah corporation that initially registered with the Utah Division of Corporations on January 2, 2007. As of May 6, 2009, the entity's status changed from active to expired. During its existence, Jolley served as registered agent, president, treasurer, and director of the company.

17. As a result, on July 16, 2008, C.B. wired \$35,000 from her bank account at Washington Mutual into RRFG's bank account at State Bank of Southern Utah.
18. As further evidence of their arrangement, C.B. received a lender agreement and an addendum to that lender agreement.²
19. The lender agreement is dated February 26, 2008 and executed by Jolley. In accordance therewith, it contains the following terms:
 - a. C.B. shall receive 1.5% interest per thirty-day cycle (18% per annum), resulting in monthly interest payments of \$525.00.
 - b. Additionally, the principal would be repaid within six months and five business days of the document's execution.
 - c. Finally, the "loan shall be considered secured and lent directly to [RRFG] for the purpose of business growth and cash flow development."
 - d. The agreement also listed an address, indicating that the property located at that address would serve as collateral for the loan.
20. The addendum is dated July 15, 2008 and unsigned by either party. Its terms include the following:
 - a. The dates of the loan agreement were modified to reflect the date in which RRFG actually received the funds.

² It remains unclear when C.B. actually received the contract and addendum, as she did not execute either document. C.B. states that she received the documents in the mail after she provided the funds to Jolley, but she cannot recall an exact date.

- b. The collateral changed from real property located at 101 N. 1850 W. to 2208 W. Saddleback Dr. in Cedar City, Utah 84720.
 - c. All other terms and conditions remained the same as the original agreement.
21. At a time when C.B. believed her investment to be due, she contacted Jolley to inquire about payment.
22. He stated that the company's funds had been used to purchase real property, which should have been sold to a third party; however, the third party had subsequently backed out, and RRFG now owned the property.
23. C.B. asked for her money back, but Jolley stated that the property would need to be sold first.
24. Based on a first in, first out analysis, bank records indicate that Jolley used C.B.'s funds in the following manner:
- a. \$1,787.81 for automobile and transportation expenses;
 - b. \$11,184.62 for bills and utilities;³
 - c. \$1,917.53 in cash withdrawals;
 - d. \$832.21 in education expenses;
 - e. \$354.49 in entertainment expenses;
 - f. \$0.35 in fees and charges;
 - g. \$674.90 in life insurance premium payments;

³ This amount includes \$9,499 in credit card payments.

- h. \$1,128.88 in food and dining expenses;
 - i. \$3,576.00 in gifts and donations;
 - j. \$561.40 in health and fitness expenses;
 - k. \$2,078.49 in mortgage costs;
 - l. \$1,155.06 in miscellaneous expenses;
 - m. \$30.00 for personal care;
 - n. \$3,669.06 in shopping expenses;
 - o. \$5,206.00 transferred;⁴
 - p. \$618.72 in travel expenses; and
 - q. \$224.48 in legitimate business expenses, including a business license for RRFG, office cooler repair, E Commerce Group membership, and a fax service.
25. As of December 20, 2012, C.B. has received a complete return of her \$35,000 investment.

CAUSES OF ACTION

Securities Fraud under § 61-1-1 of the Act

26. The Division incorporates and re-alleges paragraphs 1 through 25.
27. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act.
28. In connection with the offer and sale of securities to investor C.B., Respondent, directly

⁴ Three transfers went to a bank account at JPMorgan Chase.

or indirectly, made false statements, including, but not limited to, the following:

- a. The funds would be used as an investment in his business, when in fact, Respondent used the majority of the funds for personal expenses.

29. In connection with the offer and sale of securities to investor C.B., Respondent, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:

- a. Some or all of the information typically provided in an offering circular or prospectus regarding Respondent or an investment in RRFG, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. Total number of investors;
 - iv. Suitability factors for the investment;
 - v. Whether the investment was a registered security or exempt from registration; and
 - vi. Whether Respondent was licensed to sell securities.

II. THE DIVISION'S CONCLUSIONS OF LAW

30. Based on the Division's investigative findings, the Division concludes that:

- a. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act;
- b. Respondent violated § 61-1-1(2) of the Act by making untrue statements of

material fact and omitting to state material facts in connection with the offer and sale of securities, disclosure of which was necessary in order to make representations made not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

31. Respondent neither admits nor denies the Division's findings of fact and conclusions of law but consents to the sanctions below being imposed by the Division.
32. Respondent agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.
33. Respondent agrees not to seek licensure in any capacity in the securities industry in Utah.
34. Respondent agrees to cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions relevant to the matter herein.
35. Pursuant to Utah Code Ann. § 61-1-20, and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondent agrees to pay a fine to the Division in the amount of \$35,000.
36. Each dollar paid by Respondent to the investor towards restitution shall be credited by the Division toward payment of the fine.⁵

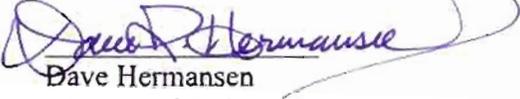
IV. FINAL RESOLUTION

⁵ On December 20, 2012, Talley provided the Division with proof of complete repayment of the \$35,000 investment to the investor, thereby offsetting the above-stated fine to the Division.

37. Respondent acknowledges that this Stipulation and Consent Order, upon approval by the Securities Commission, shall be the final compromise and settlement of this matter.
38. Respondent further acknowledges that if the Securities Commission does not accept the terms of the Stipulation and Consent Order, it shall be deemed null and void and without any force or effect whatsoever.
39. Respondent acknowledges that the Stipulation and Consent Order does not affect any civil or arbitration causes of action that third-parties may have against him rising in whole or in part from his actions and that the Stipulation and Consent Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.
40. Respondent acknowledges that a violation of this Stipulation and Consent Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.
41. The Stipulation and Consent 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 the Stipulation and Consent Order in any way.

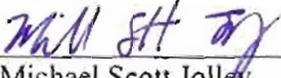
Utah Division of Securities

Date: JANUARY 10, 2013

By: 
Dave Hermansen
Director of Enforcement

Respondent

Date: 1/9/2013

By: 
Michael Scott Jolley

Approved:


D. Scott Davis
Assistant Attorney General
N.M.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondent ceases and desists from violating the Utah Uniform Securities Act.
3. Respondent will not seek to be licensed in the securities industry in the state of Utah.
4. Respondent will cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions relevant to the matter herein.
5. The Division imposes a fine of \$35,000 against Respondent, offset by restitution payments to the investor.⁶

⁶ On December 20, 2012, Jolley provided the Division with proof of complete repayment of the \$35,000 investment to the investor, thereby offsetting the fine to the Division.

BY THE UTAH SECURITIES COMMISSION:

DATED this ____ day of _____, 2013.

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Mailing

I certify that on the _____ day of _____, 2013, I mailed, by regular mail, a true and correct copy of the Stipulation and Consent Order to:

MICHAEL JOLLEY
2208 W. SADDLEBACK DR.
CEDAR CITY, UT 84720

Executive Secretary

RECEIVED

JAN 11 2013

Utah Department of Commerce
Division of Securities

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

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

IN THE MATTER OF:

SYNERGY FUNDING, LLC
JOSHUA PAUL CHAPMAN
DENNIS JOHN ROWLEY

Respondents.

STIPULATION AND CONSENT
ORDER

Docket No. SD-08-0045
Docket No. SD-08-0046
Docket No. SD-08-0047

The Utah Division of Securities (the Division), by and through its Director of Enforcement, ~~Thomas Brady~~ **Dave R. Hermansen**, and Dennis John Rowley, hereby stipulate and agree as follows:

1. Dennis John Rowley (Rowley), Joshua Paul Chapman (Chapman), and Synergy Funding, LLC (Synergy, and collectively with Rowley and Chapman, Respondents), were the subject of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, as amended (the Act).
2. In connection with that investigation, the Division initially issued an Order to Show Cause against Respondents on April 11, 2008, alleging securities fraud. The Division

then re-issued the Order to Show Cause, as to Rowley, on July 23, 2012. Criminal charges were also filed against Rowley¹ and Chapman² in connection with the activities referred to herein.

3. Rowley waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf. Rowley understands that by waiving a hearing, he is waiving the requirement that the Division prove the allegations against him by a preponderance of evidence, waiving his right to confront and cross-examine witnesses who may testify against him, to call witnesses on his own behalf, and any and all rights to appeal the findings, conclusions and sanctions set forth in this Stipulation and Consent Order.
4. Rowley understands that he has a right to be represented by counsel, and he voluntarily and knowingly waives the right to have counsel represent him in this matter.
5. Rowley acknowledges that this Stipulation and Consent Order does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
6. Rowley admits the jurisdiction of the Division over him and over the subject matter of this action.

¹ *State of Utah Attorney General v. Dennis John Rowley*, Case No. 081906645, Third Judicial District Court of Utah (2008). On April 22, 2010, Rowley was found guilty of securities fraud and theft.

² *State of Utah Attorney General v. Joshua Paul Chapman*, Case No. 081906646, Third Judicial District Court of Utah (2008). On October 20, 2011, Chapman was found guilty of securities fraud. The case is currently on appeal with the Utah Court of Appeals (20120137-CA).

I. THE DIVISION'S FINDINGS OF FACT

THE RESPONDENTS

7. Synergy was a Utah limited liability company organized on April 6, 2006. Synergy's status with the Utah Division of Corporations changed to expired on August 6, 2008, as a result of a failure to file renewal. During its existence, Chapman was listed as the registered agent and sole manager of the entity. Synergy has never been licensed by the Division to sell securities in the state of Utah.
8. At all relevant times, Chapman was a resident of Utah. Chapman has never been licensed in the securities industry in any capacity.
9. At all relevant times, Rowley was a resident of Utah. Rowley has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

10. In or around September 2006, Chapman telephoned investor SM at SM's home in Salt Lake County, Utah, to tell him about an investment opportunity involving a hard-money loan.
11. Chapman told SM that Rowley needed \$70,000 to purchase and renovate a home in Draper, Utah.
12. Chapman and SM had several conversations regarding the investment opportunity. With respect thereto, Chapman told SM the following:

- a. SM would receive interest of 100% from Rowley within 60 days;
 - b. Rowley would renovate the basement of a home, have the property re-appraised, take out a loan on the higher value, and pay SM back with the loan proceeds;
 - c. Rowley had the necessary skills and experience to complete the purchase and renovation of the home;
 - d. If the deal did not go as planned, Chapman had a document he received from Rowley, stating that Chapman and SM could take possession of the home; and
 - e. There was enough equity in the Draper home to recover SM's investment.
13. On or about October 23, 2006, Chapman went to SM's home and gave SM a \$70,000 promissory note. Chapman signed the promissory note in the presence of SM.
 14. The note stated that the funds would be invested in the Draper property, the lender risked losing all principal, the note was not secured by a trust deed, and the return on the note was "anticipated to be 100% but may vary somewhat." The note had a maturity date of December 15, 2006.
 15. That same day, Chapman and SM met Rowley at Wells Fargo Bank in Salt Lake City, Utah. Rowley told SM to purchase a cashier's check for \$65,000 made payable to Sean Burrows (Burrows).³ Rowley told SM that Burrows was Rowley's business associate.

³Sean Burrows, an insurance client of Rowley, had agreed that Rowley could use his bank account. As part of the agreement, Rowley deposited proceeds of his business deals into Burrows' account, and Burrows distributed it at

This was the first time SM had heard of Burrows.

16. SM did as Rowley instructed and gave the cashier's check to Rowley.
17. SM also withdrew \$5,000 in cash and gave the money to Rowley, making a total investment of \$70,000.
18. On or about November 6, 2006, Chapman called SM and told him that Rowley wanted to "flip" homes and needed \$140,000 to do so. Chapman knew that SM had investment funds available because SM told Chapman he had obtained a home equity loan.
19. Chapman offered SM an investment opportunity, paying interest of 4% per month, in return for SM's investment of \$140,000 for "flipping" houses.
20. On or about November 13, 2006, SM again met Rowley and Chapman at the Wells Fargo Bank in Salt Lake City, Utah. Rowley instructed SM to purchase a \$140,000 cashier's check made payable to Burrows.
21. While at the bank, Rowley signed a promissory note in the presence of SM and Chapman and gave it to SM. The note accrued interest at 48% per year, stated that the investment was secured by a trust deed, and set a maturity date of January 24, 2007.
22. On or about December 23, 2006, Chapman told SM that Rowley was unable to complete the remodel of the Draper home because the house had undisclosed water damage.

Rowley's request. In return, Rowley let Burrows keep a portion of the money he deposited. Burrows estimated that he received a total of \$10,000 to \$15,000 from the money Rowley deposited into his account.

Chapman claimed Rowley was suing the seller.

23. SM suggested that he and Chapman take ownership of the house, but Chapman told SM to wait and see if the problem resolved itself.
24. On or about February 23, 2007, when both promissory notes were past due, SM contacted Rowley to demand payment.
25. SM told Rowley that, if Rowley could not afford to pay back SM, Rowley needed to make payments on SM's home equity loan.
26. Rowley told SM that Rowley could not pay back SM and asked for an additional 30 days to pay. Rowley made a payment of \$1,600 to SM in or around February 2007.
27. In or around March 2007, Rowley asked SM for another extension of 30 days, and made an additional payment of \$1,600 to SM.
28. SM has had no contact with Rowley since that time.
29. SM contacted Chapman and said SM wanted to take ownership of the Draper house. Chapman told SM that the document Chapman had in his possession, purportedly allowing SM and Chapman to take control of the Draper house, was worthless because Rowley did not own the home.
30. SM contacted the realtor who was selling the Draper home and was told that Rowley did not own the house because he never finalized the purchase.
31. To date, SM has received approximately \$3,200 from Rowley. Respondents still owe SM

\$210,000 in principal alone.

Use of Invested Funds

32. Bank records reveal that Rowley used \$45,000 of SM's \$70,000 investment as an earnest money deposit on the Draper home, paid \$10,000 to the seller of the Draper home, and converted \$9,000 into cash. Burrows used the remainder to dine out and purchase groceries and clothing.
33. Bank records reveal that Rowley used \$15,000 of SM's \$140,000 investment as an "earnest money" deposit paid to another person, gave \$30,000 to an individual for unknown reason, paid \$40,000 to the Utah Office of Recovery Services (for Rowley), and converted over \$25,000 into cash. Burrows used the remainder of the money to pay for clothing, food, sporting goods, computers, firearms, and other living expenses.

SECURITIES FRAUD UNDER § 61-1-1 OF THE ACT

34. The Division incorporates and re-alleges paragraphs 1 through 33.
35. The promissory notes offered and sold by Synergy, Chapman, and Rowley to SM are securities under § 61-1-13 of the Act.
36. In connection with the offer and sale of a security, Rowley, directly or indirectly, made false statements, including, but not limited to, the following:
 - a. The invested money would only be used to renovate the Draper home and purchase real estate:

- b. SM would earn 4% monthly interest on SM's \$140,000 investment, when in fact, Rowley had no reasonable basis on which to make this representation; and
 - c. The \$140,000 investment would be backed by a deed of trust.
37. In connection with the offer and sale of a security, Rowley, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
- a. Rowley would use a large portion of SM's investment funds to pay personal expenses, including, but not limited to, Rowley's child support payments;
 - b. Rowley would use some of SM's investment funds to pay a friend for the use of his bank account;
 - c. Rowley owed over \$42,000 in unpaid civil judgments; and
 - d. Chapman and Synergy would receive significant compensation from Rowley in return for obtaining SM's investments.
38. Based upon the foregoing, Rowley violated § 61-1-1 of the Act.

II. THE DIVISION'S CONCLUSIONS OF LAW

39. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunities offered and sold by Rowley are securities under § 61-1-13 of the Act;

- b. Rowley violated § 61-1-1(2) of the Act by making untrue statements of material fact and omitting to state material facts in connection with the offer and sale of securities, disclosure of which was necessary in order to make representations made not misleading.

III. REMEDIAL ACTIONS/SANCTIONS

40. Rowley admits the Division's findings of fact and conclusions of law and consents to the sanctions below being imposed by the Division.
41. Rowley agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.
42. Rowley agrees that he will be barred from (i) associating⁴ with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah.
43. Rowley agrees to cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions relevant to the matter herein.

⁴"Associating" includes, but is not limited to, acting as an agent of, receiving compensation directly or indirectly from, or engaging in any business on behalf of a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah. "Associating" does not include any contact with a broker-dealer, agent, investment adviser, or investment adviser representative licensed in Utah incidental to any personal relationship or business not related to the sale or promotion of securities or the giving of investment advice in the State of Utah.

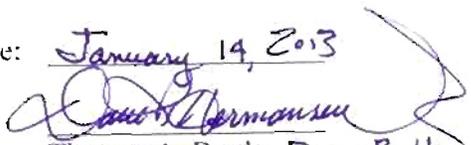
44. Rowley agrees to pay restitution as required in the criminal case *State of Utah Attorney General v. Dennis John Rowley*. Case No. 081906645. Third Judicial District Court of Utah (2008).

IV. FINAL RESOLUTION

45. Rowley acknowledges that this Stipulation and Consent Order, upon approval by the Securities Commission, shall be the final compromise and settlement of this matter.
46. Rowley further acknowledges that if the Securities Commission does not accept the terms of the Stipulation and Consent Order, it shall be deemed null and void and without any force or effect whatsoever.
47. Rowley acknowledges that the Stipulation and Consent Order does not affect any civil or arbitration causes of action that third-parties may have against him rising in whole or in part from his actions, and that the Stipulation and Consent Order does not affect any criminal causes of action that may arise as a result of his conduct referenced herein.
48. Rowley acknowledges that a violation of this Stipulation and Consent Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.
49. The Stipulation and Consent 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 the Stipulation and Consent Order in any way.

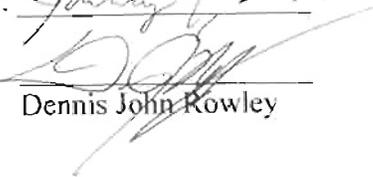
Utah Division of Securities

Date: January 14, 2013

By: 
~~Thomas A. Brady~~ Dave R. Hermansen
Director of Enforcement

Respondent

Date: January 7, 2012

By: 
Dennis John Rowley

Approved:


D. Scott Davis
Assistant Attorney General
J.G.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Rowley ceases and desists from violating the Utah Uniform Securities Act.
3. Rowley is barred from the securities industry in Utah.
4. Rowley will cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions relevant to the matter herein.
5. Rowley will pay restitution as required in the criminal case *State of Utah Attorney General v. Dennis John Rowley*, Case No. 081906645, Third Judicial District Court of Utah (2008).

BY THE UTAH SECURITIES COMMISSION:

DATED this ____ day of _____, 2013.

Brent Baker

Tim Bangerter

Jane Cameron

Erik Christiansen

Laura Polacheck

Certificate of Mailing

I certify that on the _____ day of _____, 2013, I mailed, by regular mail, a true and correct copy of the Stipulation and Consent Order to:

DENNIS ROWLEY
432 HAVEN CREST ROAD
DRAPER, UT 84020

Executive Secretary

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146760
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6628

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

In the matter of: CRAIG ELDON TAYLOR dba THE MALL HOP and SMOOTHIE BEACH, Respondent.	<u>FINAL ORDER BY DEFAULT</u> Docket No. SD 12-0038
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The notice of agency action and order to show cause in this matter were filed by the Division of Securities (hereinafter "Division") on June 25, 2012. The Scheduling Order entered in this matter set an administrative hearing date of November 29, 2012. The administrative hearing was continued to January 24, 2013.

At the hearing on January 24, 2013, the Division was represented by D. Scott Davis, Assistant Attorney General. Respondent did not appear nor did any party or counsel appear on Respondent's behalf. Further, Respondent failed to file an Answer to the Order to Show Cause, Initial Disclosures, Witness and Exhibit Lists in accordance with the Scheduling Order entered in this matter on August 1, 2012. With Respondent having failed to attend or participate in a properly scheduled hearing after receiving proper notice, an Order of Default shall be entered by the Division pursuant to UTAH CODE ANN. § 63G-4-209(1).

IT IS HEREBY ORDERED:

1. In violation of UTAH CODE ANN. § 61-1-1(2), Respondent made false statements, directly or indirectly, in connection with the offer and sale of securities to investors.
2. In violation of UTAH CODE ANN. § 61-1-1(2), Respondent failed to disclose material information which was necessary in order to make statements made not misleading in connection with the offer and sale of securities to investors.
3. In accordance with UTAH CODE ANN. § 61-1-20(f), Respondent is assessed and ordered to pay a fine in the amount of \$7,250.00.
4. In accordance with UTAH CODE ANN. § 61-1-20(e), Respondent is ordered to cease and desist from engaging in any act or practice constituting a violation of UTAH CODE ANN. Title 61, Chapter 1 and UTAH ADMIN. CODE R164.
5. Pursuant to UTAH CODE ANN. § 61-1-21(1), a person who willfully violates an order entered by the Division is guilty of a third degree felony.

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A request or motion to set aside this order by default may be filed with the presiding officer and/or with the Director of the Division of Securities pursuant to UTAH CODE ANN. § 63G-4-209(3)(a) and the Utah Rules of Civil Procedure. If a defaulted party wishes a review of the presiding officer's decision on a motion to set aside a default, UTAH CODE ANN. § 63G-4-209(3)(c) provides that agency review of the presiding officer's decision on a motion to set aside a default order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of the presiding officer's decision. The agency action in this

case was an informal proceeding. The laws and rules governing agency review of this proceeding are found in Title 63G, Chapter 4 of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

Dated this 22 day of January, 2013.



ANGELA HENDRICKS, Presiding Officer
160 East 300 South
Salt Lake City, Utah 84114-6704
Telephone No. (801) 530-6305

BY THE UTAH SECURITIES COMMISSION:

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

DATED this _____ day of _____, 2013.

Tim Bangerter

Jane Cameron

Erik Anthony Christiansen

Brent Baker

Laura Polacheck

CERTIFICATE OF SERVICE

I certify that I have this ____ day of _____, 2013 served the foregoing FINAL ORDER BY DEFAULT on the parties in this proceeding by mailing a copy, properly addressed by first class mail with postage prepaid, to:

CRAIG ELDON TAYLOR
524 WEST 440 SOUTH
OREM, UT 84058

And by hand-delivery to:

D. Scott Davis, Assistant Attorney General
Office of the Attorney General of Utah

Ann Skaggs, Securities Analyst
Utah Division of Securities
