

SECURITIES COMMISSION MEETING
MINUTES

July 28, 2011

Securities Staff Present

Dave Hermansen, Director of Compliance
Benjamin Johnson, Director of Corporate Finance
Michael Hines, Director of Enforcement
Nadene Adams, Administrative Assistant
Thomas Brady, Analyst
Chip Lyons, Analyst
Ann Skaggs, Examiner
Julie Price, Board Secretary

Commissioner's Present

Erik Christiansen, Parsons Behle & Latimer
Jane Cameron, Zion's Bank
Laura Polacheck, AARP Utah
Jan Graham, Graham Law Offices

Commissioner's Absent

Tim Bangerter, Bangerter Financial Group

Public Present

No members of the public present.

Swearing in of New Commissioner: Jan Graham was sworn into office by Michael Hines as the newest Securities Commissioner.

Election of New Commission Chair: Laura Polacheck nominated Erik Christiansen to be the new Securities Commission Chair. A motion was made and seconded to approve Erik Christiansen as the new Commission Chair.

Minutes: A motion was made and seconded to approve the May 26, 2011 minutes. The motion was passed unanimously.

Director's Report: Director Woodwell was unable to attend the commission meeting and asked Dave Hermansen to deliver his report. Mr. Hermansen reported that the hearing scheduled for the end of August had been cancelled. The parties have stipulated in this matter.

Mr. Hermansen reported the Division's base budget for fiscal year 2011 is still being finalized with some payables that have come in this month. The Division should be \$50,000.00 - \$70,000.00 in the black.

The Education Fund balance at the end of June was approximately \$1,000,000.00, and about \$500,000.00 will go back to the State General Fund. On the licensing/compliance side, the remaining auction rate securities cases should be settling in fiscal year 2012. The total amount that we should be bringing in is \$674,000.00.

The Division has made significant efforts in the area of investor education over the past two months. The Division has made nine presentations throughout the state. These include two presentations at the Wayne Brown Institute; the annual meeting of the Utah State Bar Securities Section; a financial literacy class at Syracuse High School; a KPCW talk show in Park City, Utah; Liberty Senior Center Fair in Salt Lake City, Utah; Bountiful Lion's Club; and participating in a

panel hosted by the Securities and Commodities Fraud Working Group.

There have been some recent staffing changes. Joseph Gatton will be leaving and returning to law school around August 20th. Jonny Stewart will be leaving next month and has been appointed the new director of the Division of Real Estate. Both of these individuals will be greatly missed. Benjamin Johnson introduced the Division's newest staff member, Ann Skaggs. She will be working with the corporate finance and licensing/compliance sections. The Division has one more opening that is currently closed. It will be for one more examiner which should be filled by the next Commission meeting.

Compliance & Licensing Section Report: Dave Hermansen reported that his section is still in the process of completing the 170 IA reviews. About 50% of the applicants had no problems but the remaining 50% have had problems. His staff is working with the IA's to resolve these issues.

The licensing/compliance section is still working on several actions. His staff has spent a great amount of time trying to get these final Vescor related stipulations finished.

Mr. Hermansen's section is continuing to train Sharon Weinle, Brandon Henrie, Darren Miller, and Ann Skaggs. Brandon Henrie and Sharon Weinle will be attending the NASAA Investment Adviser training in Ft. Lauderdale, Florida for a week.

Corporate Finance Section Report: Benjamin Johnson reported that filing statistics for the first six months show good growth. Registrations are up 7.7%. State-level exemptions are up 14.3% and Rule 506 filings are up 19%.

Given the additional staffing, his section has begun their 506 filing review program with the help of the licensing/compliance section. He feels that this is a very good program.

Mr. Johnson recently attended the NASAA Corporate Finance training in Ft. Lauderdale, Florida. At the training, NASAA provided a look at the new electronic 506 filing system. This system should be ready for testing by the end of August or first part of September. NASAA will be sending the beta version out for testing to a select number of states. Utah will be one of those states testing the new system.

Enforcement Section Report: Michael Hines reported he attended a preliminary hearing this morning on Greg Baldwin which resulted in him being held over to stand trial. This was an undercover investigation that was conducted at the Salt Lake Library.

This past Tuesday, Mr. Hines gave a two hour presentation to the staff at Rocky Mountain Advisers on how to identify if a transaction is a security.

Education Fund Expenditure Report: Benjamin Johnson reviewed the updated expenditure report for the Education and Training Fund and discussed the line items that were being requested by the Division for Commission approval. This included Division operating costs, enforcement investigations and litigations expenses, licensing investigations and litigations expenses, expert witness expenses, routine computer replacements, updated computer software, and the next public service campaign. Several items were backed out of the fund including web page updates, and print advertising.

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

"Red Flag" Investor Education Ad Campaign: Dave Hermansen reported that last year's public service campaign was very successful. The Division received numerous complaints because of it. The Commission watched New Mexico's "Red Flag" public service campaign. The public service campaign for this year will be similar to New Mexico's "Red Flag" campaign.

Consideration of Grant Request

Utah State University: Dave Hermansen presented this grant request. The Commission reviewed this grant and put it to a vote.

Action: Jan Graham made a motion to approve the grant for \$15,000.00. The motion was seconded and carried.

Approval of Stipulation and Consent Orders

Mascot Financial, LC & Samuel Duane Aston: Tom Brady reported that the respondents directly or indirectly, made false statements in connection with the offer and sale of a security to the investor. The respondents failed to disclose material information which was necessary in order to make representations not misleading, in connection with the offer and sale of a security. The respondents engaged in acts, practices, or courses of business that operated as a fraud or deceit on an investor. Mascot Financial, LC and Samuel Duane Aston will cease and desist from violating the Utah Uniform Securities Act, Mr. Aston agrees to be permanently barred from the securities industry, the respondents will cooperate with the Division in any future investigations, and Mr. Aston agrees to pay restitution as ordered in the criminal case against Mr. Aston (Case No. 071402432).

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

Patent Holding, LLC & Steven Lynn Bowers: Tom Brady reported that between March 2005 and April 2005, the respondents solicited an investor to invest a total of \$295,000.00 with Patent through Millennial Financial Group, Inc. Mr. Bowers made material misstatements and omissions regarding the investor's investment with Patent. The investor lost \$251,000.00 in principal alone. Mr. Bowers made false statements in connection with the offer and sale of a security to the investor. Mr. Bowers failed to disclose material information which was necessary in order to make statements not misleading in connection with the offer and sale of a security. The respondents will cease and desist from violating the Utah Uniform Securities Act, Mr. Bowers agrees to be permanently barred from the securities industry, the respondents will cooperate with the Division in any future investigations, and Mr. Bowers agrees to pay restitution as ordered in the criminal case against him (Case No. 101400038).

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

Pat G. Miner: Tom reported that between March 2005 and April 2005, the respondent solicited an investor to invest a total of \$295,000.00 with Patent through Millennial Financial Group, Inc. Mr. Miner made material misstatements and omissions regarding the investor's investment with Patent. The investor lost \$251,000.00 in principal alone. Mr. Miner made false statements in connection with the offer and sale of a security to the investor. Mr. Miner also failed to disclose material information which was necessary in order to make statements not misleading in connection with the offer and sale of a security. Mr. Miner will cease and desist from violating the Utah Uniform Securities Act, pay a \$10,000.00 fine, and cooperate with the Division in any future investigations.

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

Zcom Networks, Inc., Matrix Management, Inc., and Alex R. Parsinia: Tom Brady reported that between February 2007 and December 2007, Mr. Parsinia solicited an investor to invest a total of \$100,000.00 with Matrix. Mr. Parsinia made material misrepresentations and omissions with regard to the investor's \$100,000.00 investment in Matrix. The investor lost \$100,000.00 in principal alone. Mr. Parsinia made false statements in connection with the offer and sale of securities. Mr. Parsinia failed to disclose material information which was necessary in order to make representations made not misleading in connection with the offer and sale of securities. The respondents are in default for failing to appear before the Securities Commission on March 17, 2011. The respondents are ordered to permanently cease and desist from any violations with the Utah Uniform Securities Act and pay a \$125,000.00 fine to the Division within 30 days of the entry of the Order.

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

Cadence Financial, LLC & Jeffrey Thompson Wilding: Tom Brady reported that from February 2008 to December 2008, the respondents offered and sold securities to a group of four investors, in or from Utah, and collected a total of \$318,500.00. The respondents made material misrepresentations and omissions in connection with the offer and sale of a security to the investor. The respondents made false statements in connection with the offer and sale of securities. The respondents failed to disclose material information which was necessary in order to make representations made not misleading in connection with the offer and sale of a security. The respondents will cease and desist from violating the Utah Uniform Securities Act, pay a \$20,000.00 fine, Mr. Wilding agrees to be permanently barred from the securities industry, and the respondents will cooperate with the Division in any future investigations.

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

John Taylor: Tom Brady reported that from November 2005 to December 2005, Mr. Taylor offered and sold promissory notes to investors in and from Utah, and collected a total of at least \$270,000.00. The investors lost at least \$270,000.00 in principal alone. Mr. Taylor made false statements in connection with the offer and sale of a security. He also failed to disclose material information which was necessary in order to make the representations made not misleading in connection with the offer and sale of a security. Mr. Taylor is to cease and desist from violating the Utah Uniform Securities Act, pay a \$20,000.00 fine, be permanently barred from the securities industry, and cooperate with the Division in any future investigations.

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

Stone Bridge Tile, LLC & Michael Scott Atkinson: Tom Brady reported that from October 2007 to December 2007, the respondents offered and sold securities to two groups of investors, in or from Utah, and collected a total of \$81,000.00. The investors lost all \$81,000.00 in principal. The respondents made false statements in connection with the offer and sale of securities to investors. The respondents failed to disclose material information which was necessary in order to make the representations not misleading in connection with the offer and sale of securities to investors. The respondents will cease and desist from violating the Utah Uniform Securities Act, cooperate with the Division in any future investigations, and Mr. Atkinson agrees to be barred from the securities industry for a minimum of three years and until full restitution is paid.

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

Bradley Grant Kitchen: Tom Brady reported that in December 2006, Mr. Kitchen

collected \$600,000.00 from an investor. To date, the investor is still owed \$315,000.00. Mr. Kitchen made false statements in connection with the offer and sale of a security. Mr. Kitchen also failed to disclose material information which was necessary in order to make statements not misleading in connection with the offer and sale of a security. Mr. Kitchen will cease and desist from violating the Utah Uniform Securities Act, agrees to be permanently barred from the securities industry, and cooperate with the Division in any future investigations.

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

Bryan Joseph Robert: Tom Brady reported that between January 2009 and February 2009, Mr. Robert offered and sold investment contracts to an investor in or from Utah, and collected a total of \$175,000. The investor lost \$165,400.00 in principal alone. Mr. Robert made false statements in connection with the offer and sale of a security to the investors. Mr. Robert also failed to disclose material information which was necessary in order to make statements not misleading in connection with the offer and sale of a security. Mr. Robert will cease and desist from violating the Utah Uniform Securities Act, pay a \$5,000.00 fine, and cooperate with the Division in any future investigations.

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

ITEC Manufacturing, LLC & Douglas Clair Morby: Tom Brady reported that on April 24, 2006, the respondents offered and sold an investment contract to an investor in or from Utah, and collected a total of \$35,000.00. The investor lost \$33,250.00 of his principal. The respondents made false statements in connection with the offer and sale of a security. 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 a security. The respondents will cease and desist from violating the Utah Uniform Securities Act, pay a \$60,000.00 fine, cooperate with the Division in any future investigations, and Mr. Morby agrees to be permanently barred from the securities industry in Utah.

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

Nutratek, LLC & Johnny Anthony Sanchez: Tom Brady asked the Commission to dismiss this case on grounds that protection of the public has been adequately served. Mr. Sanchez pleaded guilty to two counts of securities fraud in a parallel proceeding. As part of sentencing, Mr. Sanchez was placed on probation and was ordered to pay \$20,000.00 in restitution for the related conduct in the Division's Order to Show Cause.

Action: Jan Graham made a motion to approve the Motion to Dismiss and Order Granting Motion to Dismiss. The motion was seconded and carried.

Kevin D. Kunz, Investment Management Corporation, Twin K Investments, Inc., and Modena Hills, Inc.: Chip Lyons reported that this one of the final two actions taken by the Division in regards to the Vescor Ponzi scheme. This action was filed against the brokerage firm who sold more than \$44,000,000.00 in Vescor securities in Utah. In 1996, NASD (now FINRA), took an enforcement action against Mr. Kunz and the firm. The NASD sanctions were affirmed by the Tenth Circuit Court of Appeals in 2003. A 2001 NASD enforcement action against Mr. Kunz and Investment Management Corporation (IMC) led to additional sanctions. Under the NASD Order affirmed by the Tenth Circuit Court of Appeals, IMC was prohibited from participating as primary placement or sales agent in securities offerings until it retained an independent consultant to review the firm policies and procedures relating to such offerings, and provide a report with recommendations which IMC was required to demonstrate to NASD that it had implemented the consultant's recommendations. IMC never complied with those requirements.

After the NASD suspension, the firm tried to conceal IMC's activities from regulators in which Vescor transactions were not recorded on the books and records of IMC as required by law and Mr. Kunz and others facilitated the payment of commissions from Vescor through outside business entities. The respondents misrepresented material facts in connection with the offer and sale of Vescor securities. The respondents also omitted numerous material facts in connection with the offer and sale of Vescor securities. In connection with the offer or sale of securities, the respondents engaged in acts, practices, and a course of business which operated as a fraud.

The respondents are barred from associating with any licensed broker-dealer or investment adviser in this state, and from acting as an agent for any issuer soliciting investor funds in this state. The respondents will provide truthful testimony and cooperation with any State or Federal investigation involving Southwick, the VesCor companies, Horne, Deseret Financial, Horne Financial, and any individual under investigation as a result of their affiliation with VesCor and/or Southwick. 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. Fines are imposed against the respondents are as follows: Mr. Kunz \$750,000.00; IMC \$500,000.00; Twin K Investments, Inc. \$50,000.00; Modena Hills, Inc. \$50,000.00.

Action: Jan Graham recused herself. Jane Cameron made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Next Meeting – September 22, 2011.

Jan Graham made a motion to adjourn the meeting. The motion was seconded and carried.

Approved:


Erik Christiansen, Chairman

Date:

9/22/11