

# Utah Securities Commission

## Meeting Minutes

### May 22<sup>nd</sup>, 2014

#### **Division of Securities Staff Present**

Keith Woodwell, Division Director  
Maria Skedros, Commission Secretary  
Dave Hermansen, Enforcement Director  
Ken Barton, Compliance Director  
Benjamin Johnson, Licensing & Registration Director  
Dee Johnson, Investor Education Director  
Karen McMullin, Investor Education Coordinator  
Ann Skaggs, Securities Analyst  
Charles Lyons, Securities Analyst  
Adam Sweet, Lead Securities Investigator  
Matt Edwards, Lead Securities Investigator  
Heidie George, Securities Examiner  
Russ Bulloch, Securities Examiner  
Nadene Adams, Office Specialist

#### **Other State of Utah Employees:**

Jennie Jonsson, Administrative Law Judge, Department of Commerce  
Paul Amann, Assistant Attorney General

#### **Commissioners Present**

Tim Bangerter, Landmark Wealth Advisors  
Erik Christiansen, Parsons Behle & Latimer  
Brent Baker, Clyde, Snow & Sessions  
Gary Cornia, Brigham Young University

#### **Commissioners Absent**

David Russon, Investment Management Consultants

#### **Public Present:**

Russell Walker

**Minutes:** At 9:03 am the meeting was called to order and Commissioner **Brent Baker** made the motion to approve the minutes from the March 27<sup>th</sup>, 2014 and April 21<sup>st</sup>, 2014 Commission meetings. Commissioner **Tim Bangerter** seconded the motion and the motion was approved unanimously.



**Home and Business Networks, LLC, Christopher Sterling Belliston SD-09-0020, SD-09-0021, Order on Motion for Default:** Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on March 17<sup>th</sup>, 2009. The Respondent filed a response to the Order on April 15<sup>th</sup>, 2009. Criminal proceedings concluded on September 16<sup>th</sup>, 2013 and an initial hearing was scheduled. The Respondent failed to attend or participate in the initial hearing. Therefore a default order is recommended. The Respondent is ordered to cease and desist from any further violations of the Act, a permanent bar from the industry and pay a fine of \$50,000.00 to the Division.

Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **Brent Baker** seconded the motion. The motion was passed unanimously.

**Kenneth Day SD-13-0021, Stipulation and Consent Order:** Dave Hermansen reported that from June 2009 to August 2009, the Respondent offered and sold securities to an investor and collected a total of at least \$75,000.00. The Respondent violated the Act by making untrue statements of material facts or omitting to state material facts in connection with the sale of securities. Mr. Day is ordered to cease and desist from violating the Act, barred from the industry, and assessed a fine of \$37,500, of which \$35,000 may be offset by payments of restitution.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**West States Investments, Inc., Jason Kim Brown SD-10-0063, SD-10-0064 Stipulation and Consent Order:** Dave Hermansen reported that in 2007 Respondent offered and sold a security to one investor and collected a total of \$250,000. The Respondent made material misstatements and omissions in connection with the offer and sale of a security. The victim lost all of her investment. The Utah Attorney General's office filed charges against the Respondent, and the Respondent was ordered to pay restitution back to the investor, which he did. The Respondent admits to the Division's findings and agrees of cease and desist from any conduct that violates the Act. The Respondent is barred from the industry and the Division imposes a fine of \$10,000.00.

Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.



**Manchester Development Holdings Corp.; National Entertainment, Inc.; Cary K. Beagley SD-11-0066, SD-11-0067, SD-11-0068 Recommended Order on Motion for Default:** Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was filed on August 29<sup>th</sup>, 2011. Thereafter, the proceedings were stayed due to criminal proceedings against the Respondent. On March 12<sup>th</sup>, 2014, the stay was lifted and the Respondent was required to respond to the Division within 30 days, which he failed to do. An initial hearing was set for May 7<sup>th</sup>, 2014 and the Respondent failed to appear. Therefore, a default order is recommended. The Respondent is ordered to pay a fine of \$20,000.00 and is permanently barred from licensure in the industry.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Tim Bangert** seconded the motion. The motion was passed unanimously.

**Michael J. Hansen and CEMA Group, LLC SD-13-0022, SD-13-0023 Stipulation and Consent Order:** Dave Hermansen reported that an Order to Show Cause and Notice of Agency Action was entered on March 6<sup>th</sup>, 2013. The Respondent violated the Act by making false statements and misrepresentations, while engaged in the offer and sale of securities. The Salt Lake County District Attorney's Office filed charges against the Respondent. The Respondent is ordered to cease and desist from violating the Act and is barred from the securities industry. Mr. Hansen is ordered to pay restitution as ordered in the criminal case against him.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**Chad Bennett Reid SD-13-0030 Stipulation and Consent Order:** Adam Sweet reported that from approximately March 2005 to February 2009, the Respondent offered and sold securities to at least eight investors, collecting approximately \$320,500.00. The Utah Attorney General's Office filed criminal charges against the Respondent on November 8<sup>th</sup>, 2012. The charges included three counts of securities fraud and one count of pattern of unlawful activity. The Respondent agreed to pay \$282,205.07 in restitution to the investors. The Respondent made complete payment of restitution upon entry of his plea. The proposed Stipulation and Consent Order provides that the Respondent neither admits nor denies the findings and conclusions of law, and orders Respondent to cease and desist from any further violations of the Act, bars him from the industry, and imposes a fine of \$20,000.00. Commissioner Brent Baker expressed concern that the Respondent does not have to admit to the findings and conclusions of law. Commissioner Erik Christiansen also agreed that the Respondent's acts were egregious and expressed a lack of support for the proposed Stipulation.

Commissioner **Brent Baker** made the motion to deny the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion passed unanimously and it is recommended that this case moves to renegotiations or a hearing.



**Christian Oesch SD-13-0046 Recommended Order on Motion for Default:** Dave Hermansen reported that on October 31<sup>st</sup>, 2013 a Notice of Agency Action and Order to Show Cause was entered. The Respondent was required to file a response within 30 days and failed to do so. An initial hearing was held on December 4<sup>th</sup>, 2013 and the Respondent failed to appear. Therefore, a default order is recommended. The Respondent is ordered to cease and desist from engaging in any further violations of the Act, pay a fine of \$72,693.00 to the Division, and barred from the industry.

Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **Brent Baker** seconded the motion. The motion was passed unanimously.

**Timothy A. Nemeckay and Nemeckay Group Incorporated SD-14-0009, SD-14-0010 Stipulation and Consent Order:** Matthew Edwards reported that from approximately 2011 to 2013, the Respondent offered and sold limited liability company interest to at least twelve investors and collected a total of \$3,697,142. A Notice of Agency Action and an Order to Show Cause was entered on April 14, 2014. The Respondent violated the Act by engaging in the offer and sale of securities, while not being licensed. The Respondent is ordered to cease and desist from violating the Act, barred from the industry and ordered to pay a fine of \$350,000 with \$313,710 of that fine amount be offset by restitution.

Commissioner **Erik Christiansen** and Commissioner **Brent Baker** recused themselves due to conflicts of interest. The motion to approve or deny this order was deferred until Commissioner **David Russon** is available.

**Ira Sorensen SD-13-0039 Stipulation and Consent Order:** Ken Barton reported that the Respondent is a licensed insurance agent in Utah and at one time was a licensed broker-dealer agent. Mr. Sorensen was affiliated with Dee Randall's Horizon entities and he referred insurance clients to Randall for the purchase of private placement securities in the form of "Horizon Notes". Mr. Sorensen received \$10,500.00 in direct compensation for the sale of Horizon Notes. Mr. Sorensen referred investors to Mr. Randall without prior approval of his broker-dealer firm, a practice known as "selling away". Mr. Sorensen is ordered to disgorge \$10,500.00 to the Randall/Horizon Bankruptcy Trustee and pay a fine of \$15,000 to the Division. \$10,000 of the fine may be offset by restitution. Mr. Sorensen agrees to not seek a Utah securities license for five years.

Commissioner **Erik Christiansen** recused himself due to conflicts of interest.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.



**John A. Gervasi SD-14-0001 Stipulation and Consent Order:** Ken Barton reported that Mr. Gervasi is an agent with Brookville Capital Partners, a New York broker-dealer firm licensed to do business in Utah. Mr. Gervasi has never been licensed as a broker-dealer agent in Utah. On April 12, 2013, the Respondent contacted by phone, the home of the Division of Securities Director of Enforcement, Mr. Dave Hermansen. Mr. Gervasi's phone call concerned investing money at Brookville through Mr. Gervasi. On April 24<sup>th</sup>, 2013, Mr. Hermansen called the Respondent requesting more information on the investment opportunity that the Respondent was selling. In connection with the solicitation of the sale of securities Mr. Gervasi made several misrepresentations and omissions of material facts and acted as an unlicensed agent. Mr. Gervasi neither admits or denies the Division's findings, agrees to cease and desist from further violations of the Act, and pay a fine of \$10,000.00 to the Division.

Commissioner **Tim Bangerter** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**Gregory S. Blackburn SD-14-0004 Stipulation and Consent Order:** Ken Barton reported that Mr. Blackburn is a licensed insurance agent in Utah and at one time was a licensed broker-dealer in Utah, which limited him to selling mutual funds and variable insurance products. Mr. Blackburn was never licensed as a broker-agent for securities such as Horizon Notes. Mr. Blackburn referred insurance clients to Mr. Randall for the purchase of private placement securities in the form of Horizon Notes, receiving approximately \$7,246.00 in compensation for the sale of the Notes. When referring an investor to Randall, Mr. Blackburn made material misrepresentations and omissions. Mr. Blackburn neither admits or denies the Division's findings, agrees to cease and desist from further violations of the Act, disgorge his commission to the Randall/Horizon Bankruptcy Trustee, and pay a fine of \$15,000.00 to the Division.

Commissioner **Erik Christiansen** recused himself due to conflicts of interest.

Commissioner **Brent Baker** made the motion to approve the proposed Order and Commissioner **Gary Cornia** seconded the motion. The motion was passed unanimously.

**Evidentiary Hearing: NevWest Corp., Brisam Corp., Brain A. Kitfs SD-07-0049, SD-07-0050, SD-07-0051**

Both parties presented opening arguments and put on evidence with respect to the Division's administrative action against Respondent.

Commissioner **Gary Cornia** made the motion to adjourn the meeting

Commissioner **Brent Baker** seconded the motion and the meeting was adjourned at 12:00 pm.



Approved:  \_\_\_\_\_

Erik Christiansen, Chairman  
Tim Baughman, Commissioner

Date: 8/11/17 \_\_\_\_\_



# Utah Securities Commission

## Meeting Minutes

### July 1<sup>st</sup>, 2014

#### Division of Securities Staff Present

Keith Woodwell, Division Director  
Maria Skedros, Commission Secretary  
Dave Hermansen, Enforcement Director  
Ann Skaggs, Securities Analyst  
Matt Edwards, Lead Securities Investigator

#### Other State of Utah Employees:

Jennie Jonsson, Administrative Law Judge, Department of Commerce  
Paul Amann, Assistant Attorney General

#### Commissioners Present via conference call:

Tim Bangerter, Landmark Wealth Advisors  
Gary Cornia, Brigham Young University  
David Russon, Investment Management Consultants

#### Commissioners Absent

Erik Christiansen, Parsons Behle & Latimer  
Brent Baker, Clyde, Snow & Sessions

#### Public Present:

None.

**Minutes:** At 10:03 am the meeting was called to order by Commissioner **David Russon**. This meeting is a quorum of the Commission for the purpose of reviewing the Stipulation and Consent Order in the case of Timothy A. Nemeckay and Nemeckay Group Incorporated SD-14-0009, SD-14-0010. Commissioners **Erik Christiansen** and **Brent Baker** recused themselves due to their firm's connections with the Respondent.

Lead Investigator **Matt Edwards** reviewed the findings and facts of case. The Respondent has agreed to cease and desist from violating the Act, and to a permanent bar from the Securities industry in the State of Utah. The Division imposes a fine of \$350,000. against the Respondent, with \$313,710 of that fine amount available to be offset by restitution.

Commissioner **Gary Cornia** made the motion to approve the proposed Order and Commissioner **Tim Bangerter** seconded the motion. The motion was passed unanimously.

Commissioner **David Russon** made the motion to adjourn the meeting

Commissioner **Tim Bangerter** seconded the motion and the meeting was adjourned at 10:12 am.



Approved:  \_\_\_\_\_

~~Erik Christiansen, Chairman~~  
*Tim Bergeson* *Commissioner*

Date: 8/11/14 \_\_\_\_\_



DIVISION OF SECURITIES  
KEITH WOODWELL, DIRECTOR  
DEPARTMENT OF COMMERCE  
P.O. BOX 146741  
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  
MANLY "TED" ELWOOD LOGAN,  
RESPONDENT

**ORDER ON MOTION FOR DEFAULT**  
CASE NO. SD-09-0022

---

**BY THE UTAH SECURITIES COMMISSION:**

This adjudicative proceeding was initiated pursuant to a March 17, 2009 notice of agency action and order to show cause. A hearing before the Utah Securities Commission (Commission) was held on August 11, 2014. Respondent failed to appear.

Given the foregoing, the Commission finds that, pursuant to Utah Code § 63G-4-209(1)(b), proper factual and legal bases exist for entering a default order against Respondent.

**ORDER**

Based on the foregoing, the Commission accepts the allegations outlined in the Division's order to show cause as being true, to wit:

1. That the investment opportunities offered and sold by Respondent are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);

2. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly made false statements to investors;
3. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly failed to disclose material information that was necessary in order to make representations made not misleading;
4. That, in violation of Utah Code Ann. § 61-1-7, Respondent sold securities that were neither registered nor exempt from registration; and
5. That Respondent's actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

Respondent is hereby ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq. In addition, Respondent is hereby ordered to pay a fine of \$50,000 to the Utah Division of Securities. Of the total fine, \$20,000 is due and payable in full upon receipt of this final order; the remaining \$30,000 is subject to offset on a dollar-to-dollar basis for any restitution paid pursuant to the restitution order entered against Respondent in case number 091903893 (Third District Court, Salt Lake County, Utah). Finally, Respondent is hereby permanently barred from licensure in the securities industry in Utah.

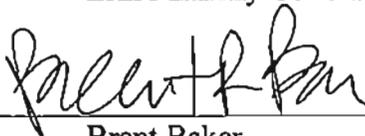
All further proceedings in this case are dismissed. This dismissal does not relieve Respondent from complying with the terms of the default order.

This order shall be effective on the signature date below.

DATED this 11<sup>th</sup> day of August, 2014

**UTAH SECURITIES COMMISSION:**

  
\_\_\_\_\_  
Tim Bangerter

\_\_\_\_\_  
Erik Anthony Christiansen  
  
\_\_\_\_\_  
Brent Baker

\_\_\_\_\_  
Gary Cornia  
  
\_\_\_\_\_  
David Russon

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Agency review of this order may be obtained by filing a request for agency review with the Executive Director of the Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of this order. A motion to set aside the order may also be filed with the presiding officer. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Section 63G-4-101 et seq. of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of August, 2014 the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

Manly Logan  
1613 Wyngate Park Dr.  
South Jordan, UT 84095

and caused a copy to be hand delivered to:

Paul Amann, Assistant Attorney General  
Office of the Attorney General of Utah  
Fifth Floor, Heber M. Wells Building  
Salt Lake City, Utah

Utah Division of Securities  
Second Floor, Heber M. Wells Building  
Salt Lake City, Utah

  
\_\_\_\_\_

DIVISION OF SECURITIES  
KEITH WOODWELL, DIRECTOR  
DEPARTMENT OF COMMERCE  
P.O. BOX 146741  
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

**ERIK BLOMQUIST,**

RESPONDENT

**RECOMMENDED ORDER ON MOTION  
FOR DEFAULT**

**CASE NO. SD-14-0018**

---

**BY THE PRESIDING OFFICER:**

This adjudicative proceeding was initiated pursuant to a June 30, 2014 notice of agency action and order to show cause. Respondent was required to file a response to the order to show cause within the ensuing 30-day period. As of the date of this order, Respondent has not filed a response.

An initial hearing was held on August 6, 2014. Respondent failed to appear. As of the date of this order, Respondent has made no effort to participate in these proceedings.

Given the foregoing, the presiding officer finds that, pursuant to Utah Code § 63G-4-209(1)(b) and (c), proper factual and legal bases exist for entering a default order against Respondent.

## RECOMMENDED ORDER

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, to wit:

1. That the investment opportunities offered and sold by Respondent are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);
2. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly made false statements to investors;
3. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly failed to disclose material information that was necessary in order to make representations made not misleading; and
4. That Respondent's actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

The presiding officer further recommends that the Utah Securities Commission enter a default order against Respondent, requiring:

1. That Respondent cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq;
2. That Respondent pay a fine of \$62,500 to the Utah Division of Securities, with \$12,500 of the fine due and payable in full upon receipt of the final order, and with the remaining \$50,000 subject to offset on a dollar-to-dollar basis for any restitution paid; and

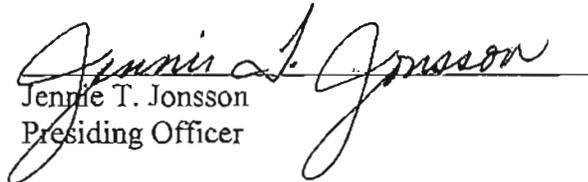
3. That Respondent be permanently barred from licensure in the securities industry in Utah.

Finally, the presiding officer recommends that, upon entering the default order, the Utah Securities Commission dismiss any further proceedings in this case.

This recommended order shall be effective on the signature date below.

DATED this 6<sup>th</sup> day of August, 2014.

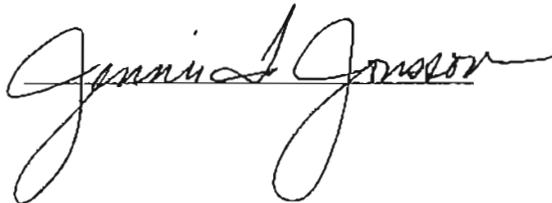
UTAH DEPARTMENT OF COMMERCE

  
Jennie T. Jonsson  
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 6<sup>th</sup> day of August, 2014, the undersigned hand delivered a true and correct copy of the foregoing RECOMMENDED ORDER ON MOTION FOR DEFAULT to the following:

Utah Securities Commission  
c/o Keith Woodwell, Director, Utah Division of Securities  
Heber M. Wells Building, 2nd Floor  
Salt Lake City, UT



DIVISION OF SECURITIES  
KEITH WOODWELL, DIRECTOR  
DEPARTMENT OF COMMERCE  
P.O. BOX 146741  
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  
ERIK BLOMQUIST,  
RESPONDENT

**ORDER ON MOTION FOR DEFAULT**  
**CASE NO. SD-14-0018**

---

**BY THE UTAH SECURITIES COMMISSION:**

The presiding officer's August 6, 2014 recommended order on motion for default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

**ORDER**

Respondent is hereby ordered cease and desist from engaging in any further conduct in violation of Utah Code § 61-1 et seq.

Respondent is hereby ordered to pay a fine of \$62,500 to the Utah Division of Securities. Of this total fine, \$12,500 is due and payable immediately upon receipt of this final order. The remaining \$50,000 is subject to offset on a dollar-to-dollar basis for any restitution paid.

Respondent is hereby permanently barred from licensure in the securities industry in Utah.

All further proceedings in this case are dismissed. This dismissal does not relieve Respondent from complying with the terms of the default order.

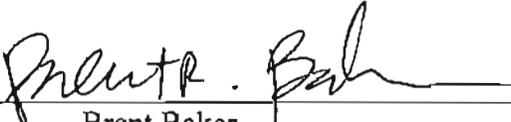
This order shall be effective on the signature date below.

DATED this <sup>11<sup>th</sup></sup> 8<sup>th</sup> day of August, 2014

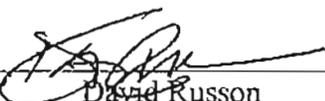
**UTAH SECURITIES COMMISSION:**

  
\_\_\_\_\_  
Tim Bangerter

\_\_\_\_\_  
Erik Anthony Christiansen

  
\_\_\_\_\_  
Brent Baker

\_\_\_\_\_  
Gary Cornia

  
\_\_\_\_\_  
David Russon

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Agency review of this order may be obtained by filing a request for agency review with the Executive Director of the Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of this order. A motion to set aside the order may also be filed with the presiding officer. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Section 63G-4-101 et seq. of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the 12 day of August, 2014 the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

Erik Blomquist  
10351 North 6580 West  
Highland, UT 84003

Randall Edwards  
136 S. Main St., Ste. 700  
Salt Lake City, UT 84101

and caused a copy to be hand delivered to:

Paul Amann, Assistant Attorney General  
Office of the Attorney General of Utah  
Fifth Floor, Heber M. Wells Building  
Salt Lake City, Utah

Utah Division of Securities  
Second Floor, Heber M. Wells Building  
Salt Lake City, Utah

  
\_\_\_\_\_

DIVISION OF SECURITIES  
KEITH WOODWELL, DIRECTOR  
DEPARTMENT OF COMMERCE  
P.O. BOX 146741  
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

**TECHNICAL SERVICES  
INTERNATIONAL, INC.;**  
**THOMAS R. BLONQUIST,**

RESPONDENTS

**RECOMMENDED ORDER ON MOTION  
FOR DEFAULT**

**CASE NO. SD-09-0041**

**CASE NO. SD-09-0042**

---

**BY THE PRESIDING OFFICER:**

This adjudicative proceeding was initiated pursuant to a September 8, 2009 notice of agency action and order to show cause. Thereafter, the proceedings were stayed for a time. The stay was lifted on June 20, 2014, and Respondents were ordered to file an answer to the Division's order to show cause within the ensuing 30-day period. As of the date of this order, Respondents have not filed an answer.

An initial hearing was held on August 6, 2014. Respondents failed to appear. As of the date of this order, Respondents have made no effort to participate in these proceedings.

Given the foregoing, the presiding officer finds that, pursuant to Utah Code § 63G-4-209(1)(b) and (c), proper factual and legal bases exist for entering a default order against Respondents.

**RECOMMENDED ORDER**

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, to wit:

1. That the investment opportunities offered and sold by Respondents are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);
2. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondents directly or indirectly made false statements to investors;
3. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondents directly or indirectly failed to disclose material information that was necessary in order to make representations made not misleading; and
4. That Respondents' actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

The presiding officer further recommends that the Utah Securities Commission enter a default order against Respondent, requiring:

1. That Respondents cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq;

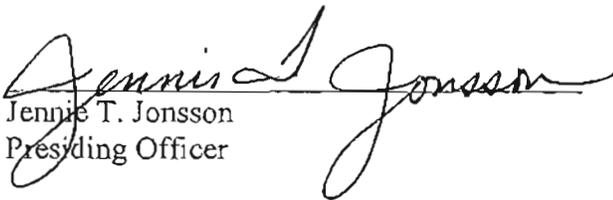
2. That Respondents pay a fine of \$282,357.39 to the Utah Division of Securities, with \$56,471 of the fine due and payable in full upon receipt of the final order and the remaining \$225,886.39 subject to offset on a dollar-to-dollar basis for any restitution paid; and
3. That Respondent Blonquist be permanently barred from licensure in the securities industry in Utah.

Finally, the presiding officer recommends that, upon entering the default order, the Utah Securities Commission dismiss any further proceedings in this case.

This recommended order shall be effective on the signature date below.

DATED this 6<sup>th</sup> day of August, 2014.

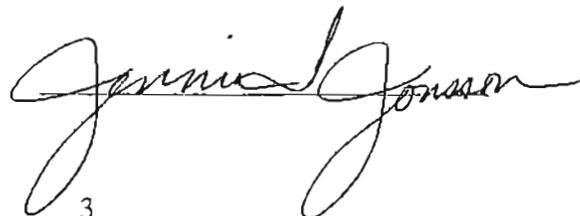
UTAH DEPARTMENT OF COMMERCE

  
Jennie T. Jonsson  
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 6<sup>th</sup> day of August, 2014, the undersigned hand delivered a true and correct copy of the foregoing RECOMMENDED ORDER ON MOTION FOR DEFAULT to the following:

Utah Securities Commission  
c/o Keith Woodwell, Director, Utah Division of Securities  
Heber M. Wells Building, 2nd Floor  
Salt Lake City, UT

  
3

DIVISION OF SECURITIES  
KEITH WOODWELL, DIRECTOR  
DEPARTMENT OF COMMERCE  
P.O. BOX 146741  
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  
  
**TECHNICAL SERVICES  
INTERNATIONAL, INC.;**  
**THOMAS R. BLONQUIST,**  
  
RESPONDENT

**ORDER ON MOTION FOR DEFAULT**  
  
CASE NO. SD-09-0041  
CASE NO. SD-09-0042

---

**BY THE UTAH SECURITIES COMMISSION:**

The presiding officer's August 6, 2014 recommended order on motion for default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

**ORDER**

Respondents are hereby ordered cease and desist from engaging in any further conduct in violation of Utah Code § 61-1 et seq.

Respondents are hereby ordered to pay a fine of \$282,357.39 to the Utah Division of Securities. Of this total fine, \$56,471 is due and payable immediately upon receipt of this final order. The remaining \$225,886.39 is subject to offset on a dollar-to-dollar basis for any restitution paid.

Respondent Blonquist is hereby permanently barred from licensure in the securities industry in Utah.

All further proceedings in this case are dismissed. This dismissal does not relieve Respondent from complying with the terms of the default order.

This order shall be effective on the signature date below.

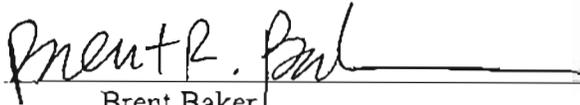
DATED this 11<sup>th</sup> day of August, 2014

**UTAH SECURITIES COMMISSION:**



Tim Bangerter

Erik Anthony Christiansen



Brent Baker

Gary Comia



David Russon

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

Agency review of this order may be obtained by filing a request for agency review with the Executive Director of the Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of this order. A motion to set aside the order may also be filed with the presiding officer. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Section 63G-4-101 et seq. of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the 12<sup>th</sup> day of August, 2014 the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

Thomas Blonquist, et al  
c/o Gregory Skordas  
Skordas, Caston & Hyde  
341 S. Main St., Ste. 303  
Salt Lake City, UT 84111

and caused a copy to be hand delivered to:

Paul Amann, Assistant Attorney General  
Office of the Attorney General of Utah  
Fifth Floor, Heber M. Wells Building  
Salt Lake City, Utah

Utah Division of Securities  
Second Floor, Heber M. Wells Building  
Salt Lake City, Utah



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 LES KESLER,**

**Respondent.**

**STIPULATION AND CONSENT  
ORDER**

**Docket No. SD-09-0009**

---

The Utah Division of Securities (Division), by and through its Director of Enforcement, Dave R. Hermansen, and Michael Les Kesler (Kesler or 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. As a result of that investigation, the Utah County Attorney's Office filed charges against

Respondent<sup>1</sup> on January 23, 2009. The charges included eight counts of securities fraud, one count of unregistered securities, and one count of pattern of unlawful activity.

3. On September 29, 2010, Respondent entered into a plea in abeyance on two counts of securities fraud, second degree felonies. In connection therewith, Respondent also agreed to pay \$368,000 in restitution.
4. On February 3, 2009, the Division initiated an administrative action against Respondent, through the issuance of an Order to Show Cause and Notice of Agency Action. The Order to Show Cause alleges that Respondent violated § 61-1-1 (securities fraud) and § 61-1-7 (sale of unregistered securities) of the Act while engaged in the offer and sale of securities in or from Utah.
5. In settlement of the Division's administrative action, Respondent hereby 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 the 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 (Order).
6. Respondent is currently represented by David M. Kono of Bennett Tueller Johnson &

---

<sup>1</sup> *State of Utah v. Michael Les Kesler*, Case No. 091400271, Fourth Judicial District Court of Utah (2009).

Deere and is satisfied with his representation in this matter.

7. Respondent acknowledges that this Order does not affect any enforcement action that may be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
8. 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**

9. At all times relevant to the matters asserted herein, Kesler was a resident of Utah County, Utah. Kesler has never been licensed in the securities industry in any capacity.

### **GENERAL ALLEGATIONS**

10. From approximately 2004 through 2007, Respondent offered to sell stock in Indian Oil, Inc. (Indian Oil)<sup>2</sup> to at least eight investors in or from Utah, who invested a total of at least \$929,500.<sup>3</sup> A detailed narrative of the investments made by three of the eight investors is included below.

---

<sup>2</sup> Indian Oil was a Utah corporation that incorporated on or about November 28, 1986. Its corporate status initially expired on or about February 24, 2005 for failure to file a renewal; however, the entity was later reinstated in Utah in 2005. On or about February 28, 2008, its status expired once again and the entity has not since been reinstated. From approximately 1998 until 2007, Kesler held a position in management and/or on the board of directors for the company. At all times relevant to the matters asserted herein, Indian Oil's principal place of business was located in Utah, and the entity was never licensed in the securities industry in any capacity.

<sup>3</sup> Of the \$929,500 invested, a total of \$588,500 came from personal investments made by the eight investors. The remaining \$341,000 came from a business account for Wasatch Funding Co.

11. Stock is defined as a security pursuant to § 61-1-13 of the Act.
12. Respondent told investors that Indian Oil owned exclusive technology that could make diesel fuel from such things as: used motor oil, used jet fuel, coal tar, and oil shale.
13. Investors lost all of their principal investments.

Investor JT

14. In 2004, Kesler introduced JT to an investment opportunity in Indian Oil at a meeting at the company's facility in Utah County, Utah.
15. Kesler told JT that Indian Oil had the only equipment utilizing proprietary technology that could process used motor oil to make diesel fuel, and that the diesel fuel produced would be an off-road grade for construction equipment.
16. Kesler told JT he invented the equipment and built it himself.
17. Kesler claimed to have already lined up an adequate supply of feedstock<sup>4</sup> and buyers to purchase the diesel that the company produced.
18. Kesler said that the only outstanding items were working capital and permits to process used oil.
19. On August 3, 2005, JT borrowed \$60,000 from his sister and purchased stock in Indian Oil.
20. JT also agreed to serve as vice president of the company and help secure the necessary

---

<sup>4</sup>The "feedstock" was used motor oil and used vegetable oil.

permits, while Kesler prepared the equipment for production.

21. In exchange for his investment, JT received seventy-two shares of stock in Indian Oil.
22. After investing, JT tried to secure the necessary permits from the DEQ, purchase a load of vegetable oil used in the production of biodiesel, hire an accountant to prepare and maintain company accounts, and compile a basic business plan for the company.
23. In the process, JT discovered that Kesler was incapable of producing a profitable amount of biodiesel from vegetable oil and that Kesler had no disclosure documents for Indian Oil.
24. To date, JT has received no return from his investment in Indian Oil.

DH and SH, Husband and Wife

25. In June 2006, Kesler discussed an investment opportunity in Indian Oil with DH and SH at the company's facility in Utah County, Utah.
26. Kesler gave DH and SH a tour of the Indian Oil facility. He showed them the offices, a laboratory and the refining area. Kesler showed them the refining equipment, including the machine he claimed to have invented to refine diesel fuel from used motor oil.
27. Kesler told DH and SH that this was the only machine utilizing proprietary technology that could process used motor oil into diesel fuel.
28. Kesler had a beaker of refined oil and a bucket of refined tar sands which he said were the finished product from his unique process.

29. Kesler also showed DH and SH the yard containing the storage tanks which were surrounded by a cement wall. Kesler explained the wall was required by state rules to contain any spillage.
30. When DH and SH asked Kesler how their money would be used if they invested, Kesler said it would be used to buy an oil tanker truck which would help increase oil production.
31. Kesler told DH and SH that their investment would be secured by the company and all of its assets. Kesler specifically listed the land and buildings, the equipment, the product and the accounts of the company as security for the investment.
32. Prior to offering Indian Oil stock to DH and SH, Kesler failed to tell them, among other things, that Indian Oil had been issued several Warning Letters and Notices of Violation and Order for Compliance by the Utah Division of Solid and Hazardous Waste, for violations of DEQ rules; and that Indian Oil had entered into two separate Stipulation and Consent Orders with the Division of Solid and Hazardous Waste, agreeing to pay penalties totaling \$25,525.
33. On July 10, 2006, DH and SH purchased seven shares of stock in Indian Oil at a price of \$10,000 per share, for a total of \$70,000.
34. In exchange for their investment, they received a stock certificate dated August 28, 2006.
35. After some time, Indian Oil had yet to become profitable. As a result, DH and SH asked for a return of their investment.

36. They were told that the company did not have the funds to pay them back.

Investor LW

37. LW first heard about the opportunity to invest in Indian Oil in July 2006 from a friend and investor.

38. In July 2006, LW met with Kesler at the Indian Oil facility in Utah County, Utah, to learn more about the investment.

39. Kesler gave LW a tour of the facility and showed her what he claimed to be the only proprietary technology that could convert used motor oil into diesel fuel.

40. Kesler told LW that if she invested in Indian Oil, her money would be used to buy an oil tanker to transport oil.

41. LW was told that the company would pay dividends to shareholders.

42. Kesler told LW that investments in Indian Oil were secured by the land, building and equipment of the company.

43. Prior to offering Indian Oil stock to LW, Kesler failed to tell her, among other things, that Indian Oil had been issued several Warning Letters and Notices of Violation and Order for Compliance by the Utah Division of Solid and Hazardous Waste, for violations of DEQ rules; and that Indian Oil had entered into two separate Stipulation and Consent Orders with the Division of Solid and Hazardous Waste, agreeing to pay penalties totaling \$25,525.

44. On July 10, 2006, LW purchased five shares of stock in Indian Oil for a total of \$50,000.
45. In exchange for the investment, LW received a stock certificate on or about August 28, 2006.
46. After some time, the company had yet to become profitable, and LW asked for a return of her investment.
47. LW was told that the company did not have the funds to pay her back.

## **CAUSES OF ACTION**

### **COUNT I**

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

48. The Division incorporates and re-alleges paragraphs 1 through 47.
49. The stock offered by Respondent is a security under § 61-1-13 of the Act.
50. In connection with the offer of securities, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. That Respondent invented and built the only proprietary technology that could convert used motor oil into off-road grade diesel fuel, when, in fact, equipment that could accomplish this same purpose had been around since the 1960s;
  - b. That the equipment could produce a profitable level of off-road grade diesel fuel;
  - c. That Respondent had the knowledge to profitably produce biodiesel; and
  - d. That, with respect to several investors, including DH, SH, and LW, the

investment in Indian Oil was secured by the property and equipment of the company, when, in fact, none of the investments were secured by property or equipment.

54. In connection with the offer of securities, Respondent, 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. That Respondent had a history of civil litigation;
  - b. That Respondent had two tax liens filed against him;
  - c. That Indian Oil had been issued two Warning Letters by the Division of Solid and Hazardous Waste for violations of DEQ rules;
  - d. That Indian Oil had been issued four Notices of Violation and Order for Compliance by the Division of Solid and Hazardous Waste for violations of DEQ rules;
  - e. That Indian Oil entered into a Stipulation and Consent Order with the Division of Solid and Hazardous Waste, agreeing to pay a penalty of \$14,485;
  - f. With respect to several investors, including LW and DH and SH, that Indian Oil entered into a second Stipulation and Consent Order with the Division of Solid and Hazardous Waste, agreeing to pay a penalty of \$11,040;
  - g. That Indian Oil's record of violations with the Division of Solid and Hazardous

Waste could complicate the process of obtaining the necessary permits; and

- h. Some or all of the information typically provided in an offering circular or prospectus regarding Indian Oil, such as:
  - i. The identity of Indian Oil's principals, along with their experience in refining oil;
  - ii. Indian Oil's financial statements;
  - iii. The market for Indian Oil's service(s);
  - iv. The nature of the competition for the service(s);
  - v. The track record of Indian Oil with other investors;
  - vi. The number of other investors;
  - vii. The risk factors for Indian Oil's investors;
  - viii. Discussion of pertinent suitability factors for the investment;
  - ix. Any conflicts of interest Indian Oil, principals, or agents may have had with regard to the investment;
  - x. Agent commissions or compensation for selling the investment;
  - xi. Any involvement of Indian Oil or its principals in certain legal proceedings, including bankruptcy or prior violations of state or federal securities laws;
  - xii. Whether the investment was a registered security or exempt from

registration; and

- xiii. Whether the person selling the investment was licensed.

## **COUNT II**

### **Offer of Unregistered Securities under § 61-1-7 of the Act**

- 55. The Division incorporates and re-alleges paragraphs 1 through 47.
- 56. The stock offered by Respondent is a security under § 61-1-13 of the Act.
- 57. The offer of securities occurred in the state of Utah.
- 58. The securities were not registered or notice filed under the Act, and Respondent did not file any claim of exemption relating to the securities.

## **II. THE DIVISION'S CONCLUSIONS OF LAW**

- 59. Based on the Division's investigative findings, the Division concludes that:
  - a. The investment opportunities offered 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 facts or omitting to state material facts in connection with the offer of securities, disclosure of which were necessary in order to make representations made not misleading.
  - c. Respondent violated § 61-1-7 of the Act by offering securities in the state of Utah without prior registration, exemption or notice filing, in accordance with the provisions of the Act.

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

60. Respondent admits the Division's findings of fact and conclusions of law and consents to the sanctions below being imposed by the Division.
61. Respondent agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.
62. Respondent agrees that he will be barred from (i) associating<sup>5</sup> 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.
63. Respondent agrees to pay restitution as ordered in the criminal case, *State of Utah v. Michael Les Kesler*, Case No. 091400271, Fourth Judicial District Court of Utah (2009).<sup>6</sup>

### **IV. FINAL RESOLUTION**

64. Respondent acknowledges that this Order, upon approval by the Securities Commission, shall be the final compromise and settlement of this matter.
65. Respondent further acknowledges that if the Securities Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

---

<sup>5</sup>"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.

<sup>6</sup> Through the related criminal proceeding, Kesler was ordered to pay restitution in the amount of \$368,000.

66. Respondent acknowledges that the 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 Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein.
67. Respondent acknowledges that a willful violation of this Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.
68. The 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 Order in any way. The Order may be docketed in a court of competent jurisdiction. Upon entry of the Order, any further scheduled hearings are canceled.

Utah Division of Securities:

Date: Aug 6, 2014

By: [Signature]  
Dave R. Hermansen  
Director of Enforcement

Approved: [Signature]  
Paul G. Amann  
Assistant Attorney General  
S.J.

Respondent:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Michael Les Kesler

\_\_\_\_\_  
David M. Kono  
Attorney for Respondent



## ORDER

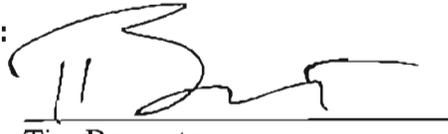
IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondent cease and desist from violating the Utah Uniform Securities Act.
3. Respondent is barred from (i) associating 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.
4. Respondent pay restitution as ordered in the criminal case, *State of Utah v. Michael Les Kesler*, Case No. 091400271, Fourth Judicial District Court of Utah (2009).

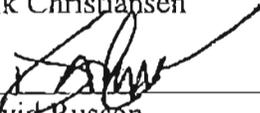
DATED this 11<sup>th</sup> day of August, 2014.

BY THE UTAH SECURITIES COMMISSION:

  
\_\_\_\_\_  
Brent Baker

  
\_\_\_\_\_  
Tim Bangerter

\_\_\_\_\_  
Erik Christiansen

  
\_\_\_\_\_  
David Russon

\_\_\_\_\_  
Gary Cornia

**Certificate of Mailing**

I certify that on the 12<sup>th</sup> day of August, 2014, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

MICHAEL LES KESLER  
325 WEST 400 SOUTH  
LINDON, UT 84042

BARRY JOHNSON  
DAVID KONO  
BENNETT TUELLER JOHNSON & DEERE  
3165 EAST MILLROCK DR., SUITE 500  
SALT LAKE CITY, UT 84121

and caused a copy to be hand delivered to:

PAUL AMANN  
UTAH ATTORNEY GENERAL'S OFFICE

ANN SKAGGS  
UTAH DIVISION OF SECURITIES

  
\_\_\_\_\_  
Executive Secretary

DIVISION OF SECURITIES  
KEITH WOODWELL, DIRECTOR  
DEPARTMENT OF COMMERCE  
P.O. BOX 146741  
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

**SCOTT ANDREW MACCAUGHERN,  
CRD# 2295921,**

RESPONDENT

**RECOMMENDED ORDER ON MOTION  
FOR DEFAULT**

**CASE NO. SD-13-0052**

---

**BY THE PRESIDING OFFICER:**

This adjudicative proceeding was initiated pursuant to a January 21, 2014 notice of agency action and order to show cause. Thereafter, the proceedings were stayed for a time. The stay was lifted on April 22, 2014. Respondent was required to file an answer to the Division's order to show cause within the following 30 days. As of the date of this order, Respondent has not filed an answer. An initial hearing was held on June 4, 2014; Respondent failed to appear. Therefore, the presiding officer finds that, pursuant to Utah Code § 63G-4-209(1)(b) and (c), proper factual and legal bases exist for entering a default order against Respondent.

## RECOMMENDED ORDER

Based on the foregoing, the presiding officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, to wit:

1. That the investment opportunities offered and sold by Respondent are securities under Utah Code Ann. § 61-1-13(1)(ee)(i);
2. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly made false statements to investors;
3. That in connection with the offer and sale of securities, and in violation of Utah Code Ann. § 61-1-1(2), Respondent directly or indirectly failed to disclose material information that was necessary in order to make representations made not misleading; and
4. That Respondent's actions, which constitute one or more violations of Utah Code Ann. § 61-1 et seq, are grounds for sanction under the Act.

The presiding officer further recommends that the Utah Securities Commission enter a default order against Respondent, requiring:

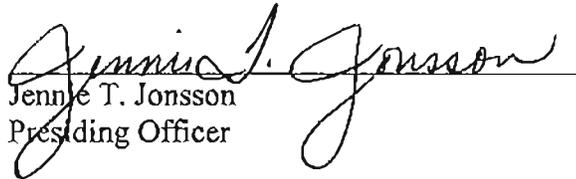
1. That Respondent cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1 et seq;
2. That Respondent pay a fine of \$20,000 to the Utah Division of Securities, due and payable in full upon receipt of the final order; and
3. That Respondent be permanently barred from licensure in the securities industry in Utah.

Finally, the presiding officer recommends that, upon entering the default order, the Utah Securities Commission dismiss any further proceedings in this case.

This recommended order shall be effective on the signature date below.

DATED this 4<sup>th</sup> day of June, 2014.

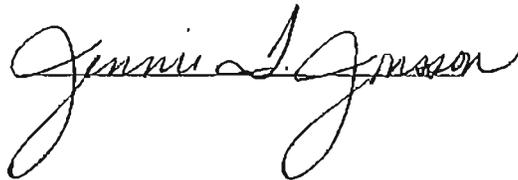
UTAH DEPARTMENT OF COMMERCE

  
Jennie T. Jonsson  
Presiding Officer

CERTIFICATE OF DELIVERY

I hereby certify that on the 4<sup>th</sup> day of June, 2014, the undersigned hand delivered a true and correct copy of the foregoing RECOMMENDED ORDER ON MOTION FOR DEFAULT to the following:

Utah Securities Commission  
c/o Keith Woodwell, Director, Utah Division of Securities  
Heber M. Wells Building, 2nd Floor  
Salt Lake City, UT



DIVISION OF SECURITIES  
KEITH WOODWELL, DIRECTOR  
DEPARTMENT OF COMMERCE  
P.O. BOX 146741  
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

**SCOTT ANDREW MACCAUGHERN,**  
**CRD# 2295921,**

RESPONDENT

**ORDER ON MOTION FOR DEFAULT**

**CASE NO. SD-13-0052**

---

**BY THE UTAH SECURITIES COMMISSION:**

The presiding officer's June 4, 2014 recommended order on motion for default in this matter is hereby approved, confirmed, accepted, and entered by the Utah Securities Commission.

**ORDER**

Respondent is hereby ordered cease and desist from engaging in any further conduct in violation of Utah Code § 61-1 et seq.

Respondent is hereby ordered to pay a fine of \$20,000 to the Utah Division of Securities, due and payable in full upon receipt of this final order.

Respondent is hereby permanently barred from licensure in the securities industry in Utah.

All further proceedings in this case are dismissed. This dismissal does not relieve Respondent from complying with the terms of the default order.

This order shall be effective on the signature date below.

DATED this 11<sup>th</sup> day of August, 2014

**UTAH SECURITIES COMMISSION:**



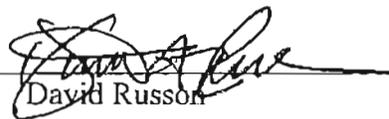
Tim Bangerter

Erik Anthony Christiansen



Brent Baker

Gary Cornia



David Russon

**NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW**

Agency review of this order may be obtained by filing a request for agency review with the Executive Director of the Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of this order. A motion to set aside the order may also be filed with the presiding officer. The agency action in this case was a formal proceeding. The laws and rules governing agency review of this proceeding are found in Section 63G-4-101 et seq. of the Utah Code, and Rule 151-4 of the Utah Administrative Code.

CERTIFICATE OF SERVICE

I hereby certify that on the 12<sup>th</sup> day of August, 2014 the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

Scott A. MacCaughern  
P.O. Box 682962  
Park City, UT 84068-2962

and caused a copy to be hand delivered to:

Paul Amann, Assistant Attorney General  
Office of the Attorney General of Utah  
Fifth Floor, Heber M. Wells Building  
Salt Lake City, Utah

Utah Division of Securities  
Second Floor, Heber M. Wells Building  
Salt Lake City, Utah

  
\_\_\_\_\_

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:**

**BRACE ROBINSON,**

**Respondent.**

**STIPULATION AND CONSENT  
ORDER**

**Docket No. SD-10-0076**

---

The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave R. Hermansen, and Brace Robinson (“Robinson” or “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 therewith, the Division initiated an administrative action against Respondent, through the issuance of an Order to Show Cause and Notice of Agency Action dated November 1, 2010. The Order to Show Cause alleged that Respondent violated § 61-1-1(2) (securities fraud) of the Act, while engaged in the offer and sale of

securities in or from Utah.

3. The Iron County Attorney's Office subsequently filed charges against Respondent on or about September 16, 2011.<sup>1</sup>
4. With respect to the administrative action, the Securities Commission approved an Order on Motion for Default ("Default Order") on or about May 22, 2014, as a result of Respondent's failure to appear at an initial hearing that took place at the Division's office on or about March 12, 2014.
5. Respondent now seeks to enter into this Stipulation and Consent Order ("Order") in settlement of the Division's action. Upon approval by the Securities Commission, this Order shall supersede the prior Default Order.
6. Respondent hereby 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 the 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 Order.

---

<sup>1</sup> *State of Utah v. Brace Robinson*, Case No. 111500513, Fifth Judicial District Court of Utah (2011). On or about September 16, 2011, the Iron County Attorney's Office filed charges against Respondent, including one count of securities fraud, a second degree felony, and one count of theft, a third degree felony. On or about March 27, 2012, the court accepted a plea of no contest to one count of theft, a class A misdemeanor. According to the plea agreement, this plea would be held in abeyance for a period of twelve months, during which time, Respondent would make complete restitution to the investor identified herein. Upon satisfaction of that condition, the court ordered the plea withdrawn and dismissed the case.

7. Respondent is represented by attorney James M. Park of The Park Firm, P.C. and is satisfied with his advice and representation in this matter.
8. Respondent acknowledges that this Order does not affect any enforcement action that may be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
9. 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**

10. Robinson was, at all relevant times, a resident of the state of Utah. Robinson has never been licensed in the securities industry in any capacity.

##### **GENERAL ALLEGATIONS**

11. From approximately January to November 2008, Respondent offered and sold securities to an investor, in or from Utah, and collected a total of \$10,000.
12. Respondent made material misrepresentations and omissions in connection with the offer and sale of securities to the investor below.
13. The investor lost approximately \$6,300 in principal alone.<sup>2</sup>

---

<sup>2</sup> In connection with the criminal action referenced above, Robinson provided the investor with a check for \$6,300, thereby repaying the outstanding principal amount of the investment.

INVESTOR S.N.

14. By January 2008, Robinson and S.N. had been close friends for several years.
15. Around that time, Robinson told S.N. about a computer software program that he had purchased.
16. According to Robinson, the program made self-automated trades in the stock market.
17. Between January and November 2008, Robinson had several additional discussions with S.N. related to the trading software.<sup>3</sup>
18. During these conversations, Robinson told S.N. that he was trading options and futures through the automated software program and making significant returns.
19. Robinson asked S.N. if he would be interested in an investment opportunity involving the program.
20. Robinson said that S.N. could invest through Robinson's account.
21. With respect to the investment opportunity, Robinson made the following statements:
  - a. Robinson had never lost money through the trading software;
  - b. S.N. would earn a 10% monthly return;
  - c. Any profits over and above the 10% monthly return would go to Robinson;
  - d. S.N. could pull out his investment funds at any time;
  - e. There was no risk on the investment; and
  - f. S.N. would incur no loss because his money would be on the "back end,"

---

<sup>3</sup> All conversations with Robinson and S.N. took place in Iron County, Utah.

meaning all other investors' monies would be lost before S.N. lost his money.

22. Based on Robinson's representations, S.N. invested \$10,000 with Robinson.
23. On or about November 4, 2008, S.N. gave Robinson a \$10,000 check made payable to Robinson.
24. On or about November 12, 2008, Robinson deposited the check in his bank account at Wells Fargo Bank.
25. Approximately one month after the investment, S.N. received an interest payment in the amount of \$1,200 from Robinson.
26. In or about February 2009, Robinson told S.N. that he had lost all of S.N.'s investment funds through the trading program.
27. S.N. consistently asked Robinson for his investment funds to be returned.
28. Robinson eventually gave S.N. another check, in the amount of \$2,500, toward repayment of S.N.'s principal.
29. Using a source and use analysis, Robinson used S.N.'s \$10,000 investment in the following manner:
  - a. \$9,000 transferred to Open E Cry, LLC<sup>4</sup>;
  - b. \$900 used for personal expenses; and
  - c. \$100 withdrawn in cash.

---

<sup>4</sup> Open E Cry, LLC, is an online brokerage company focusing on futures, forex, and equities.

**CAUSES OF ACTION**

**COUNT I**

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

30. The Division incorporates and re-alleges paragraphs 1 through 29.
31. The investment opportunity offered and sold by Respondent is a security under § 61-1-13 of the Act.
32. In connection with the offer and sale of a security to the investor, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. There was no risk in the investment, when in fact, Robinson had no reasonable basis to make such a statement; and
  - b. The investment funds would only be used to trade through the computer software, when in fact, 10% of the funds were used for personal expenses and cash.
33. In connection with the offer and sale of a security to the investor, Respondent, 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. Some or all of the information typically provided in an offering circular or prospectus regarding Robinson, such as:
    - i. Financial statements;
    - ii. Risk factors for investors;
    - iii. Suitability factors for the investment;
    - iv. Whether the investment was registered, federally covered or exempt from

registration in the state of Utah; and

- v. Whether Robinson was licensed to sell securities.

## **II. THE DIVISION'S CONCLUSIONS OF LAW**

- 34. Based on the Division's investigative findings, the Division concludes that:
  - a. The investment opportunity offered and sold by Respondent is a security under § 61-1-13 of the Act.
  - b. Respondent violated § 61-1-1(2) of the Act by making untrue statements of material facts or omitting to state material facts in connection with the offer of securities, disclosure of which were necessary in order to make representations made not misleading.

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

- 35. Respondent admits the Division's findings of fact and conclusions of law and consents to the sanctions below being imposed by the Division.
- 36. Respondent agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.
- 37. Respondent agrees that he will be barred from (i) associating<sup>5</sup> 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

---

<sup>5</sup>"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.

industry in Utah.

38. Respondent agrees to pay restitution as ordered in the criminal case, *State of Utah v. Brace Robinson*, Case No. 111500513, Fifth Judicial District Court of Utah (2011).<sup>6</sup>

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

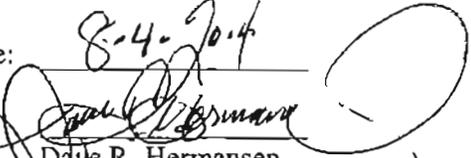
39. Respondent acknowledges that this Order, upon approval by the Securities Commission, shall be the final compromise and settlement of this matter.
40. Respondent further acknowledges that if the Securities Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
41. Respondent acknowledges that the 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 Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein.
42. Respondent acknowledges that a willful violation of this Order is a third degree felony pursuant to § 61-1-21(1)(b) of the Act.
43. The 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 Order in any way. The Order may be docketed in a court of

---

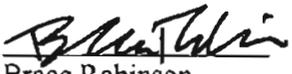
<sup>6</sup> Respondent satisfied the criminal court's restitution order on or about March 5, 2012. As a result, the criminal court ordered Respondent's plea of no contest to be withdrawn and subsequently dismissed the case. No additional financial penalty is incurred as a result of this settlement.

competent jurisdiction. Upon entry of the Order, any further scheduled hearings are canceled.

Utah Division of Securities:

Date: 8-4-2014  
By:   
Dave R. Hermansen  
Director of Enforcement

Respondent:

Date: 7/11/2014  
By:   
Brace Robinson

Approved:

  
Paul G. Amann  
Assistant Attorney General  
T.B.

  
James M. Park  
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. Respondent cease and desist from violating the Act.
3. Respondent is barred from (i) associating 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.
4. Respondent pay restitution as ordered in the criminal case, *State of Utah v. Brace Robinson*, Case No. 111500513, Fifth Judicial District Court of Utah (2011).<sup>7</sup>

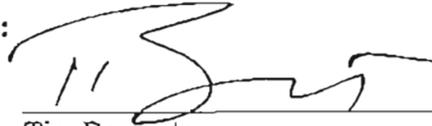
---

<sup>7</sup> Respondent satisfied the criminal court's restitution order on or about March 5, 2012. As a result, Respondent does not have an outstanding monetary obligation in connection with this settlement.

DATED this 11<sup>th</sup> day of August, 2014.

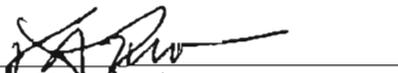
BY THE UTAH SECURITIES COMMISSION:

  
\_\_\_\_\_  
Brent Baker

  
\_\_\_\_\_  
Tim Bangert

\_\_\_\_\_  
Erik Christiansen

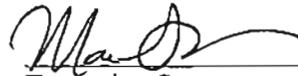
\_\_\_\_\_  
Gary Cornia

  
\_\_\_\_\_  
David Kusson

**Certificate of Mailing**

I certify that on the 12<sup>th</sup> day of August, 2014, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

BRACE ROBINSON  
c/o JAMES PARK  
THE PARK FIRM, P.C.  
141 NORTH MAIN ST., STE. 200  
P.O. BOX 765  
CEDAR CITY, UT 84721

  
Executive Secretary