

Thomas M. Melton (4999)
Assistant Attorney General
Wayne D. Jones (7235)
Assistant Attorney General
SEAN D. REYES (7969)
Utah Attorney General
Attorneys for the State of Utah
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, Utah 84114-0872
Telephone (801) 366-0310
Fax (801) 366-0315
Email: tmelton@utah.gov
wjones@utah.gov

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

IN THE MATTERS OF:	STIPULATION AND CONSENT ORDER AS TO DAVID LYLE TURNER
THEODORE LAMONT HANSEN (CRD #2833082), DAVID LYLE TURNER , and ZURICH HOLDINGS LIMITED LIABILITY COMPANY	Docket No. SD-14-0052 Docket No. SD-14-0053 Docket No. SD-14-0054
<u>Respondents.</u>	

The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave R. Hermansen, and Respondent David Lyle Turner (“Turner”) hereby stipulate and agree as follows:

1. Turner and Co-respondents Theodore Lamont Hansen (“Hansen”) and Zurich Holdings Limited Liability Company (“Zurich”) were the subjects of an investigation conducted by the Division regarding violations of the Utah Uniform Securities Act (the “Act”), Utah Code Ann. § 61-1-1, *et seq.*, as amended.

2. On October 29th, 2014, the Division initiated an administrative action against Turner, Hansen, and Zurich by filing an Order to Show Cause and Notice of Agency Action (“OSC”).
3. Turner hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order (“Order”). If entered, this Order will fully resolve the Division’s OSC allegations against Turner.
4. The administrative proceeding against Hansen and Zurich was resolved previously by the execution of a separate Stipulation and Consent Order that was approved by the Commission on August 4th, 2016.
5. Turner admits that the Division has jurisdiction over him and over the subject matter of this action.
6. Turner hereby waives any right to a hearing to challenge the Division’s evidence and to present evidence on his own behalf.
7. Turner has read this Order, understands its contents, and voluntarily agrees to the entry of this Order as set forth below. No promises, threats or other forms of inducement have been made by the Division or any representative of the Division to encourage Turner to enter into this Order, other than as set forth in this Order.
8. Turner is represented by attorney Jared Stubbs and is satisfied with the legal representation that he has received.

I. THE DIVISION’S FINDINGS OF FACT

THE RESPONDENTS

9. Hansen owns and operates Zurich. Hansen was formerly licensed with the Division as a broker-dealer agent. Hansen’s license lapsed many years ago and he has not been

registered in the securities industry in any capacity since that time.

10. Zurich is a Utah-based limited liability company that has been registered with the Utah Division of Corporations ("Corporations") since about October 6, 2008. Its current status with Corporations is listed as "active." Turner is listed as a registered principal who serves as manager of Zurich. Zurich has never been licensed by the Division.
11. Turner works for Hansen and provides administrative and general management services for Hansen's companies. Turner has been registered with Corporations as manager of Zurich since about August 4th, 2010. Turner served as manager of Zurich throughout the time period referenced in the OSC. Turner has never been licensed in the securities industry in any capacity.

GENERAL ALLEGATIONS

12. From approximately January to February 2012, Hansen, Turner, and Zurich offered and sold promissory notes and/or investment contracts in or from Utah to at least two investors, "B.M." and "T.E."
13. B.M. and T.E. paid a total of \$500,000 for the promissory notes/investment contracts.
14. Promissory notes and investment contracts are defined as securities in § 61-1-13 of the Act.
15. In connection with the offer and sale of securities to B.M. and T.E., Turner omitted to state material facts that were necessary in order to make statements that were made by Hansen, in the light of the circumstances under which Hansen made the statements, not misleading.
16. B.M. and T.E. had only received a return of \$300,000 of their total investment at the time that the Division filed the OSC; full restitution has since been paid.

INVESTORS B.M. AND T.E.

FIRST OFFER AND SALE OF SECURITIES

17. T.E. and B.M. are business partners.
18. In or about January, 2012, Hansen solicited T.E. and B.M. to make an investment through his company, Zurich (“first investment.”)
19. Hansen made material misstatements and failed to disclose material information to T.E. and B.M. in soliciting them to invest.
20. On or about January 24, 2012, B.M. and T.E. provided Hansen with a check in the amount of \$200,000, made payable to Zurich. In exchange Hansen gave T.E. and B.M. a promissory note signed by Hansen.

SECOND OFFER AND SALE OF SECURITIES

21. A few days after the first investment, Hansen solicited B.M. and T.E. to make a second investment through Zurich in the amount of \$250,000 (“second investment.”)
22. During a meeting at Hansen’s offices regarding the second investment, Hansen introduced B.M. to Turner and told B.M. that Turner was Zurich’s “Chief Financial Officer.”
23. Hansen represented that Zurich was a profitable company with assets in real estate.
24. Turner handed B.M. a document entitled “Profit and Loss Statement” during the meeting.
25. The “Profit and Loss Statement” purported to convey information regarding Zurich’s financial condition.

26. Hansen made material misstatements and failed to disclose material information to T.E. and B.M. in soliciting them to make the second investment.
27. Turner failed to correct Hansen's affirmative misstatements.
28. Based upon what they heard and saw at the meeting and upon other representations by Hansen, B.M. and T.E. decided to make the second investment.
29. B.M. and T.E. had an attorney prepare a document entitled "Loan Agreement" to fully encompass the terms of both the first and second investments. The Loan Agreement reflected a total investment of \$450,000 through Zurich.
30. T.E. and B.M. made payments to Hansen, Zurich, and others in an amount totaling \$250,000 between January 30th, 2012 and February 3rd, 2012.
31. On February 3, 2012, Turner and Hansen signed the Loan Agreement on behalf of Zurich.
32. In connection with the first and second investments, Turner failed to disclose to T.E. and B.M. that in or about 2005 he had filed for bankruptcy protection.
33. Hansen, Turner, and Zurich failed to disclose some or all of the information typically provided in an offering circular or prospectus regarding Hansen, Turner, and Zurich, such as:
 - a. Business background information;
 - b. Financial statements;
 - c. Risk factors;
 - d. Conflicts of interest;
 - e. Suitability factors for the investment;
 - f. Whether the investment was a registered security or exempt from registration; and

g. Whether Hansen, Turner, and Zurich were licensed to sell securities.

34. Funds from the first and second investments in Zurich were used for purposes other than those agreed upon by the parties.

THIRD OFFER AND SALE OF SECURITIES

35. On or about February 22, 2012, Hansen solicited B.M. for a third investment through Zurich (“third investment.”)
36. B.M. paid \$50,000.00 for the third investment.
37. Hansen executed a hand-written promissory note in connection with the third investment and personally guaranteed repayment.
38. Turner did not participate in the solicitation of B.M. for the third investment and did not sign any documents in connection with it.

CRIMINAL CHARGES AGAINST HANSEN

39. On August 6, 2014, Hansen was charged criminally in Utah’s Fourth District Court (*State of Utah vs. Theodore L Hansen*, Case No. 141402284) in connection with the conduct described in this Order.
40. On January 11, 2016, as part of a plea agreement, Hansen entered a guilty plea to two counts of Attempted Sale of Unregistered Securities (Class A Misdemeanors).
41. On February 22, 2016, Hansen was sentenced to 365 days jail for each count, the imposition of which was suspended, and was placed on probation for 36 months.
42. Prior to sentencing Hansen paid restitution to T.E. and B.M. in an amount equal to their principal losses; as a result no restitution was imposed as part of the sentence.

II. THE DIVISION’S CONCLUSIONS OF LAW

43. Based on the Division’s investigative findings, the Division concludes that:

- a. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
- b. Turner violated § 61-1-1(2) of the Act by omitting to state material facts in connection with the offer and sale of securities, the disclosure of which were necessary in order to make representations made not misleading, including but not limited to the following: failure to disclose his 2005 bankruptcy; failure to disclose information typically provided in an offering prospectus or circular, as set forth in paragraph 26 above; and, failure to disclose how the invested funds would actually be spent, as set forth in paragraph 27 above.

III. REMEDIAL ACTIONS/SANCTIONS

44. Turner neither admits nor denies the Division's Findings of Fact and Conclusions of Law, except he admits that jurisdiction is proper, and consents to the Division's imposition of the sanctions below.
45. Turner represents that any information that he provided to the Division as part of its investigation is accurate and complete.
46. Turner agrees to the imposition of a cease and desist order that prohibits him from engaging in any conduct that violates the Act.
47. Turner agrees that for a period of two years from the date of the entry of this order he will be ineligible for licensure with the Division in any capacity, that he will refrain from seeking licensure, that he will not offer, sell or apply to register securities with the Division, and that he otherwise will not participate in the securities industry in Utah.

48. Pursuant to § 61-1-20(1)(f) of the Act and in consideration of the factors set forth in §61-1-31 of the Act, the Division imposes a fine against Turner in the amount of \$12,000.
49. Turner agrees to pay the fine in installments as follows:
- a. The first fine installment of \$6,000.00 will be due to the Division within three days of the date that the Utah Securities Commission approves this Order;
 - b. The balance of \$6,000.00 shall be due within 12 months of the date that the Utah Securities Commission approves of this Order.
50. Turner agrees that as a pre-condition to entering into this agreement with the Division, Turner will provide proof to the Division that he has deposited the first fine installment of \$6,000 into his attorney's trust account.
51. Turner understands that if he fails to provide proof to the Division that he has deposited the first fine installment into his attorney's trust account, the Division will decline to enter into this settlement agreement, sign this Order , or submit this Order to the Commission for approval.

IV. FINAL RESOLUTION

52. Turner and the Division agree that this Order, upon approval by the Utah Securities Commission (the "Commission"), shall be the final compromise and settlement of this matter. Turner acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event that the Commission does not approve this Order, Turner expressly waives any claims of bias or prejudgment of the Commission, and such

waiver shall survive any nullification.

53. If Turner materially violates any term of this Order, after notice and an opportunity to be heard before an administrative law judge solely as to the issue of a material violation, Turner consents to entry of an order in which:

a. Turner neither admits nor denies the Division's Findings of Fact and Conclusions of Law as set forth in this order, except he admits that jurisdiction is proper; and

b. Turner is required to pay a fine to the Division in the amount of \$12,000, payment of which is due and payable as set forth in this Order.

The order may be issued upon ex parte motion of the Division, supported by an affidavit verifying the violation. In addition, the Division may institute judicial proceedings against Turner in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Turner or to otherwise enforce the terms of the order. Turner further agrees that he shall be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

54. Turner acknowledges that this Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Turner also acknowledges that any civil, criminal, arbitration or other causes of action brought by third parties against him have no effect on, and do not bar, this administrative action by the Division.

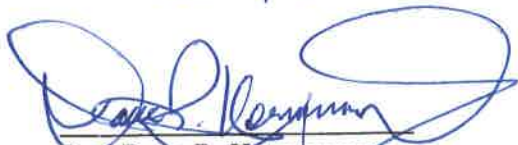
55. This Order constitutes the entire agreement between the parties herein and

supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect the Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.


56. For the entire time the fine remains outstanding, Turner agrees to notify the Division of any change in mailing address within thirty days from the date of such change.

Utah Division of Securities

Date: Jan. 9, 2017



By: Dave R. Hermansen
Director of Enforcement



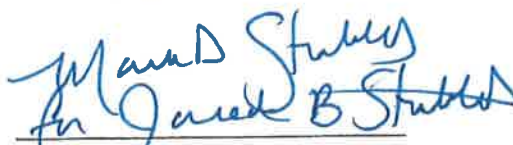
Wayne D. Jones
Assistant Attorney General

Respondent David Lyle Turner

Date: 1/6/17



David Lyle Turner



Approved by: Jared B. Stubbs
Attorney for the Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Turner neither admits nor denies, except that he admits jurisdiction, are hereby entered.
2. Turner shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. For a period of two years from the date of the entry of this order Turner shall be ineligible for licensure with the Division in any capacity; Turner shall refrain from seeking licensure during that period and shall not offer, sell or apply to register securities with the Division, and shall otherwise be precluded from participating in the securities industry in Utah.
4. Pursuant to § 61-1-20(1)(f) of the Act and in consideration of the factors set forth in §61-1-31 of the Act, the Division shall impose and Turner shall pay a fine to the Division in the total amount of \$12,000; the fine shall be paid as follows:
 - a. The first fine installment of \$6,000 shall be due to the Division within three days of the date that the Utah Securities Commission approves this Order;
 - b. The balance of \$6,000 shall be due within 12 months of the date that the Utah Securities Commission approves of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this 26th day of January, 2016.

Brent Baker

Erik Christensen

Brent A. Cochrane

Lyle White

Gary Cornia

CERTIFICATE OF MAILING

I certify that on the 27th day of January, 2016, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Jared Stubbs

Fillmore, Spencer, LLC
3301 North University Ave.
Provo, Utah 84604
Counsel for David Lyle Turner



LeeAnn Clark
Executive Secretary

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

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

IN THE MATTER OF:

**ARTISAN GROUP, LLC,
KENNETH EUGENE NORTH d.b.a.
NEW CENTURY,
NEW CENTURY FUNDING, INC.
JAMES MOORING, CRD# 2876063
DAVID BARTHOLOMEW, CRD#3097268
JON REX PUGMIRE,
JOHN PATRICK LAING**

Respondents.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-11-0046

Docket No. SD-11-0047

Docket No. SD-11-0048

Docket No. SD-11-0049

Docket No. SD-11-0050

Docket No. SD-11-0051

The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave Hermansen, and Respondents Artisan Group, LLC (“Artisan”) Kenneth Eugene North d.b.a. New Century, New Century Funding, Inc. (“North”) (collectively referred to at times as “Respondents”) hereby stipulate and agree as follows:

1. Respondents have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. On or about June 29, 2011, the Division initiated an administrative action against Respondents by filing an Order to Show Cause.

3. Respondents hereby agree to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondents pertaining to the Petition.
4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.
5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.
6. Respondents have read this Order, understand its contents, and voluntarily agree to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.
7. Respondents are represented by attorney Matthew Lewis and are satisfied with the legal representation they have received.
8. Respondents neither admit nor deny the Division's Findings of Fact and Conclusions of Law as set forth below.

FINDINGS OF FACT

THE RESPONDENTS

9. Artisan Group, LLC registered as a Utah limited liability company on October 11, 2007, but its entity status expired on February 2, 2009. Kenneth Eugene North was the registered agent and manager.
10. Kenneth "Kenny" Eugene North ("North") was at all relevant times a resident of Salt Lake County, Utah. North has never been licensed in the securities industry in any

capacity. On June 15, 2011, North was named as a defendant in a criminal case by the Utah Attorney General. Case Number 111904452.

GENERAL ALLEGATIONS

11. Between 2006 and 2009, Respondents, either directly or indirectly raised at least \$3,902,353.53 from at least seven investors in or from the State of Utah.
12. In addition to the named Respondents, North employed multiple business entities in promotional materials and on deeds of trust including, but not limited to, New Century Builders, Inc., North-Gilger Land Investments, LLC, Artisan Capital, LLC, NCB Capital, LLC, Polo Estates, The New Century Family of Companies, The New Century Group and New Century Partners.
13. Respondents made material misstatements and omissions in connection with the offer and sale of securities to the investors below.
14. New Century and North issued promissory notes to investors.
15. Respondents collected approximately \$3,484,944¹ in investor funds.

INVESTOR D.R.

16. In or about August or September 2006, John Patrick Laing (“Laing”), an associate of North, spoke to D.R. in Salt Lake County, Utah and provided D.R. with a New Century brochure.
17. During the meeting, Laing made the following statements:

¹ Respondents collected at least \$3,902,353.53, but have paid approximately \$417,409 in Ponzi payments back to the investors.

- a. that New Century issued short-term promissory notes secured by real property. Laing described the notes as hard money loans or bridge loans and said that the loans would be used while long-term financing was arranged;
- b. that New Century paid promissory note holders a “20% yearly annualized rate;”
- c. that New Century never missed an interest payment to an investor;
- d. that New Century had projects in several locations including Palm Springs, California and the La Quinta Country Club (La Quinta) in Colorado, and that invested funds would be used for one of New Century’s projects;
- e. that New Century completes some building projects and sells others prior to completion;
- f. that New Century was a great company, and had been in business for six or seven years;
- g. that North owned New Century;
- h. that North was worth \$12 million;
- i. that North was a “straight shooter;”
- j. that as a worst case scenario, D.R. would have to wait for the return of his principal while the property used to secure the investment was liquidated;
- k. that New Century did not have many investors;
- l. that the minimum investment amount was around \$100,000, and New Century was trying to raise \$1.2. million for the La Quinta project;
- m. that if D.R. needed to get his money out early, New Century would try to work it out; and

n. that Laing would earn a small commission if D.R. invested.

18. On or about September 5, 2006, D.R. invested \$500,000 with New Century. Per Laing's instructions, D.R. purchased a \$500,000 cashier's check from Zion's Bank payable directly to a third party for the purchase of an interest in a loan.
19. D.R. received a promissory note in exchange for the invested funds. D.R. signed the promissory note on September 5, 2006.
20. Laing later delivered an executed copy of the promissory note with North's signature to D.R. at D.R.'s office. The terms of the promissory note included 20% interest per annum to be paid quarterly to D.R. The maturity date listed on the promissory note was August 15, 2010.
21. On or about October 23, 2006, D.R. invested an additional \$200,000 with New Century. D.R. issued a personal check drawn on his account at Zion's Bank to make the investment. In return for his investment, D.R. received a Loan Agreement and Promissory Note signed by North and Laing on October 27, 2006. D.R. also signed the agreement on October 27, 2006.
22. The purpose of the promissory note was "... for investing in four (4) lots in Kellogg, Idaho mountain chalet development." The terms of the promissory note included promised returns of 15% per annum for two years payable monthly beginning December 15, 2006. The promissory note also states, "[t]his note is also secured by a first-position deeded LLC ownership of the lot in question, to be finalized once funding is received and project plating is complete." D.R. did not receive a trust deed or any evidence that the promissory note was secured.

23. On or about February 14, 2007, D.R. invested an additional \$1.2 million by wiring the funds to New Century Builder, Inc.'s account at Brighton Bank.
24. On or about March 8, 2007, D.R. received a copy of his \$1.2 million New Century Loan Agreement and Promissory Note. The promissory note was signed by North and Laing on February 15, 2007. The stated purpose of the promissory note was: "... investing in one (1) lot located in New Century Funding "Quarry at La Quinta" project in La Quinta (Palm Springs), California. In addition to this promissory note, this loan was purportedly secured by deeded and recorded interests in the following: Lot 1 Quarry Ranch Road, La Quinta CA 92253 (see separate deed, attached)."
25. The promissory note states that earnings would be paid out quarterly beginning March 15, 2007 and continuing every June 15, September 15, December 15, and March 15 thereafter until the home was sold, estimated at twenty-four months or less. New Century promised to pay D.R. 20% interest per annum.
26. Along with the New Century promissory note, D.R. received a copy of a Purchase and Sale Agreement between D.R. and New Century Builders as purchasers of a residential construction loan. The agreement was signed and dated by D.R. and North on February 21, 2007.
27. Attached to the promissory note was a document titled Exhibit A – First American Mortgage Servicing Inc., Construction Loan Payoff. Also attached to the promissory note was a document titled Assignment of Mortgage Loan.
28. On or about March 27, 2007, Laing told D.R. to roll over his previous IRA to a self-directed IRA. Laing said D.R. could purchase a New Century promissory note with the

- funds in the new IRA account and said New Century would pay all of the fees associated with D.R.'s account.
29. On March 27, 2007, D.R. rolled \$99,912.85 from his 401(k) to a self-directed IRA account. On April 2, 2007, D.R. signed a document authorizing the purchase of a New Century promissory note.
 30. Also on April 2, 2007, D.R. purchased and received a New Century promissory note. The promissory note memorializes the investment and terms: 20% per annum on the principal with principal and interest due March 12, 2011. The stated purpose of the promissory note was for an "... investment in one or more properties located within the New Century Funding development(s), designated and secured by one or more recorded deeds."
 31. On or about April 16, 2007, Laing and Jon Rex "Rex" Pugmire, an associate of North, solicited him to invest in a 90-day short term promissory note. North later telephone D.R. and stated that he needed an additional \$600,000 for ninety days.
 32. On May 11, 2007, D.R. purchased a cashier's check from Zion's Bank and had the check made payable to New Century Funding.
 33. On or about April 19, 2007, Laing or Pugmire delivered another promissory note. The terms of the ninety day promissory note were 24% simple-interest to be paid out at maturity. The promissory note indicated that D.R. was "secured by a deeded position in the 80% or less loan-to-value property or properties within the New Century Funding Developments."
 34. D.R. invested a total of \$2,599,913.
 35. D.R. received \$279,500 in returns from New Century.

36. D.R. is still owed \$2,320,413 in principal alone.

INVESTORS R.M. AND F.M. (HUSBAND AND WIFE)

37. R.M. met Pugmire in about May 2005 through his association with another investment company located in Utah.
38. R.M. and F.M. spoke to Pugmire by phone from their home in Newman, California while Pugmire was usually in his Utah office during the calls. In or about April 2006, Pugmire phoned R.M. and F.M. and mentioned New Century as an investment opportunity.
39. On or about April 5, 2006, Pugmire sent R.M. and F.M. a New Century brochure. The brochure stated that New Century had been in business for ten years, and stated the names of New Century's principals. The brochure stated "[t]here are no requirements to invest bridge funds with New Century Funding other than the minimum loan of \$10,000 and a willingness to put the funds to work for at least six months."
40. During three to five phone conversations, Pugmire made the following statements about himself and the investment:
- a. that he was working for New Century;
 - b. that he invested his own money in New Century;
 - c. that his grandparents or parents had invested and were receiving quarterly payments;
 - d. that R.M. and F.M. could invest in New Century and if they invested, they would double their money in four years;
 - e. that the investment was in property secured by a promissory note;

- f. that 24% profit was guaranteed;
 - g. that the investors would be paid first;
 - h. that if New Century sold the property at a profit, R.M. and F.M. could make even more money;
 - i. that the minimum investment on a four year promissory note was \$50,000;
 - j. that R.M. and F.M.'s investment would be pooled with other investor funds and used for a specific project;
 - k. that if R.M. and F.M. withdrew their investment monies early, they would lose the interest on the investment;
 - l. that R.M. and F.M. could invest for a period of six months to four years;
 - m. that the investment was "safe" even when the market was "heading south" because New Century invested in resorts and second homes; and
 - n. that New Century was capitalized through its investors.
41. Pugmire "laid out the operation" and said that he would have Laing contact R.M. and F.M. with additional information regarding the investment. Laing also sent a blank contract to R.M. and F.M. to review.
42. On June 6, 2006, Laing sent an e-mail to F.M. regarding New Century's "fixed-rate bridge-fund program" and specified the terms and interest rates offered." Laing wrote "[a]ll loans are secured with a promissory note and loans over \$100,000 are Trust Deeded in second position on one of our properties as well."
43. Based on the information provided by Pugmire and Laing, R.M. and F.M. invested in New Century. R.M. and F.M. never received a trust deed.

44. R.M. and F.M. invested \$50,000 by bank wire on June 23, 2006. Between June 20, 2006 and June 22, 2006, North, Laing, R.M. and F.M. signed the New Century Funding, Inc. Loan Agreement and Promissory Note. The terms of the promissory note guaranteed 25% per annum or 25% of the total profit from the sale of the property, whichever is greater. The promissory note matured on June 20, 2010.
45. In or about April 2007, R.M. phoned Pugmire and asked about other investment opportunities. Pugmire told R.M. about thirty, sixty, and ninety-day New Century investment options.
46. On or about April 19, 2007, Pugmire sent R.M. and F.M. an email stating: “[Laing] indicated we would be flexible and allow you to invest short-term monies for 60-90 day terms @ 2% interest monthly. The investment would need to be above \$25K. Rollover terms will be determined at maturity of a note.”
47. Based on Pugmire’s statements, R.M. and F.M. decided to invest \$80,000 on May 1, 2007. The \$80,000 was to be used by New Century on the Poncho Villa project.
48. R.M. later received a promissory note in exchange for the investment.
49. R.M. and F.M. invested a total of \$130,000.
50. R.M. and F.M. received \$12,160 in returns from New Century.
51. R.M. and F.M. are still owed \$117,840 in principal alone.

INVESTOR B.W.

52. On or about June 6, 2006, B.W. learned about investing with New Century in a meeting at her business office in Lindon, Utah. North, Laing, Pugmire, David Bartholomew (“Bartholomew”), Larry Bartholomew, John Bartholomew, and K.O. were present at this

meeting. North was promoting a real estate development project in Kellog, Idaho. North stated that the minimum investment was \$100,000. Investors would receive a promissory note, an interest rate, and the investment would be collateralized by a trust deed.

53. North's presentation included the following statements:
- a. that the New century Mission Statement was "to help families achieve greater prosperity through passive real estate investment;"
 - b. that the New Century bridge-fund provides partners with "above-average fixed-rate returns;"
 - c. that the New Century partnership provides partners a "secure, passive real estate investment;"
 - d. that development partners receive the following:
 - i. "A secure, passive real-estate investment opportunity;"
 - ii. "1st position title-placement."
 - e. that Bridge fund partners receive the following:
 - i. "New Century promissory note;"
 - ii. "Deed of trust (on all \$100,000+ loans);"
 - iii. "Monthly New Century Funding statement;"
 - iv. "Liquidity (interest paid at maturity or monthly with penalty);" and
 - v. "Guaranteed/fixed return or share in profits – whichever is greater."
54. During the presentation, North stated that the investments had no risk because investors would be in first position on the property title.

55. During the presentation, North said that he need not be licensed to sell securities because he was doing project-specific real estate investments secured by deeds to specific lots/properties.
56. Based on North's statements, B.W. invested \$100,000. On or about June 26, 2006, B.W. wired \$100,000 from her bank account to New Century. B.W. received a promissory note signed by North and Laing for the principal amount of \$100,000.
57. On or about June 26, 2006, North and Pugmire returned to B.W.'s office to offer another investment opportunity.
58. North described various investments in real estate developments. Among these opportunities was the La Quinta Project in Palm Springs, California. North also told investors that they could borrow funds using their individual credit to invest with New Century. North stated that he arranged for the financing to be set up through SunFirst Bank in St. George, Utah. Pugmire was present to handle loan paperwork for any investors that decided to invest.
59. In or about November 2006, New Century paid for B.W. to fly to Palm Springs, California to tour the La Quinta project.
60. Sometime after the Palm Springs tour, Pugmire worked with B.W. as well as Larry and John Bartholomew to complete loan paperwork and obtain individual loans from Key Bank.
61. On or about January 12, 2007, B.W. invested \$300,000 by wiring the funds to New Century's account from B.W.'s commercial loan account at Key Bank. B.W.'s

promissory note is for \$300,000 at a 15% per annum interest rate. The promissory note was signed by North and dated January 12, 2007.

62. B.W. received multiple unrecorded Deeds of Trust signed by North on January 10, 2007 and December 12, 2007. B.W. asked for recorded Deeds of Trust, and New Century claimed that they were already provided and did not provide recorded copies of the deeds.
63. B.W. invested a total of \$400,000.
64. B.W. received \$32,472 in purported returns from New Century.
65. B.W. is still owed \$367,528 in principal alone.

INVESTOR T.B.

66. From November 2006 through January 2007, T.B. met with Bartholomew four or five times in Lindon, Utah to help her with retirement planning and began discussing investment opportunities with New Century that were secured by deeds of trust. Bartholomew said he would not charge T.B. for his services because he received a commission from the people with whom he worked.
67. During the meetings, Bartholomew made the following statements:
 - a. that T.B. should pull equity from her home to invest in New Century;
 - b. that he invested in New Century and recommended New Century to his other clients;
 - c. that New Century built homes and made bridge loans;
 - d. that New Century had building projects in Colorado, California, and Idaho; and
 - e. that “This will put [T.B.’s] money to work for [her].”

68. T.B. phoned her brother, Pugmire, to discuss the investment. Pugmire said North was the principal of the company. Pugmire confirmed that New Century had building projects in Colorado, California, and Idaho. Pugmire confirmed that T.B. would be able to get her money out in an emergency. Pugmire said T.B.'s money would be used on one of New Century's building projects.
69. Based on these statements, T.B. obtained a mortgage loan from her credit union. On January 8, 2007, T.B. wrote a check for \$90,000 to New Century Funding. T.B. gave the check to Pugmire and the check was later deposited into New Century's account at Brighton Bank. Pugmire then delivered an executed promissory note signed by North and Pugmire, dated January 9, 2007, to T.B. at her home in Utah County, Utah.
70. T.B. received a \$4,500 quarterly payment in March, June, September, and December 2007. T.B. did not receive her March 2008 interest payment.
71. T.B.'s attorney sent a letter to New Century requesting the missed interest payments as well as the promised Deed of Trust.
72. Soon after, T.B. received a copy of an unrecorded deed of trust for property in Riverside, California, and not a development in Kellogg, Idaho, as agreed.
73. T.B. was sixty-five years old when she invested in New Century Funding.
74. T.B. later requested her deed be recorded. It was recorded on February 28, 2008.
75. T.B. invested a total of \$90,000.
76. T.B. received \$16,750 in returns from New Century.
77. T.B. is still owed \$73,250 in principal alone.

INVESTOR J.L. AND K.L. (WIFE AND HUSBAND)

78. J.L. first learned of New Century from her sister, B.W.
79. In November 2006, J.L. flew to Palm Springs, CA with other potential investors to tour the property being developed by New Century with Pugmire, Laing, and North.
80. During the presentation Laing stated that North had been in business for a long time and had a good track record. Laing stated his family had invested with North and North made investment decisions in favor of his investors.
81. During the presentation Pugmire, Laing, or North, all of whom were present, made the following statements:
 - a. North owned the company. Pugmire and Laing were New Century employees;
 - b. Investors would receive a recorded Deed of Trust;
 - c. New Century was paying 20-25% interest to investors;
 - d. North chose properties so carefully that even with a severe downturn in the economy, investors would still be protected;
 - e. Investors could get money out early if they really needed it; and
 - f. J.L. and K.L.'s farm could generate cash-flow income for them if they leveraged their home by taking out lines of credit.
82. Based on statements made on the Palm Springs, California tour and another visit, J.L. and K.L. invested a total of \$217,653.64. The Lunds received three promissory notes in exchange for the investment funds. The first promissory note is for \$23,153.64, dated November 16, 2006 and was signed by Laing. The \$23,153.54 was from their savings.

83. The second promissory note was for \$139,500, dated December 8, 2006, and was signed by North and Laing. The funds for this promissory note came from their home equity.
84. The third promissory note is for \$55,000, dated April 20, 2007 and was signed by North.
85. J.L. received both the second and third promissory notes via email.
86. J.L. and K.L. received unrecorded Deeds of Trust. Later, based on B.W.'s recommendation, J.L. and K.L. repeatedly requested recorded copies of their Deeds of Trust from New Century. New Century never delivered recorded copies.
87. J.L. and K.L. invested a total of \$217,654.
88. J.L. and K.L. received \$39,028 in returns from New Century.
89. J.L. and K.L. are still owed \$178,626 in principal alone.

INVESTORS D.H. AND S.H. (HUSBAND AND WIFE)

90. D.H. first heard about James Mooring ("Mooring"), an associate of North, through another investor. In June 2007, Mooring met with D.H. and S.H. about investment opportunities.
91. Mooring told them about New Century Funding and made the following statements:
 - a. North/New Century built luxury resorts and paid cash for them;
 - b. New Century operated on cash and New Century's assets outweighed their debt;
 - c. North was New Century's owner/principal;
 - d. New Century completed building projects and then sold the properties;
 - e. New Century was capitalized through its investors;
 - f. New Century was working on a project in Kellogg, Idaho similar to Park City, Utah and when complete would sell lots;

- g. New Century had other investors;
- h. A New Century promissory note was risk free and guaranteed because all the promissory notes were collateralized with real property;
- i. If D.H. pulled his investment out early, there would be a 5% penalty;
- j. D.H.'s money would be used on the Kellogg, Idaho development;
- k. North and the people at New Century were people of the highest character;
- l. Mooring would be compensated for his time by New Century and the insurance company for whom he sold policies; and
- m. Money D.H. and S.H. invested would be collateralized by property in Kellogg, Idaho.

92. Based on Mooring's statements, D.H. and S.H. invested in New Century. D.H. and S.H. decided to roll their interest payments into their principal.

93. On or about June 25, 2007, D.H. and S.H. moved their investment funds to a self-directed IRA through Mooring's help and invested the funds with New Century. S.H. invested \$58,009 in New Century and D.H. invested \$156,777.

94. On or about July 20, 2007, S.H. received a promissory note in exchange for the investment funds.

95. The terms of the promissory note were as follows:

"THIS PROMISSORY NOTE is for the purpose of a 1440 day investment in one or more properties located within the New Century Funding development(s), designated within and secured by one or more recorded deeds (see separate document). This bridge-fund loan includes a fixed 20% APR simple-interest return which will be paid out at maturity. Return on investment is guaranteed and is not dependent on New Century project production or profitability.... The loan is secured by a deeded

position in the 80% or less loan-to-value property or properties mentioned above, to be recorded once funding and signed authorization are received.FOR VALUE RECEIVED, BORROWER promises to pay...LENDER, the sum of \$58,009.47 ... together with interest thereon at a rate of 20.00 percent per annum...on the principal balance.”

96. This promissory note was signed by North on July 20, 2007 and was sent to D.H. by New Century.

97. On or about September 11, 2007, D.H. received a promissory note in exchange for the investment funds. The terms of the promissory note were stated as follows:

“THIS PROMISSORY NOTE is for the purpose of a 1440 day investment in one or more properties located within the New Century Funding development(s), designated within and secured by one or more recorded deeds (see separate document). This bridge-fund loan includes a fixed 20% APR simple-interest return which will be paid out at maturity. Return on investment is guaranteed and is not dependent on New Century project production or profitability.... The loan is secured by a deeded position in the 80% or less loan-to-value property or properties mentioned above, to be recorded once funding and signed authorization are received.FOR VALUE RECEIVED, BORROWER promises to pay...LENDER, the sum of \$156,777.309.47 ... together with interest thereon at a rate of 20.00 percent per annum...on the principal balance.”

98. The promissory note was signed by North on September 11, 2007 and by D.H. the same day, and was sent to D.H. by New Century.

99. D.H. and S.H. invested a total of \$214,787.

100. D.H. and S.H. received no returns from New Century.

101. D.H. and S.H. are still owed \$214,787 in principal alone.

INVESTOR S.L.

102. In 2006, S.L. was referred to New Century by a family member.

103. On or about October 2006, S.L. visited Kellogg, Idaho to learn more about investing in New Century.
104. North talked about all his development projects and told about plans for the area and the economy.
105. On or about November 2006, S.L. and a group of investors visited Palm Springs, California with expenses paid by North. Laing, Pugmire and North accompanied the group, which toured a condo development and visited a time-share which North said were examples of how he intended to structure his development.
106. S.L. wanted her investment to be tied to the Kellogg, Idaho project.
107. During November 2006, S.L. met with Bartholomew three times at an office in Lindon, Utah. At that time, Bartholomew was a licensed agent and investment adviser representative of HTK.
108. Bartholomew asked S.L. for a complete financial history which S.L. provided, including information about her savings, debt, liabilities, investments, certificates of deposit, life insurance, and more.
109. During the meetings, S.L. said she was a widow who wanted an investment to provide her with a monthly income so she would not have to dip into savings to meet her monthly expenses. At the meetings, Bartholomew gave S.L. a New Century brochure.
110. During the three meetings Bartholomew made the following statements:
 - a. He invested in new Century Funding;
 - b. B.W. and Larry Bartholomew invested with New Century Funding;
 - c. New Century Funding was a really good deal which he researched personally;

- d. New Century Funding had been in business a long time and was successful;
- e. North was the principal of New Century Funding;
- f. Everyone who invested with New Century Funding was making money;
- g. New Century offered investors promissory notes which paid high interest depending on how long an investor committed funds;
- h. New Century offered 25% per annum on funds invested for four years, 18% on funds invested for six months to a year, and 15% on funds invested with a monthly interest payout;
- i. There were other places S.L. could put her money that he could recommend but New Century was the best and the safest;
- j. There were two ways to participate, a direct investment of principal or by allowing New Century to use the investor's credit score;
- k. S.L.'s investment would be tied to a specific New Century real estate development project;
- l. As with any investment there was a slight risk S.L. would lose her money;
- m. S.L. would be secured by deed to real property with a value greater than her investment;
- n. The minimum investment for a two year promissory note was \$500,000 but for S.L., New Century would make an exception and allow an investment of \$250,000;
- o. In an emergency, S.L. could get her money out or change the terms of her investment contract;

- p. In order to invest, S.L. had to have a certain credit score; and
 - q. Bartholomew would not be making a commission on the investment from New Century and he would not charge her for the advice he was providing.
111. S.L. invested a total of \$250,000.
112. S.L. received \$37,500 in returns from New Century.
113. S.L. is still owed \$212,500 in principal alone.

CAUSES OF ACTION

FIRST CAUSE OF ACTION Securities Fraud Under §61-1-1 of the Act (Investor D.R.)

114. The Division incorporates and re-alleges paragraphs 1 through 112.
115. The Investment opportunities offered and sold by Respondents are securities under §61-1-13 of the Act.
116. In connection with the offer or sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
- a. that the promissory note was secured by real property when, in fact, the promissory note was not secured; and
 - b. that as a worst case scenario, D.R. would have to wait for the return of his principal while the property used to secure the investment was liquidated when, in fact, Respondents had no reasonable basis to make such a statement.
117. In connection with the offer and/or sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information which was necessary to make the statements made not misleading including, but not limited to, the following:

- a. What would happen if New Century failed to raise \$1.2 million for the La Quinta project; and
- b. Some or all of the information typically provided in an offering circular or prospectus regarding New Century and North, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. New Century and its principals' past and present legal proceedings;
 - iv. North's business experience and operating history;
 - v. Nature of competition;
 - vi. Whether the investment is a registered security or exempt from registration; and
 - vii. Whether Respondents were licensed to sell securities.

**SECOND CAUSE OF ACTION
Securities Fraud Under §61-1-1 of the Act
(Investors R.M. and F.M. (Husband and Wife))**

118. The Division incorporates and re-alleges paragraphs 1 through 116.
119. The investment opportunities offered and sold by Respondents are securities under §61-1-13 of the Act.
120. In connection with the offer or sale of a security to the investors, Respondents, directly or indirectly, made false statements including, but not limited to, the following:
 - a. that 24% profit was guaranteed when, in fact, Respondents had no reasonable basis to make such a statement; and

- b. that the investment was safe when, in fact, Respondents had no reasonable basis to make such a statement.

121. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information which was necessary in order to make the statements not misleading including, but not limited to, the following:

- a. Some or all of the information typically provided in an offering circular or prospectus regarding New Century and North, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. New Century and its principals' past and present legal proceedings;
 - iv. North's business experience and operating history;
 - v. Nature of competition;
 - vi. Whether the investment is a registered security or exempt from registration; and
 - vii. Whether Respondents were licensed to sell securities.

**THIRD CAUSE OF ACTION
Securities Fraud Under §61-1-1 of the Act
(Investor B.W.)**

- 122. The Division incorporates and re-alleges paragraphs 1 through 120.
- 123. The investment opportunities offered and sold by Respondents are securities under §61-1-13 of the Act.

124. In connection with the offer or sale of a security to the investors, Respondents, directly or indirectly, made false statements including, but not limited to, the following:

- a. that the promissory note was secured by real property when, in fact, the promissory note was not secured;
- b. that the investment was “guaranteed” when, in fact, Respondents had no reasonable basis for making such a statement; and
- c. that the investment had no risk when, in fact, Respondents had no reasonable basis to make such a statement.

125. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information which was necessary in order to make the statements not misleading including, but not limited to, the following:

- a. Some or all of the information typically provided in an offering circular or prospectus regarding New Century and North, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. New Century and its principals’ past and present legal proceedings;
 - iv. North’s business experience and operating history;
 - v. Nature of competition;
 - vi. Whether the investment is a registered security or exempt from registration; and
 - vii. Whether Respondents were licensed to sell securities.

**FOURTH CAUSE OF ACTION
Securities Fraud Under §61-1-1 of the Act
(Investor T.B.)**

126. The Division incorporates and re-alleges paragraphs 1 through 124.
127. The investment opportunities offered and sold by Respondents are securities under §61-1-13 of the Act.
128. In connection with the offer or sale of a security to the investors, Respondents, directly or indirectly, made false statements including, but not limited to, the following:
- a. that the promissory note was secured by real property when, in fact, the promissory note was not secured.
129. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information which was necessary in order to make the statements not misleading including, but not limited to, the following:
- a. Some or all of the information typically provided in an offering circular or prospectus regarding New Century and North, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. New Century and its principals' past and present legal proceedings;
 - iv. North's business experience and operating history;
 - v. Nature of competition;
 - vi. Whether the investment is a registered security or exempt from registration; and

- vii. Whether Respondents were licensed to sell securities.

**FIFTH CAUSE OF ACTION
Securities Fraud Under §61-1-1 of the Act
(Investors J.L. and K.L. (Wife and Husband))**

130. The Division incorporates and re-alleges paragraphs 1 through 128.
131. The investment opportunities offered and sold by Respondents are securities under §61-1-13 of the Act.
132. In connection with the offer or sale of a security to the investors, Respondents, directly or indirectly, made false statements including, but not limited to, the following:
- a. that the promissory note was secured by real property when, in fact, the promissory note was not secured.
133. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information which was necessary in order to make the statements not misleading including, but not limited to, the following:
- a. Some or all of the information typically provided in an offering circular or prospectus regarding New Century and North, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. New Century and its principals' past and present legal proceedings;
 - iv. North's business experience and operating history;
 - v. Nature of competition;

- vi. Whether the investment is a registered security or exempt from registration; and
- vii. Whether Respondents were licensed to sell securities.

**SIXTH CAUSE OF ACTION
Securities Fraud Under §61-1-1 of the Act
(Investors D.H. and S.H. (Husband and Wife))**

- 134. The Division incorporates and re-alleges paragraphs 1 through 132.
- 135. The investment opportunities offered and sold by Respondents are securities under §61-1-13 of the Act.
- 136. In connection with the offer or sale of a security to the investors, Respondents, directly or indirectly, made false statements including, but not limited to, the following:
 - a. that the promissory note was secured by real property when, in fact, the promissory note was not secured;
 - b. that the investment was “guaranteed” when, in fact, Respondents had no reasonable basis to make such a statement; and
 - c. that the investment had no risk when, in fact, Respondents had no reasonable basis for making such a statement.
- 137. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information which was necessary in order to make the statements not misleading including, but not limited to, the following:
 - a. Some or all of the information typically provided in an offering circular or prospectus regarding New Century and North, such as:
 - i. Financial statements;

- ii. Risk factors;
- iii. New Century and its principals' past and present legal proceedings;
- iv. North's business experience and operating history;
- v. Nature of competition;
- vi. Whether the investment is a registered security or exempt from registration; and
- vii. Whether Respondents were licensed to sell securities.

**SEVENTH CAUSE OF ACTION
Securities Fraud Under §61-1-1 of the Act
(Investor S.L.)**

138. The Division incorporates and re-alleges paragraphs 1 through 136.
139. The investment opportunities offered and sold by Respondents are securities under §61-1-13 of the Act.
140. In connection with the offer or sale of a security to the investors, Respondents, directly or indirectly, made false statements including, but not limited to, the following:
- a. that the promissory note was secured by real property when, in fact, the promissory note was not secured; and
 - b. that Bartholomew would not be making a commission on the investment when, in fact, Bartholomew had been receiving commissions.
141. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information which was necessary in order to make the statements not misleading including, but not limited to, the following:

- a. Some or all of the information typically provided in an offering circular or prospectus regarding New Century and North, such as:
- i. Financial statements;
 - ii. Risk factors;
 - iii. New Century and its principals' past and present legal proceedings;
 - iv. North's business experience and operating history;
 - v. Nature of competition;
 - vi. Whether the investment is a registered security or exempt from registration; and
 - vii. Whether Respondents were licensed to sell securities.

**EIGHTH CAUSE OF ACTION
Unlicensed Activity under §61-1-3 of the Act
(North)**

142. The Division incorporates and re-alleges paragraphs 1 through 140.
143. Respondent North offered and sold securities to investors in the State of Utah.
144. Respondent North was not licensed engage in the offer and/or sale of securities in the State of Utah.
145. Accordingly, each offer and/or sale of securities by North violated §61-1-3 of the Act.

CRIMINAL CHARGES AGAINST REPONDENT NORTH

146. On November 16, 2015, Respondent North was sentenced in Utah's Third District Court (*State v. Kenneth E. North*, Case Number 111904452) in connection with the conduct described in this order. As part of a plea agreement, North entered a guilty plea to one

count of Pattern of Unlawful Behavior (2nd Degree Felony). North was ordered to pay restitution in the amount of \$556,000 as a condition of his probation.

CONCLUSIONS OF LAW

147. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunities offered and sold by Respondents are securities under §61-1-13 of the Act.
 - b. Respondents violated §61-1-1(2) of the Act by making untrue statements of material facts and/or omitting to state material facts in connection with the offer and sale of securities, disclosure of which were necessary in order to make representations made not misleading.
 - c. Respondents violated §61-1-3 of the Act by transacting business in the State of Utah as an issuer and/or issuer agent without being properly licensed.

REMEDIAL ACTIONS/SANCTIONS

147. Respondents neither admit nor deny the Division's Findings of Fact and Conclusions of Law, but consent to the below sanctions being imposed by the Division.
148. Respondents represent that the information they have provided to the Division as part of its investigation is accurate and complete.
149. Respondents agree to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the State of Utah.

150. Respondents agree to be barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in or from the State of Utah.
151. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a fine in the amount \$15,000 against Respondents, jointly and severally. Respondents shall pay the fine to the Division as follows: (a) \$7,500 within three days of the date that the Utah Securities Commission (“Commission”) approves this Order, and (b) \$7,500 no later than 24 months after the entry of this Order.
152. Pursuant to Utah Code Ann. §61-1-20(1)(e)(iv), the Division orders the Respondents, jointly and severally, to pay restitution to the investors in the amount of \$3,484,944. If Respondent North timely pays full restitution as ordered in the Criminal Action,² the full amount of the Division’s restitution shall be waived.

FINAL RESOLUTION

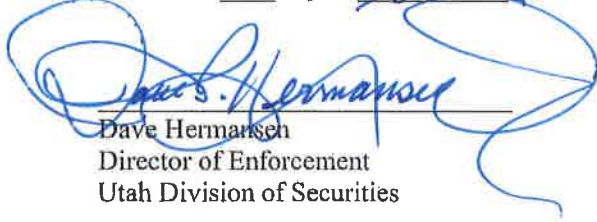
153. Respondents acknowledge that this Order, upon approval by the Commission, shall be the final compromise and settlement of this matter. Respondents acknowledge that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondents expressly waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

² On November 16th, 2015, Respondent North was ordered to pay restitution in the amount of \$556,000 in the associated criminal action, *State v. Kenneth E. North*, Case Number 111904452, in the Third District Court of Utah, Salt Lake County (“Criminal Action”).

154. If Respondents materially violate any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which:
- a. Respondents admit the Division's Findings of Fact and Conclusions of Law as set forth in this Order; and
 - b. any fine and/or restitution payments owed by Respondents pursuant to this Order become immediately due and payable.
155. The order may be issued upon ex parte motion of the Division, supported by an affidavit verifying the violation. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.
156. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar, this administrative action by the Division against them.
157. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements

between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 12 day of December 2016



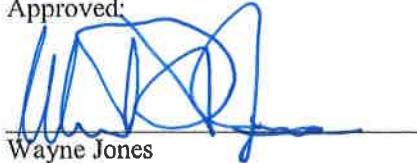
Dave Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 9 day of December 2016



Kenneth Eugene North
Artisan Group, LLC

Approved:



Wayne Jones
Assistant Attorney General
Counsel for Division

Approved:

Matthew Lewis
Counsel for Respondents

between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this ____ day of _____, 2016

Dated this 9th day of Dec., 2016


Dave Hermansen
Director of Enforcement
Utah Division of Securities

Kenneth Eugene North
Artisan Group, LLC

Approved:

Approved:

Wayne Jones
Assistant Attorney General
Counsel for Division



Matthew Lewis
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Respondents neither admit nor deny, are hereby entered.
2. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. Respondents are barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in the State of Utah.
4. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes and Respondents, jointly and severally, shall pay a fine in the amount of \$15,000. The fine shall be paid to the Division as set forth in paragraph 151 above.
5. Pursuant to Utah Code Ann. §61-1-20(1)(e)(iv), the Respondents shall pay restitution to the investors in the amount of \$3,484,944. If Respondent North timely pays restitution in the Criminal Action, the Division's order of restitution shall be waived in full.

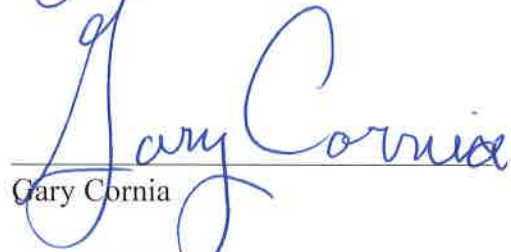
BY THE UTAH SECURITIES COMMISSION:

DATED this 26th day of January, 2017

Brent Baker



Erik Christiansen



Gary Cornia



Brent A. Cochran



Lyle White

CERTIFICATE OF MAILING

I certify that on the 27th day of January, 2017, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Matthew R. Lewis
RAY QUINNEY & NEBEKER P.C.
36 South State Street, 14th Floor
Salt Lake City, UT 84145-0385
Counsel for Respondents



LeeAnn Clark
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:

**JEFFREY A. LARSON, and
PEAK ASSET MANAGEMENT, LLC,**

RESPONDENTS.

**RECOMMENDED ORDER ON MOTION
FOR DEFAULT**

Case no. SD-16-044
Case no. SD-16-045

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to an October 18, 2016 Notice of Agency Action and Order to Show Cause. The Respondent, Jeffery A. Larson, personally signed the return receipt on the mailing of the Notice of Agency Action and Order to Show Cause. Respondents were required to file a response 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 a response. An initial hearing was held on December 15, 2016. Respondents failed to appear.

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

The Presiding Officer recommends that the Utah Securities Commission accept the allegations outlined in the Division's order to show cause as being true, and find:

1. That in connection with the offer and sale of securities, and in violation of the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1(2), Respondents misrepresented material facts and/or omitted material facts necessary in order to make the statements made, in light of the circumstances made, not misleading;
2. That from 2005 through 2011, in connection with the offer, sale or purchase of securities, Respondents engaged in acts, practices, or a course of business that operated as a fraud against clients and T.D. Ameritrade, in violation of Section 61-1-1(3) of the Act, by:
 - a. Forging client signatures on various account documents to gain access to their monies;
 - b. Writing numerous checks from client accounts for personal use; and
 - c. Creating numerous false account statements provided to clients which showed profits rather than losses actually sustained from Larson’s trades and from Larson’s theft of funds;
3. That in violation of Section 61-1-3(3) of the Act, Peak Asset Management, LLC and Mr. Larson acted as an unlicensed investment adviser and unlicensed investment adviser representative, respectively, by holding themselves out as investment advisers and trading client accounts for compensation; and
4. That Respondents’ actions, which constitute one or more violations of Utah Code Ann. Section 61-1-1 *et seq.*, are grounds for sanction under the Act.

The Presiding Officer further recommends that the Utah Securities Commission enter a default order against Respondents, requiring:

1. That Respondents permanently cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-1 through 3 or any other section of the Act;
2. That Respondents pay a fine, jointly and severally, of \$50,000 to the Utah Division of Securities, with a dollar-for-dollar offset for restitution paid to investors as ordered in the parallel criminal action against Mr. Larson (Case no. 131901398, Second District Court, Weber County, Utah). In the criminal action, Mr. Larson was ordered to pay restitution in the amount of \$217,206 to investors, at a rate of at least \$600.00 per month; and
3. That Respondents be permanently barred from associating with any broker-dealer or investment adviser in Utah; or acting as an agent for any issuer raising monies 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 December 23rd, 2016.

UTAH DEPARTMENT OF COMMERCE



Bruce Dobb
Presiding Officer

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:

JEFFREY A. LARSON and
PEAK ASSET MANAGEMENT, LLC,

RESPONDENTS.

ORDER ON MOTION FOR DEFAULT

Case no. SD-16-0044
Case no. SD-16-0045

BY THE UTAH SECURITIES COMMISSION:

The Presiding Officer's 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 to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-1 through 3 or any other section of the Utah Uniform Securities Act.

Respondents are hereby ordered to pay a fine of \$50,000 to the Utah Division of Securities. The fine shall be offset on a dollar-for-dollar basis for any restitution paid to investors pursuant to Mr. Larson's parallel criminal proceeding (Case no. 131901398, Second

District Court, Weber County, Utah). In the criminal action, Mr. Larson was ordered to pay restitution in the amount of \$217,206 to investors, at a rate of at least \$600.00 per month.

Respondents are hereby permanently barred from associating with any broker-dealer or investment adviser in Utah; or acting as an agent for any issuer raising monies in Utah.

All further proceedings in this case are dismissed. This dismissal does not relieve Respondents from their obligation to comply with the terms of the Default Order. This order shall be effective on the signature date below.

DATED this 26th day of January, 2017

UTAH SECURITIES COMMISSION:

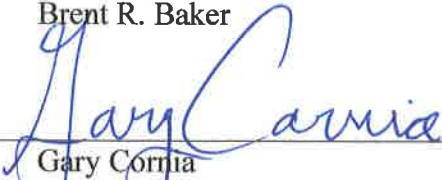


Lyle White



Erik A. Christiansen

Brent R. Baker



Gary Cornia



Brent A. Cochran

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.

A respondent may seek agency review under Section 63G-4-301, or reconsideration under Section 63G-4-302, only on the decision of the presiding officer on a motion to set aside this default, as provided in 63G-4-209.

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2017 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:

Jeffrey A. Larson
Peak Asset Management, LLC
535 South 875 East
Kaysville, UT 84137

and caused a copy to be hand delivered to:

Jennifer Korb, 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:

**WALTER FREDERICK SCHWARZ,
CRD#1057065;
LONE PEAK ASSET MANAGEMENT,
INC., CRD#117241**

Respondents.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-16-0020

Docket No. SD-16-0021

The Utah Division of Securities (“Division”), by and through its Director of Compliance, Kenneth O. Barton, and Respondents Walter F. Schwarz (“Schwarz”) and Lone Peak Asset Management, Inc. (“LPAM”) (collectively referred to at times as “Respondents”) hereby stipulate and agree as follows:

1. Respondents have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. On or about May 19, 2016, the Division initiated an administrative action against Respondents by filing a Petition to Censure and Impose a Fine.
3. Respondents hereby agree to settle this matter with the Division by way of this

Stipulation and Consent Order (“Order”). If entered, the Order will fully resolve all claims the Division has against Respondents pertaining to the Petition.

4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.
5. Respondents hereby waive any right to a hearing to challenge the Division’s evidence and present evidence on their behalf.
6. Respondents have read this Order, understand its contents, and voluntarily agree to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.
7. Respondents are represented by attorneys Scott Jenkins and John Mann and are satisfied with the legal representation they have received.

I. FINDINGS OF FACT

8. LPAM is a Utah corporation that is licensed with the Division as an investment adviser firm with its primary place of business in Alpine, Utah. LPAM has been licensed in Utah since 1996. LPAM also has an office located in Westlake Village, California.
9. Schwarz is the owner, director and designated official of LPAM. He has taken and passed the FINRA Series 6, 7, 22, 24, and 63 examinations. Schwarz has been licensed in Utah as an investment adviser representative of LPAM since 1996. He was also previously licensed as a broker-dealer agent of several broker-dealer firms between 1983 and 2003. Schwarz is the sole licensed investment adviser representative of LPAM.
10. Robert L. Duvalois (“Duvalois”) is a Utah resident who is Schwarz’s brother-in-law.

Through a Utah corporation he owns and controls, RD3, Inc. (“RD3”), Duvalois provides services for LPAM pursuant to a written “independent contractor agreement” dated January 2, 2015. Prior to that agreement, Duvalois was a W-2 employee of LPAM since its inception. Duvalois has never been licensed in the securities industry in any capacity.¹

11. Jason Schwarz (“Jason” or “Jason Schwarz”) is a Utah resident and the son of Schwarz. He has never been licensed in the securities industry in any capacity.
12. Duvalois, RD3 and Jason Schwarz were named as respondents in an Order to Show Cause filed by the Division contemporaneously with this action.²
13. In May 2015 the Division conducted an on-site examination of Respondents, which revealed the following:

Firm Business

14. LPAM services approximately 77 households with 156 total accounts, with a total of approximately \$20 million in assets under management. Client accounts are held at custodian TD Ameritrade, Inc. LPAM does not have discretionary authority, but has clients execute limited power of attorney forms for LPAM to make trades in client accounts.
15. At the time of the Division’s examination, Schwarz explained that over the past few years he had been spending a vast majority of his time with a new thrift shop business he had started. In addition to operating a store located in Utah, he was in the process of opening another store in California.

¹ Between 1998 and 2004 Duvalois was employed in an unlicensed capacity with two broker-dealer firms with which Schwarz was then associated.

² See <http://securities.utah.gov/dockets/16002201.pdf>

16. Due to Schwarz's involvement in the other businesses, Duvalois had been doing the majority of the management of LPAM, and Schwarz's plan was to transition LPAM to Duvalois and phase himself out of the advisory business altogether in a year or two.
17. Schwarz further stated that he had taken no income from LPAM since 2007 or 2008, but that Duvalois was paid a salary of \$7,000 per month. In addition to Duvalois, LPAM has a telephone receptionist located in LPAM's California office.
18. With regard to the day to day operations of LPAM, all calls are directed to and answered by the California office, and subsequently forwarded to either Schwarz or Duvalois.
19. Schwarz meets with clients annually and periodically as necessary to discuss their accounts, often traveling to where the client lives. In addition to Utah, LPAM has clients located in California, Texas, and other western states.³ Many clients are seniors and the firm does not actively advertise or market itself to new clients.

Unlicensed Activity – Duvalois

20. After Schwarz meets with a client, Schwarz and Duvalois discuss any changes to be made. Duvalois then follows up separately with the client to review the changes, after which Duvalois effects any recommended securities transactions.
21. Although Duvalois refers to himself as a "back office" support person, in addition to the clerical and ministerial responsibilities associated with traditional back office support, Duvalois engages in many activities for LPAM that require licensing as an investment adviser representative.
22. For example, Duvalois told the Division "clients are conditioned" to contact him to work

³ Records contained in the Investment Adviser Registration Depository ("IARD") indicate LPAM and Schwarz are not licensed in any other state besides Utah.

out the details discussed in appointments with Schwarz. Duvalois has extensive contact with clients, which includes, among other things: written and verbal communications, gathering client information for financial planning illustrations, conducting “technical analysis” on securities, providing entry and exit point recommendations to clients for securities purchases and sales, making trades in client accounts, and generating and providing detailed performance reports of client accounts.

23. Duvalois also solicits clients for LPAM, and provides advisory services to prospects through RD3. Although he doesn’t charge a fee for those services presently,⁴ approximately five of those individuals have become clients of LPAM. Since Duvalois is compensated for his work at LPAM he indirectly receives compensation for those solicitations.
24. According to the independent contractor agreement, Duvalois “shall be engaged in, but not limited to, providing on an ‘as needed basis’ the following services:”
 - a. RIA compliance including Form ADV (Part I & II) & IARD/CRD matters;
 - b. Accounts receivable/payable & reconciliation procedures;
 - c. Portfolio reporting & cost basis tax information requests;
 - d. Financial planning illustrations (data collection and software input);
 - e. Back office service and operation logistics;
 - f. Sales blotter & trading record execution & confirmation report reconciliation;
 - g. File & record management (digital & hard copy); and
 - h. Corporate compliance/paperwork items and/or associated matters.

⁴ Duvalois stated he intends to begin a business advising individuals who have self-directed retirement accounts.

25. Duvalois acknowledged making trades for LPAM accounts. An analysis of trading logs received from account custodian TD Ameritrade shows that for the years 2013, 2014 and from January through July 2015, Duvalois made between 85% and 98% of the trades in client accounts.
26. Several clients interviewed by the Division confirmed that clients generally meet with Schwarz for annual reviews and to discuss portfolio adjustments when necessary, but that Duvalois implements the strategies agreed to in the client meetings with Schwarz.
27. Email correspondence from Duvalois further demonstrates his giving advice to clients:
[Investor],

I thought that I would reach out to you as I have received an alert on Yahoo stock as previously discussed. You may recall our discussion when price action was hovering around \$51.00 - \$52.00/Share when I suggested that the price was reflecting an overbought (exceptionally high price) signal. True to form, via my technical analysis, the price has retraced to an area that may become somewhat attractive if you're still considering purchasing into the position. Earlier today, price action hit \$42.55 (my first level of speculation) with a low on the day at \$41.80. I am now focused on the \$40.18 [sic] price as this appears to be a level of decent support (supply vs demand) regarding the fair value of the stock at this time. Could it go lower? Sure! I just wanted to give you a heads up as I promised to monitor this and Delta Airlines (still under evaluation), on your behalf, regarding profit potential and [Schwarz's] feedback regarding fundamental consideration. This communication is the result of that commitment. Any questions please let me know!
Hope you're having an exceptional day!

Rob Duvalois
Lone Peak Asset Management, Inc.

28. Likewise, Schwarz acknowledged to the Division that he is a "not a technical guy" but a "fundamental guy" when it comes to portfolio analysis, and that Duvalois discusses technical aspects of trades with clients, such as whether a stock is "overbought". Schwarz said clients perceive Duvalois as "a guy watching over their stuff". Schwarz

conceded “one or two” clients probably perceive Duvalois as an adviser.

29. Duvalois’s activities go well beyond back office services or simply executing trades as directed by Schwarz. During his interview, Duvalois discussed how he “implements technical analysis” for clients:

... it’s... it’s the training you go through through the years that, oh I’m going to tell you what technical analysis is, is in a nutshell, it’s learning to identify particular patterns... you’re going to look at different things. You’re going to look at tick volume... you’re going to look at what’s called relative strength indicators... where they fall within a balance of...of a certain range. Are they above the median? Ah, these type, types of things that...that I have learned through the years that they become tools of the trade.

30. Duvalois also related speaking with a client about a securities purchase recommendation that had been made by Schwarz. The client called Duvalois to discuss the timing of the purchase. Duvalois told the client Duvalois was uncomfortable buying the stock at the time and advised against the purchase.
31. In addition, Duvalois told Division examiners how his “technical analysis” helps existing clients earn higher returns and helps LPAM attract new clients.

Unlicensed Activity – Jason Schwarz

32. Schwarz’s son, Jason, has never been licensed with LPAM and is not licensed in the securities industry in any capacity. Jason is not identified in any LPAM records as an employee, independent contractor, or with any other affiliation to LPAM, a fact confirmed by Schwarz.
33. Trade records reviewed by the Division, however, show that between 2013 and 2015

Jason made three (3) trades for one LPAM client.⁵

34. In addition, information posted on the internet – where Jason offers commentary on financial markets – represents that he is in fact “an options strategist for Loan Peak Asset Management in Westlake Village, Calif.”⁶

35. Similarly, an “About the Author” description of Jason on Amazon.com’s web site for a book he wrote states:

Jason Schwarz is the options strategist for Lone Peak Asset Management (“LPAM”), a registered investment advisory firm located in Westlake Village, CA. Specializing in option LEAPS, he played a key role in helping LPAM’s clients manage their way through the 2008 downturn.⁷

Books and Records

Form ADV, Brochure, and Delivery Log

36. Although for the past few years Schwarz has spent a vast majority of his time on other businesses unrelated to LPAM, LPAM’s Form ADV⁸ did not contain complete and accurate information about the firm and Schwarz’s outside business activities, as required by 17 CFR §275.204-1(a) of the Investment Advisers Act of 1940 (“IA Act”), incorporated into the Act through Utah Administrative Code (“UAC”) Rule R164-4-3(E)(1)(d).

37. With respect to LPAM’s business, Form ADV makes no mention of Duvalois or RD3,

⁵ TD Ameritrade records indicate those trades were placed using the login id “lonepeak02” which is assigned to Jason Schwarz.

⁶ <http://www.thestreet.com/author/1136962/JasonSchwarz/all.html> (accessed April 29, 2016)

⁷ http://www.amazon.com/Alpha-Hunter-Profiting-Option-LEAPS/dp/0071634088/ref=sr_1_2?ie=UTF8&qid=1461948480&sr=8-2&keywords=jason+schwarz (accessed April 29, 2016)

⁸ Form ADV is a uniform document used by investment advisers to register with the United States Securities and Exchange Commission (“SEC”) or with state securities regulators.

and, particularly, LPAM's delegation of advisory firm responsibilities to Duvalois, Duvalois' lack of licensure and lack of qualification to be rendering investment advice to clients. Nor is there any mention of Jason Schwarz executing trades or holding himself out as affiliated with LPAM.

38. With regard to Schwarz's outside business activities, in addition to the retail stores, Schwarz is also a principal in Camp Management Services, LLC, an entity that promotes honesty in youth athletics. Neither is disclosed as an outside business activity on Form ADV or Schwarz's Form U4, the Uniform Application for Securities Registration or Transfer, a document filed with FINRA and the Division for individuals to become licensed in the securities industry. Form U4 requires the disclosure of all business activities conducted by licensed individuals. Like Form ADV, it is the licensed individual's responsibility to ensure the form is accurate and current.
39. LPAM also failed to provide Form ADV Part 2, the Firm Brochure and Brochure Supplement⁹ to clients, as required by 17 CFR §275.204(3)(b) of the IA Act and UAC Rule R164-5-1(D)(1).
40. LPAM does not maintain an ADV delivery log, as required by 17 CFR §275.204-2(a)(14)(i) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1).

Policies and Procedures Manual

41. No policies or procedures document could be produced and was not maintained by

⁹ Form ADV Part 2 requires investment advisers to prepare narrative brochures written in plain English that contain information such as the types of advisory services offered, the adviser's fee schedule, disciplinary information, conflicts of interest, and the educational and business background of management and key advisory personnel of the adviser. The brochure is the primary disclosure document that investment advisers provide to their clients.

LPAM. Failure to maintain a policies and procedures manual is a violation of 17 CFR §275.204-2(a)(17)(i) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1).

- a. Consequently, no record documenting the required annual review of the policies and procedures was found, as required by 17 CFR §275.204-2(a)(17)(ii) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1).

Code of Ethics

42. LPAM did not have a code of ethics document, as required by 17 CFR §275.204-2(a)(12)(i) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1).

- a. Consequently, no record of any ethics violations were kept, as required by 17 CFR §275.204(2)(a)(12)(ii) of the IA Act, incorporated into the Act through UAC Rule R164-5-1(D)(1).

II. CONCLUSIONS OF LAW

Employment of Unlicensed Investment Adviser Representative under § 61-1-3(4) of the Act

43. Under Section 61-1-3(4)(a)(i) of the Act, it is unlawful for an investment adviser to employ an investment adviser representative unless the person is licensed.

44. As described in paragraphs 20-31 above, LPAM violated Section 61-1-3(4)(a)(i) of the Act by employing an unlicensed investment adviser representative and solicitor, Duvalois.

45. In addition, as set forth in paragraphs 32-35, LPAM permitted Schwarz's son Jason to place trades in client accounts, and to hold himself out as associated with LPAM. Jason

is not licensed in the securities industry in any capacity.

Splitting Compensation with Unlicensed Individual under § 61-1-2(1) of the Act

46. Under Section 61-1-2(1)(c) of the Act, it is unlawful for an investment adviser to share compensation with any person not licensed as an investment adviser representative.

LPAM and Schwarz violated the Act by sharing advisory compensation with Duvalois.

Failure to Maintain Books and Records under § 61-1-5(1) of the Act

47. Investment advisers are required to maintain books and records as part of their advisory business. As described in paragraphs 36-42 above, many firm books and records were incomplete, outdated, or not maintained, and could not be provided during the examination, in violation of Section 61-1-5(1) of the Act.

Failure to Supervise under § 61-1-6(2)(a)(ii)(J) of the Act

48. Schwarz spent a large percentage of his time away from the LPAM business. Schwarz hired and allowed an unlicensed individual, Duvalois, to act as an investment adviser representative over an extended period of time. Schwarz also permitted a second unlicensed person, Jason, to conduct trades in client accounts and represent himself as associated with LPAM.
49. Schwarz and LPAM failed to reasonably supervise, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act by, among other things, not establishing, maintaining, and enforcing policies and procedures aimed to prevent violations of the securities laws described herein, including the unlicensed activities and failure to maintain books and records as required.

III. REMEDIAL ACTIONS/SANCTIONS

50. Respondents admit they failed to maintain books and records as described in paragraphs 36-42. Respondents neither admit nor deny the Division's other Findings and Conclusions, and consent to the sanctions below being imposed by the Division.
51. Respondents represent that the information they have provided the Division as part of its investigation is accurate and complete.
52. Respondents agree to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.
53. Within thirty (30) days following entry of this Order, Respondents agree to retain a compliance consultant, not objectionable to the Division, to address the issues raised in this action. Respondents agree to promptly implement the recommendations of the consultant and report to the Division specific actions undertaken. Those actions shall include:
 - a. disclosing to all clients by letter, not objectionable to the Division, that Duvalois is unlicensed and that such restricts his ability to interact with or advise clients;
 - b. ensuring that unless and until Duvalois becomes licensed as an investment adviser representative his activities are limited to clerical or ministerial functions not requiring a securities license;
 - c. amending Duvalois's contract as necessary to reflect items a. and b.;
 - d. updating Form ADV and creating and maintaining a delivery log; and
 - e. developing and maintaining a policies and procedures manual and code of ethics.

54. Pursuant to Utah Code Ann. Section 61-1-6 and in consideration of the factors set forth in Section 61-1-31, the Division imposes a fine in the amount of \$25,000.00, jointly and severally. The fine shall be paid as follows: \$5,000 within thirty (30) days following entry of this Order and the remaining \$20,000 within 120 days of the entry of this Order. Up to \$2,500 of the fine may be offset for documented expenses related to the compliance consultant. That documentation shall be provided to the Division within 120 days of the entry of this Order. If Respondents do not submit such documentation within that period, no \$2,500 offset of the fine is allowed.

IV. FINAL RESOLUTION

55. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission (“Commission”), shall be the final compromise and settlement of this matter. Respondents acknowledge that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondents expressly waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.
56. If Respondents materially violate any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which:
- a. Respondents admit the Division’s Findings of Fact and Conclusions of Law as set forth in this Order; and
 - b. any payments owed by Respondents pursuant to this Order become immediately

due and payable.

The order may be issued upon ex parte motion of the Division, supported by an affidavit verifying the violation. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

57. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar, this administrative action by the Division against them.
58. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 19th day of January, 2016 ^{2017 KB}



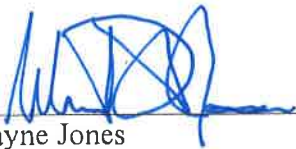
Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 17th day of Jan, 2017



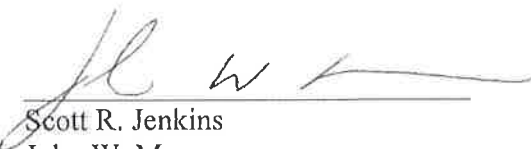
Walter F. Schwarz
Lone Peak Asset Management, Inc.

Approved:



Wayne Jones
Assistant Attorney General
Counsel for Division

Approved:



Scott R. Jenkins
John W. Mann
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are admitted in part as set forth in paragraph 50 but which are otherwise neither admitted nor denied by Respondents, are hereby entered.
2. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondents shall take remedial actions as set forth in paragraph 53;
4. Pursuant to Utah Code Ann. Section 61-1-6 and in consideration of the factors set forth in Section 61-1-31, the Division imposes a fine in the amount of \$25,000.00, jointly and severally. The fine shall be paid as follows: \$5,000 within thirty (30) days following entry of this Order and the remaining \$20,000 within 120 days of the entry of this Order. Up to \$2,500 of the fine may be offset for documented expenses related to the compliance consultant. That documentation shall be provided to the Division within 120 days of the entry of this Order. If Respondents do not submit such documentation within that period, no \$2,500 offset of the fine is allowed.

BY THE UTAH SECURITIES COMMISSION:

DATED this 26th day of January, 2017

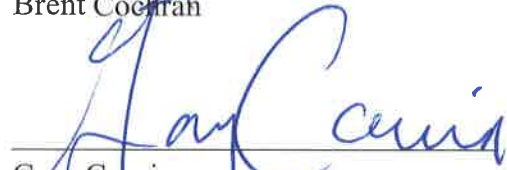
Brent Baker



Erik Christiansen



Brent Cochran



Gary Cornia



Lyle White

CERTIFICATE OF MAILING

I certify that on the 27th day of September, 2017, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Scott R. Jenkins
John W. Mann
Fetzer Simonsen Booth & Jenkins, P.C.
50 W. Broadway, Suite 1200
Salt Lake City, UT 84101
Counsel for Respondents

A handwritten signature in blue ink, appearing to read "Allison Clark", is written over a horizontal line.

Executive Secretary

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

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

IN THE MATTER OF:

**ROBERT L. DUVALOIS, CRD#3040352
RD3, INC.
JASON SCHWARZ,**

Respondents.

**STIPULATION AND CONSENT
ORDER**

**Docket No. SD-16-0022
Docket No. SD-16-0023
Docket No. SD-16-0024**

The Utah Division of Securities (“Division”), by and through its Director of Compliance, Kenneth O. Barton, and Respondents Robert L. Duvalois (“Duvalois”), RD3, Inc. (“RD3”), and Jason Schwarz (“Jason Schwarz”)(collectively referred to at times as “Respondents”) hereby stipulate and agree as follows:

1. Respondents have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. On or about May 19, 2016, the Division initiated an administrative action against Respondents by filing an Order to Show Cause.
3. Respondents hereby agree to settle this matter with the Division by way of this Stipulation and Consent Order (“Order”). If entered, the Order will fully resolve all

claims the Division has against Respondents pertaining to the Order to Show Cause.

4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.
5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.
6. Respondents have read this Order, understand its contents, and voluntarily agree to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.
7. Respondents are represented by attorneys Scott Jenkins and John Mann and are satisfied with the legal representation they have received.

I. FINDINGS OF FACT

8. Duvalois is a Utah resident. Through a Utah corporation he owns and controls, RD3, Duvalois provides services for Lone Peak Asset Management, Inc. ("LPAM") pursuant to a written "independent contractor agreement" dated January 2, 2015. Prior to that agreement, Duvalois was a W-2 employee of LPAM since its inception in 1996.
9. LPAM is a Utah corporation that is licensed with the Division as an investment adviser firm with its primary place of business in Alpine, Utah. LPAM has been licensed in Utah since 1996. LPAM also has an office located in Westlake Village, California.
10. LPAM is owned and controlled by Walter F. Schwarz ("Schwarz"), CRD#1057065. Schwarz is the sole licensed investment adviser representative of LPAM.
11. Jason Schwarz is a Utah resident and the son of Schwarz.

12. Duvalois, RD3, and Jason Schwarz have never been licensed in the securities industry in any capacity.¹
13. Schwarz and LPAM are named as respondents in a Petition filed by the Division contemporaneously with this action.²
14. In May 2015 the Division conducted an on-site examination of LPAM which revealed the following:

Firm Business

15. LPAM services approximately 77 households with 156 total accounts, with a total of approximately \$20 million in assets under management. Client accounts are held at custodian TD Ameritrade, Inc. LPAM does not have discretionary authority, but has clients execute limited power of attorney forms for LPAM to make trades in client accounts.
16. At the time of the Division's examination, Schwarz explained that over the past few years he had been spending a vast majority of his time with a new thrift shop business he had started. In addition to operating a store located in Utah, he was in the process of opening another store in California.
17. Due to Schwarz's involvement in the other businesses, Duvalois had been doing the majority of the management of LPAM, and Schwarz's plan was to transition LPAM to Duvalois and phase himself out of the advisory business altogether in a year or two.
18. Schwarz further stated that he had taken no income from LPAM since 2007 or 2008, but

¹ Between 1998 and 2004 Duvalois was employed in an unlicensed capacity with two broker-dealer firms with which Schwarz was then associated.

² See <http://securities.utah.gov/dockets/16002001.pdf>

that Duvalois was paid a salary of \$7,000 per month. In addition to Duvalois, LPAM has a telephone receptionist located in LPAM's California office.

19. With regard to the day to day operations of LPAM, all calls are directed to and answered by the California office, and subsequently forwarded to either Schwarz or Duvalois.
20. Schwarz meets with clients annually and periodically as necessary to discuss their accounts, often traveling to where the client lives. In addition to Utah, LPAM has clients located in California, Texas, and other western states.³ Many clients are seniors and the firm does not actively advertise or market itself to new clients.

Unlicensed Activity – Duvalois/RD3

21. After Schwarz meets with a client, Schwarz and Duvalois discuss any changes to be made. Duvalois then follows up separately with the client to review the changes, after which Duvalois effects any recommended securities transactions.
22. Although Duvalois refers to himself as a “back office” support person, in addition to the clerical and ministerial responsibilities associated with traditional back office support, Duvalois engages in many activities for LPAM that require licensing as an investment adviser representative.
23. For example, Duvalois told the Division “clients are conditioned” to contact him to work out the details discussed in appointments with Schwarz. Duvalois has extensive contact with clients, which includes, among other things: written and verbal communications, gathering client information for financial planning illustrations, conducting “technical analysis” on securities, providing entry and exit point recommendations to clients for

³ Records contained in the Investment Adviser Registration Depository (“IARD”) indicate LPAM and Schwarz are not licensed in any other state besides Utah.

securities purchases and sales, making trades in client accounts, and generating and providing detailed performance reports of accounts.

24. While Schwarz and LPAM do not actively market or advertise for new clients, Duvalois solicits clients for LPAM, and provides advisory services to prospects through RD3.

Although he doesn't charge a fee for those services presently,⁴ approximately five of those individuals have become clients of LPAM. Since Duvalois is compensated for his work at LPAM he indirectly receives compensation for those solicitations.⁵

25. According to the independent contractor agreement, RD3 and Duvalois "shall be engaged in, but not limited to, providing on an 'as needed basis' the following services:"

- a. RIA compliance including Form ADV (Part I & II) & IARD/CRD matters;
- b. Accounts receivable/payable & reconciliation procedures;
- c. Portfolio reporting & cost basis tax information requests;
- d. Financial planning illustrations (data collection and software input);
- e. Back office service and operation logistics;
- f. Sales blotter & trading record execution & confirmation report reconciliation;
- g. File & record management (digital & hard copy); and
- h. Corporate compliance/paperwork items and/or associated matters.

26. Duvalois acknowledged making trades for LPAM accounts. An analysis of trading logs received from account custodian TD Ameritrade shows that for the years 2013, 2014 and

⁴ Duvalois stated he intends to begin a business advising individuals who have self-directed retirement accounts.

⁵ Utah Administrative Code ("UAC") Rule R164-4-2(G)(4)(a)(iii) requires that any person receiving a fee from an investment adviser for client referrals must be licensed as an investment adviser representative.

from January through July 2015, Duvalois made between 85% and 98% of the trades in client accounts.

27. Several clients interviewed by the Division confirmed that clients generally meet with Schwarz for annual reviews and to discuss portfolio adjustments when necessary, but that Duvalois implements the strategies agreed to in the client meetings with Schwarz.

28. Email correspondence from Duvalois further demonstrates his giving advice to clients:

[Investor],

I thought that I would reach out to you as I have received an alert on Yahoo stock as previously discussed. You may recall our discussion when price action was hovering around \$51.00 - \$52.00/Share when I suggested that the price was reflecting an overbought (exceptionally high price) signal. True to form, via my technical analysis, the price has retraced to an area that may become somewhat attractive if you're still considering purchasing into the position. Earlier today, price action hit \$42.55 (my first level of speculation) with a low on the day at \$41.80. I am now focused on the \$40.18 [sic] price as this appears to be a level of decent support (supply vs demand) regarding the fair value of the stock at this time. Could it go lower? Sure! I just wanted to give you a heads up as I promised to monitor this and Delta Airlines (still under evaluation), on your behalf, regarding profit potential and [Schwarz's] feedback regarding fundamental consideration. This communication is the result of that commitment. Any questions please let me know!

Hope you're having an exceptional day!

Rob Duvalois
Lone Peak Asset Management, Inc.

29. Likewise, Schwarz acknowledged to the Division that he is a "not a technical guy" but a "fundamental guy" when it comes to portfolio analysis, and that Duvalois discusses technical aspects of trades with clients, such as whether a stock is "overbought".

30. Schwarz said clients perceive Duvalois as "a guy watching over their stuff". Schwarz conceded "one or two" clients probably perceive Duvalois as an adviser.

31. Duvalois' activities go well beyond back office services or simply executing trades as directed by Schwarz. During his interview, Duvalois discussed how he "implements technical analysis" for clients:
- ... it's... it's the training you go through through the years that, oh I'm going to tell you what technical analysis is, is in a nutshell, it's learning to identify particular patterns... you're going to look at different things. You're going to look at tick volume... you're going to look at what's called relative strength indicators... where they fall within a balance of...of a certain range. Are they above the median? Ah, these type, types of things that...that I have learned through the years that they become tools of the trade.
32. Duvalois also related speaking with a client about a securities purchase recommendation that had been made by Schwarz. The client called Duvalois to discuss the timing of the purchase. Duvalois told the client Duvalois was uncomfortable buying the stock at the time and advised against the purchase.
33. In addition, Duvalois told Division examiners how his "technical analysis" helps existing clients earn higher returns and helps LPAM attract new clients.

Unlicensed Activity – Jason Schwarz

34. Jason Schwarz has never been licensed with LPAM and is not licensed in the securities industry in any capacity. He is not identified in any LPAM records as an employee, independent contractor, or with any other affiliation to LPAM, a fact confirmed by Schwarz during the LPAM examination.
35. Trade records reviewed by the Division, however, show that Jason made three (3) trades for an LPAM client.⁶

⁶ TD Ameritrade records indicate those trades were placed using the login id "lonepeak02" which is assigned to Jason Schwarz.

36. In addition, information posted on the internet – where Jason offers commentary on financial markets – represents that he is in fact “an options strategist for Lone Peak Asset Management in Westlake Village, Calif.”⁷
37. Similarly, an “About the Author” description of Jason on Amazon.com’s web site for a book he wrote states:
- Jason Schwarz is the options strategist for Lone Peak Asset Management (“LPAM”), a registered investment advisory firm located in Westlake Village, CA. Specializing in option LEAPS, he played a key role in helping LPAM’s clients manage their way through the 2008 downturn.⁸

II. CONCLUSIONS OF LAW

Unlicensed Investment Adviser and Investment Adviser Representative under § 61-1-3 of the Act

38. Under Section 61-1-3(3) of the Act, it is unlawful for a person to transact business in this state as an investment adviser or investment adviser representative unless the person is licensed.
39. As described in paragraphs 21-33 above, RD3 and Duvalois violated Section 61-1-3(3) of the Act by acting as an unlicensed investment adviser and investment adviser representative, respectively.
40. As described in paragraphs 34-37 above, Jason Schwarz violated Section 61-1-3(3) of the Act by acting as and holding himself out as an investment adviser representative

⁷ <http://www.thestreet.com/author/1136962/JasonSchwarz/all.html> (accessed April 29, 2016)

⁸ http://www.amazon.com/Alpha-Hunter-Profiting-Option-LEAPS/dp/0071634088/ref=sr_1_2?ie=UTF8&qid=1461948480&sr=8-2&keywords=jason+schwarz (accessed April 29, 2016)

without being licensed.

III. REMEDIAL ACTIONS/SANCTIONS

41. Respondents neither admit nor deny the Division's Findings and Conclusions but consent to the sanctions below being imposed by the Division.
42. Respondents represent that the information they have provided the Division as part of its investigation is accurate and complete.
43. Respondents agree to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.
44. Respondent Duvalois agrees that unless and until he becomes licensed as an investment adviser representative, any activities with LPAM shall be limited to clerical or ministerial functions not requiring a securities license and shall amend his contract with LPAM accordingly.
45. Respondent Jason Schwarz agrees to take prompt action to remove from the internet or elsewhere in the public domain any references that suggest or otherwise represent him as:
 - a) an investment adviser or investment adviser representative;
 - b) licensed in the securities industry; or
 - c) otherwise associated with LPAM, including those described in paragraphs 36-37, and shall provide documentation of such actions to the Division.
46. Pursuant to Utah Code Ann. Section 61-1-20 and in consideration of the factors set forth in Section 61-1-31, the Division imposes fines as follows:

Duvalois and RD3, jointly and severally: \$15,000.00.

Jason Schwarz: \$3,500.00.

The fines shall be paid in full within thirty (30) days following entry of this Order.

IV. FINAL RESOLUTION

47. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission (“Commission”), shall be the final compromise and settlement of this matter. Respondents acknowledge that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondents expressly waive any claims of bias or prejudice of the Commission, and such waiver shall survive any nullification.
48. If Respondents materially violate any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondents consent to entry of an order in which:
- a. Respondents admit the Division’s Findings of Fact and Conclusions of Law as set forth in this Order; and
 - b. any payments owed by Respondents pursuant to this Order become immediately due and payable.

The order may be issued upon ex parte motion of the Division, supported by an affidavit verifying the violation. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree

The order may be issued upon ex parte motion of the Division, supported by an affidavit verifying the violation. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

49. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar, this administrative action by the Division against them.
50. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 19 day of January, 2016



Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 24th day of JAN, 2017




Robert L. Duvalois
RD3, Inc.

to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

49. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar, this administrative action by the Division against them.
50. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 19th day of January, 2016

Dated this ____ day of _____, _____

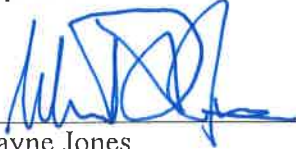


Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Robert L. Duvalois
RD3, Inc.

Jason Schwarz

Approved:



Wayne Jones
Assistant Attorney General
Counsel for Division

Approved:



Scott R. Jenkins
John W. Mann
Counsel for Respondents



Jason Schwarz

Approved:

Wayne Jones
Assistant Attorney General
Counsel for Division

Approved:

Scott R. Jenkins
John W. Mann
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are neither admitted nor denied by Respondents, are hereby entered.
2. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondents shall take remedial actions as set forth in paragraphs 44 and 45.
4. Pursuant to Utah Code Ann. Section 61-1-20 and in consideration of the factors set forth in Section 61-1-31, the Division imposes fines as follows:

Duvalois and RD3, jointly and severally: \$15,000.00.

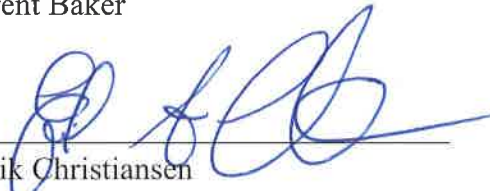
Jason Schwarz: \$3,500.00.

The fines shall be paid in full within thirty (30) days following entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this 26th day of January, 2017

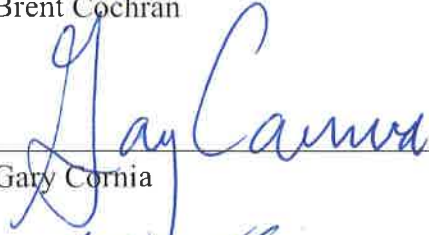
Brent Baker



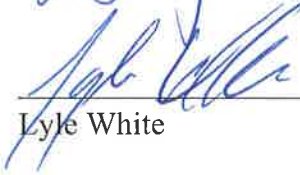
Erik Christiansen



Brent Cochran



Gary Cornia

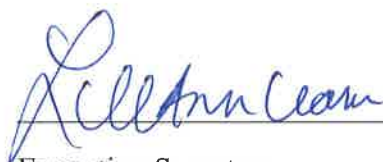


Lyle White

CERTIFICATE OF MAILING

I certify that on the 27th day of January, 2017, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Scott R. Jenkins
John W. Mann
Fetzer Simonsen Booth & Jenkins, P.C.
50 W. Broadway, Suite 1200
Salt Lake City, UT 84101
Counsel for Respondents



Executive Secretary

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

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

IN THE MATTER OF:

JOHN JACOB ASHTON

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-16-0015

The Utah Division of Securities (“Division”), by and through its Director of Compliance, Kenneth O. Barton, and Respondent John Jacob Ashton (“Respondent” or “Jake”) hereby stipulate and agree as follows:

1. Respondent has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. On or about April 13, 2016, the Division initiated an administrative action against Respondent and others by filing an Order to Show Cause.
3. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order (“Order”). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the Order to Show Cause.
4. Respondent admits that the Division has jurisdiction over him and the subject matter of

this action.

5. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
6. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.
7. Respondent understands that he may be represented by counsel in this matter, understands the role that counsel would have in defending and representing his interests in this case, and hereby knowingly, freely, and voluntarily waives his right to have counsel represent him in this proceeding.

I. THE DIVISION'S FINDINGS OF FACT

8. Jake is a Utah resident who has never been licensed in the securities industry in any capacity.
9. Stephen Abraham "Abe" Ashton ("Ashton") is a Utah resident and Jake's brother. He has never been licensed in the securities industry in any capacity.
10. One For the Money Financial, Inc. ("OFTM") is a Utah corporation owned and controlled by Ashton and his wife, Kimberly Ashton. Its principal place of business is St. George, Utah, but it also has an office in Henderson, Nevada. OFTM has never been licensed in the securities industry in any capacity.¹

¹ Ashton and OFTM are also named Respondents in the Division's April 13, 2016 Order to Show Cause, and the actions against them are currently pending:
<http://securities.utah.gov/dockets/16001501.pdf>

11. Jake and Ashton are licensed in Utah as insurance agents and OFTM is licensed as an insurance organization.
12. Between 2008 and 2014 (“relevant period”) Jake worked for Ashton and OFTM.
13. During that time, Jake, Ashton and OFTM (collectively, “OFTM Respondents”) conducted free lunch and dinner seminars targeted toward senior citizens and retirees.
14. Jake also appeared with Ashton on a radio program called “Retirement Brothers”.
15. In seminars, on the radio and internet, Jake and Ashton called themselves “financial advisors” and held themselves out as experts in financial matters. The consistent theme in each forum was to advise against investments in the stock market, and instead recommend the purchase of fixed indexed annuities from Jake and Ashton.

Business Model and Seminars

16. The OFTM Respondents’ business model consists of selling clients, almost exclusively, a single product – fixed indexed annuities.
17. Fixed indexed annuities are considered to be insurance products rather than securities products. OFTM Respondents are paid a sales commission by the insurance companies whose products they sell. Fixed indexed annuities pay a higher upfront commission. OFTM Respondents would generally earn between 6 and 7% on the annuity sales.
18. In many cases during the relevant period after attending a seminar and meeting with OFTM Respondents, clients liquidated securities products in order to purchase fixed indexed annuities from OFTM Respondents.
19. Despite rendering investment advice to clients with regard to retirement accounts that contained securities holdings, OFTM Respondents did not disclose to clients in their

marketing or on their radio show that they are only insurance-licensed and not licensed or qualified to offer advice regarding the stock market or securities investments typically held in 401(k)s or IRAs.²

20. Among other things, seminar materials prepared by Ashton presented OFTM as a “full-service financial planning firm” and Ashton as a “National speaker who trains hundreds of financial advisors, accountants and stock brokers.” Through seminar slides OFTM Respondents provided information and analysis on the advisability of investing in securities using stock market charts and graphs and outlined the pros and cons of investing in stocks and bonds. Slides referred to “The Stock Market Casino” and “Trillions Lost in Retirements [sic] accounts.”
21. A questionnaire circulated at seminars asked for detailed personal financial information including dollar amounts of investments. Seminar attendees were offered a “free” follow-up consultation with OFTM Respondents, which included a “review of financial plan” and evaluation of investments.
22. Although Ashton prepared the advertising, seminar materials and slides and did most of the sales presentations, Jake introduced his brother, participated in some seminars and met with potential clients.
23. Electronic records summarizing client interactions show that OFTM Respondents actively provided investment advice to clients, including:
 - a. in 2011 Ashton and Jake met with a client, M.S., who wanted to discuss a safer

² In Utah, an insurance agent who receives a commission from the sale of insurance to a client who makes that purchase with the proceeds of securities the agent recommends be sold must be licensed with the Division as an investment adviser or investment adviser representative. Utah Admin. Code Rule R164-4-2(G)(3)(c).

investment than her bond mutual fund, after which she liquidated the mutual fund and purchased annuity products with the proceeds; and

- b. in 2011 client J.P. called “to talk with someone about her stocks and options for investments.” She subsequently met with Jake, “liquidated all her money” and had a follow-up appointment with Ashton at which time she signed annuity applications for IRA and non-qualified monies, later writing a check for \$176,000 from her liquidated IRA account monies.

“Retirement Brothers” Radio Program

24. OFTM Respondents paid to host a weekly radio program, during which they advertised their “services” and held themselves out as investment advisers, often focusing on market volatility and speculating about the next adverse event in the securities market.
25. Statements made by Jake on the radio program in 2013 and 2014 include the following:
 - a. “Call our office, though—your retirement is at risk if you leave it in the market, and if you’re retiring or preparing for retirement, call us, we have some great strategies for you to get some decent returns while keeping it out of the market.” Retirement Brothers broadcast 10/12/2013, at 09:18/22-59 to 9:39/22-59.
 - b. “...what’s our options out there, what are our investment options, do we take risks in the market? We are unsure about the market, we are not in control of the market, no one knows what’s going to happen today or tomorrow in the market even though we are at all new highs, again, which is happening frequently, which makes me nervous— or do we settle on what the banks are offering .1% or .25%— and there is another answer out there, it’s come in and call our office, that’s the answer. We are happy to show you what is out there in a very safe way. We know who you are, you’re conservative, you’re retired, you don’t want to watch the ticker every morning as you get up and think, ‘Oh no, what do these economic numbers mean, what does Warren Buffet mean when the key indicators [are] not looking good in the market? Should I worry, ‘do I need to call my stock broker?’ The answer is, don’t call the stock broker, call us, and we’ll be happy to sit down with you. Or, you can attend one of our seminars, we’re always advertising our seminars. . . .” Retirement Brothers broadcast, 11/08/2013, at 19:27/23:00 to 20:21/23:00.
 - c. “People are worried that we’re at the tail end of this little boom that’s going on

with the stock market and uh, I'm a little nervous, too—Warren Buffet, he says the signals are out there with the Wilshire 5000, that it's above expectations and that's always a sign of a downfall in the U.S. equities, so that has us nervous, uh, but most importantly, that's what we do here at our office. If you're worried about those 401k's or IRA's and you're in retirement and you're invested in the stock market, please pick up your phone, give our office a call. Let's take away the worries of what the economy, what's going to happen to the economy, what's going to happen with the Dow Jones this week at all new highs, call our office, please, give us a call—come in here and sit down, it cannot last forever, there is indeed a bubble, and why there's a bubble? Just quickly let me explain: economic numbers are not great, unemployment is not great, yet we're at all new highs—and that means there's a bubble, and so when that corrects and how it corrects, no one really knows the day or the time or how much . . .” Retirement Brothers broadcast, 11/08/2013, at 05:10/23:00 to 05:58/23:00.

d. “Just this week . . . this gal comes in, whose been retired for a few years, her husband's passed away and she was in tears. . . as she sat across the conference room table from Abe and I . . . she was worried about just running out of money... as we opened up her family portfolio, and her retirement portfolio that her husband had started to put together, we helped her see that she was going to be okay, we just helped her show (sic) some conservative ideas, some conservative planning—she had a lot of market risk for her age, and then her stage of life, so we said listen, here's what we can do for you, and set up a concrete plan where there's guaranteed income benefits for her for the rest of her life, and it turns out with that guaranteed income, that she knew for sure walking out of our office that she was going to be set for the rest of her life . . .” Retirement Brothers broadcast 10/18/2013, at 12:51/22:58 to 14:00/22:58.

26. In a radio advertisement promoting “The Retirement Brothers”:

Abe Ashton: “Market's going up, it's been a strong growth period, and it's no different than sitting at a casino and having a winning streak and thinking, ‘when do you get out?’”

Jake Ashton: “And that's why we're called the retirement brothers, if you're thinking about retirement or are now retired, we'll sit down with you, talk to you about, when is the time to run?”

27. There were no disclosures on the radio show that Jake and Ashton were not licensed to discuss securities or give investment advice until after the Division began its investigation in August 2014 when a disclaimer statement was added.

Internet Representations

28. Jake's LinkedIn account profile described him as "Owner/Financial Advisor" of Ashton Strobelt³, working in the field of "Financial Services". His listed "Skills" included many securities terms and references that would lead the public to believe he was licensed to give investment advice: retirement planning, investments, wealth management, portfolio management, financial planners, asset allocation, investment advisory, financial advisory, mutual funds, 401k, alternative investments, financial services, investment strategies, and financial planning.

29. OFTM's web page contained the following:

A full-service financial planning firm, One for the Money Financial offers clients total estate and retirement planning to ensure you leave lasting legacies for generations. Our senior advisors work exclusively with pre-retirees and retirees to create comprehensive plans using conservative investment strategies that increase your monthly income with no risk to your principal investment growth. Celebrating our 15th year helping families reach their financial goals, the One for the Money Financial team can customize a plan just for you.

II. THE DIVISION'S CONCLUSIONS OF LAW

Unlicensed Investment Adviser / Representative Under § 61-1-3 of the Act

30. Section 61-1-13(1)(q)(i) defines investment adviser as a person who:

(A) for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; or

(B) for compensation and as a part of a regular business, issues, or promulgates analyses or reports concerning securities.

(ii) "Investment adviser" includes a financial planner or other person who:

³ OFTM now conducts business under this name.

(A) as an integral component of other financially related services, provides the investment advisory services described in Subsection (1)(q)(i) to others for compensation and as part of a business; or

(B) holds the person out as providing the investment advisory services described in Subsection (1)(q)(i) to others for compensation.

31. Under Section 61-1-3(3) of the Act, it is unlawful for a person to transact business in this state as an investment adviser or investment adviser representative unless the person is licensed.
32. As described herein, Jake violated Section 61-1-3(3) by holding himself out as providing investment advisory services, through, among other things, OFTM advertising and seminar materials, statements he made on the “Retirement Brothers” radio show, his LinkedIn profile and the OFTM web site.

III. REMEDIAL ACTIONS/SANCTIONS

33. Respondent admits the Division’s findings and conclusions, and consents to the sanctions below being imposed by the Division.
34. Respondent represents that the information he has provided the Division as part of its investigation is accurate and complete.
35. Respondent agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.
36. Respondent agrees that unless and until he becomes licensed with the Division, he will:
 - a. make the following disclosure in a prominent manner on all sales, marketing and promotional materials used in connection with his insurance business activities:

“Jake Ashton is a licensed insurance agent and is not securities licensed. Any request for assistance concerning securities will be referred to a licensed securities firm and/or agent”;

- b. refrain from requesting or reviewing client or prospective client account statements that contain information about a person’s securities holdings; and
- c. shall not inquire into a client or prospective client’s satisfaction with that person’s current investments in securities, the person’s current licensed firm and/or agent, or make comparisons between securities and non-securities products. As used in this paragraph, “securities” refers both to specific securities products and to securities in general.

37. Pursuant to Utah Code Ann. Section 61-1-20 and in consideration of the factors set forth in Section 61-1-31 and Respondent’s financial situation and ability to pay, the Division imposes a fine of \$6,500.00. Respondent shall make an initial payment of \$1,000 within ten (10) days following entry of this Order. The remaining balance shall be paid in full within twenty-four (24) months following entry of the Order.

IV. FINAL RESOLUTION

38. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission (“Commission”), shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly

waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

39. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondent consents to entry of an order in which any payments owed by Respondent pursuant to this Order become immediately due and payable. The order may be issued upon ex parte motion of the Division, supported by an affidavit verifying the violation. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.
40. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.
41. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe,

or otherwise affect this Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 19th day of January, 2016



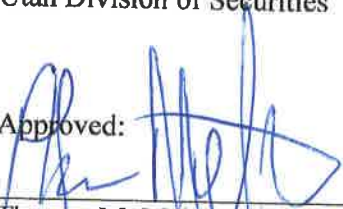
Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 17 day of January, 2017



John Jacob Ashton

Approved:



Thomas M. Melton
Assistant Attorney General
Counsel for Division

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are admitted by Respondent, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondent shall take remedial actions as set forth in paragraph 36.
4. Pursuant to Utah Code Ann. Section 61-1-20 and in consideration of the factors set forth in Section 61-1-31 and Respondent's financial situation and ability to pay, Respondent shall pay a fine of \$6,500.00 to be paid as set forth in paragraph 37.

BY THE UTAH SECURITIES COMMISSION:

DATED this 26th day of January, 2017

Brent Baker



Erik Christiansen



Brent Cochran



Gary Cornia



Lyle White

CERTIFICATE OF MAILING

I certify that on the 27th day of December, 2017, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

John Jacob Ashton
1745 Flagstone Drive
St. George, UT 84790-8528

A handwritten signature in blue ink, appearing to read "Kathleen Cecce", written over a horizontal line.

Executive Secretary