

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:

CUNNINGHAM ENERGY, LLC;

KEVIN K. THIBEAU;

JAN P. BOLTON;

SCOTT A. JOHNSON;

CASEY J. WILSON.

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-17-0031

Docket No. SD-17-0032

Docket No. SD-17-0033

Docket No. SD-17-0034

Docket No. SD-17-0035

The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave Hermansen, and Respondent Cunningham Energy, LLC (“Respondent” or “Cunningham Energy”), hereby stipulate and agree as follows:

1. Respondent Cunningham Energy and its agents, Kevin Thibeau (“Thibeau”), Jan Bolton (“Bolton”), Scott A. Johnson (“Johnson”) and Casey J. Wilson (“Wilson”) have been the subject of an investigation by the Division into allegations that they violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-3 (unlicensed activity) while engaged in the offer or sale of securities in the State of Utah.

2. On or about June 15, 2017, the Division initiated an administrative action against Respondent and its agents by filing an Order to Show Cause.
3. Respondent Cunningham Energy 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. The action against Thibeau, Bolton, Johnson and Wilson is still pending.
5. Respondent Cunningham Energy admits that the Division has jurisdiction over it and over the subject matter of this action.
6. Respondent Cunningham Energy hereby waives any right to a hearing to challenge the Division’s evidence and present evidence on its behalf.
7. Respondent Cunningham Energy 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 Cunningham Energy to enter into this Order, other than as described in this Order.
8. Respondent Cunningham Energy is represented by attorney Edwin J. Tomko and is satisfied with the legal representation it has received.

FINDINGS OF FACT

9. Cunningham Energy is a limited liability company that has been registered with the State of West Virginia Secretary of State beginning March 10, 2008. Cunningham Energy is a secondary oil recovery company that offers oil and gas securities to investors. Ryan

Cunningham is listed as the manager of Cunningham Energy. Barry Cunningham is listed as the Director of Finance and Risk Assessment of Cunningham Energy.

10. Thibeau was employed as the Director of Investor Relations with Cunningham Energy. Thibeau has never been licensed in the securities industry.
11. Bolton was employed as a sales agent with Cunningham Energy. Bolton has never been licensed in the securities industry.
12. Johnson was employed as a sales agent with Cunningham Energy. Johnson has never been licensed in the securities industry.
13. Wilson was employed as a sales agent of Cunningham Energy. Wilson has never been licensed in the securities industry.

GENERAL ALLEGATIONS

14. On June 10, 2016, the Division received a phone call from a prospective investor who was interested in investing with Cunningham Energy, and reported to the Division, among other things, that numerous individuals in Utah had purchased oil and gas investments from Cunningham Energy.
15. A search of the Division's records revealed that the Division did not receive registration or exemption notices or filings from Cunningham Energy for these investments. Consequently, Division Examiners contacted Cunningham Energy's compliance officer in Texas, and informed him that it appeared to the Division that Cunningham Energy was selling oil and gas investments in Utah without prior registration.
16. On June 13, 2016, the Division received eight Form D notice filings from Cunningham Energy. In its filings with the Division, Cunningham Energy reported a total of eight late

notice filings, including the following:

- a. On March 16, 2011, Cunningham Energy collected \$59,100.00 over the course of three investments from Utah residents;
 - b. On November 15, 2011, Cunningham Energy collected \$367,840.00 over the course of five investments from Utah residents;
 - c. On July 14, 2012, Cunningham Energy collected \$33,750.00 over the course of one investment from a Utah resident;
 - d. On June 13, 2013, Cunningham Energy collected \$172,500.00 over the course of three investments from Utah residents;
 - e. On June 21, 2013, Cunningham Energy collected \$23,250.00 over the course of one investment from a Utah resident;
 - f. On July 24, 2013, Cunningham Energy collected \$34,790.00 over the course of two investments from Utah residents;
 - g. On December 26, 2013, Cunningham Energy collected \$278,750.00 over the course of five investments from Utah residents; and
 - h. On October 16, 2014, Cunningham Energy collected \$55,000.00 over the course of three investments from Utah residents.
17. On June 15, 2016, the Division requested additional information from Cunningham Energy. Specifically, the Division requested that Cunningham Energy provide, for each Utah investor: the name of the investor; the date of investment; the amount invested; the name of the sales agent; and the commissions paid for each investment.
 18. On August 15, 2016, the Division received a letter from Cunningham Energy indicating

that, between March 16, 2011 and December 30, 2014, Bolton, Johnson, Thibeu, and Wilson, while employed as sales agents of Cunningham Energy, collected a combined total of \$121,084.00 in sales commissions for selling oil and gas securities to 13 Utah residents.

19. The investment opportunities offered and sold by Respondent Cunningham Energy are investment contracts and/or certificates of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease.
20. Investment contracts and certificates of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease are securities under §61-1-13 of the Act.
21. A review of FINRA's Central Registration Depository ("CRD")¹ indicates that, during the period relevant to the transactions described herein, Bolton, Johnson, Thibeu, and Wilson, were not licensed to offer or sell securities in any capacity.
22. In connection with the offer or sale of securities to investors in the state of Utah, Bolton, Johnson, Thibeu, and Wilson, were employed and/or engaged by Cunningham Energy and acted as agents of Cunningham Energy.
23. Between March 16, 2011 and December 30, 2014, Bolton, Johnson, Thibeu, and Wilson received a combined total of \$121,084.00 in commissions for the sale of securities in the state of Utah.

¹ CRD is an electronic database maintained by the Financial Industry Regulatory Authority and the states. Among other things, CRD contains licensing and disciplinary information on broker-dealers, investment advisers, agents, and investment adviser representatives.

Bolton Sales

24. While employed as an unlicensed sales agent of Cunningham Energy, Bolton collected a total of \$24,616 in commissions from the sale of securities to three Utah investors. The three investors purchased a total of \$273,760.00 in securities from Cunningham Energy through the following seven transactions:
- a. On February 29, 2012, Bolton sold \$117,400.00 in Cunningham Energy oil and gas interests relating to project "Rainmaker 11" to a Utah investor, and received \$11,740.00 in commissions;
 - b. On March 8, 2012, Bolton sold \$9,790.00 in Cunningham Energy oil and gas interests relating to project "Rainmaker 11" to a Utah investor, and received \$979.00 in commissions;
 - c. On April 23, 2012, Bolton sold \$78,320.00 in Cunningham Energy oil and gas interests relating to project "Rainmaker 11" to a Utah investor, and received \$7,832.00 in commissions;
 - d. On July 24, 2012, Bolton sold \$33,750.00 in Cunningham Energy oil and gas interests relating to project "Thunder Horse" to a Utah investor, and received \$3,375.00 in commissions;
 - e. On December 23, 2013, Bolton sold \$34,500.00 in Cunningham Energy oil and gas interests relating to project "Rhino 3" \$690.00 in commissions;
25. During all times relevant to the transactions described herein, Bolton was not licensed to sell securities in the state of Utah.

Johnson Sales

26. While employed as an unlicensed sales agent of Cunningham Energy, Johnson collected a total of \$47,000.00 in commissions from the sale of securities to five Utah investors. The investors purchased a total of \$470,000.00 in securities from Cunningham Energy through the following transactions:
- a. On June 21, 2013, Johnson sold \$23,250.00 in Cunningham Energy oil and gas interests relating to project “Trinity 3” to a Utah investor, and received \$2,325.00 in commissions;
 - b. On July 24, 2013, Johnson sold \$25,000.00 in Cunningham Energy oil and gas interests relating to project “Thunderhorse II” to a Utah investor, and received \$2,500.00 in commissions;
 - c. On December 31, 2013, Johnson sold \$103,500.00 in Cunningham Energy oil and gas interests relating to project “Rhino 3” to a Utah investor, and received \$10,350.00 in commissions;
 - d. On February 28, 2014, Johnson sold \$51,750.00 in Cunningham Energy oil and gas interests relating to project “Rhino 3” to a Utah investor, and received \$5,175.00 in commissions;
 - e. On August 12, 2014, Johnson sold \$34,500.00 in Cunningham Energy oil and gas interests relating to project “Dragon’s Breath” to a Utah investor, and received \$3,450.00 in commissions;
 - f. On September 29, 2014, Johnson sold \$69,000.00 in Cunningham Energy oil and gas interests relating to project “Dragon’s Breath” to a Utah investor, and received

\$6,900.00 in commissions; and

- g. On October 16, 2014, Johnson sold \$25,000.00 in Cunningham Energy oil and gas interests relating to project "Lion's Paw" to a Utah investor, and received \$2,500.00 in commissions.

- 27. During all times relevant to the transactions described herein, Johnson was not licensed to sell securities in the state of Utah.

Thibeau Sales

- 28. While employed as an unlicensed sales agent of Cunningham Energy, Thibeau collected a total of \$47,773.00 in commissions from the sale of securities to six Utah investors. The six investors purchased a total of \$505,030.00 in securities from Cunningham Energy through the following thirteen transactions:

- a. On March 16, 2011, Thibeau sold \$4,925.00 in Cunningham Energy oil and gas interests relating to project "Blue Creek 3" to a Utah investor, and received \$492.50 in commissions;
- b. On April 18, 2011, Thibeau sold \$4,925.00 in Cunningham Energy oil and gas interests relating to project "Blue Creek 3" to a Utah investor, and received \$492.50 in commissions;
- c. On May 2, 2011, Thibeau sold \$49,250.00 in Cunningham Energy oil and gas interests relating to project "Blue Creek 3" to a Utah investor, and received \$4,925.50 in commissions;
- d. On June 10, 2011, Thibeau sold \$196,800.00 in Cunningham Energy oil and gas interests relating to project "Big Sandy 5" to a Utah investor, and received

- \$19,680.00 in commissions;
- e. On July 14, 2011, Thibeaumont sold \$8,200.00 in Cunningham Energy oil and gas interests relating to project “Big Sandy 5” to a Utah investor, and received \$820.00 in commissions;
 - f. On August 30, 2011, Thibeaumont sold \$4,100.00 in Cunningham Energy oil and gas interests relating to project “Big Sandy 5” to a Utah investor, and received \$410.00 in commissions;
 - g. On November 15, 2011, Thibeaumont sold \$117,480.00 in Cunningham Energy oil and gas interests relating to project “Rainmaker 11” to a Utah investor, and received \$11,748.00 in commissions;
 - h. On November 28, 2011, Thibeaumont sold \$39,160.00 in Cunningham Energy oil and gas interests relating to project “Rainmaker 11” to a Utah investor, and received \$3,916.00 in commissions;
 - i. On April 6, 2012, Thibeaumont sold \$5,690.00 in Cunningham Energy oil and gas interests relating to project “Rainmaker 11” to a Utah investor, and received \$569.00 in commissions;
 - j. On December 30, 2013, Thibeaumont sold \$20,000.00 in Cunningham Energy oil and gas interests relating to project “Rhino 3” to a Utah investor, and received \$2,000.00 in commissions;
 - k. On December 30, 2014, Thibeaumont sold \$20,000.00 in Cunningham Energy oil and gas interests relating to project “Lion’s Paw” to a Utah investor, and received \$2,000.00 in commissions.

29. During all times relevant to the transactions described herein, Thibeau was not licensed to sell securities in the state of Utah.

Wilson Sales

30. While employed as an unlicensed sales agent of Cunningham Energy, Wilson collected a total of \$1,725.00 in commissions from the sale of securities to one Utah investor. The investor purchased \$34,500.00 in securities from Cunningham Energy through the following:
- a. On December 26, 2013, Wilson sold \$34,500.00 in Cunningham Energy oil and gas interests relating to project "Rhino 3" to a Utah investor, and received a \$1,725.00 in commissions.
31. During all times relevant to the transactions described herein, Wilson was not licensed to sell securities in the state of Utah.

CONCLUSIONS OF LAW

Unlicensed Activity under § 61-1-3(2)(a) of the Act

32. It is unlawful for a broker-dealer or issuer to employ or engage an agent unless the agent is licensed.
33. As described herein, Cunningham Energy acted as an issuer at the time of this offering, and employed and/or engaged Bolton, Johnson, Thibeau, and Wilson, all unlicensed issuer agents of Cunningham Energy.
34. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunities offered and sold by Respondent are securities under §61-1-13 of the Act.

- b. Respondent Cunningham Energy violated §61-1-3(2)(a) of the Act by employing or engaging agents to offer or sell its securities in the state of Utah without the proper licenses.

REMEDIAL ACTIONS/SANCTIONS

35. Respondent Cunningham Energy neither admits nor denies the Division's Findings of Fact and Conclusions of Law, and consents to the below sanctions being imposed by the Division.
36. Respondent Cunningham Energy represents that the information it has provided to the Division as part of its investigation is accurate and complete.
37. Respondent Cunningham Energy agrees 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.
38. Respondent Cunningham Energy agrees to be barred from acting as an issuer and soliciting investor funds in the State of Utah for two years.
39. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondent Cunningham Energy agrees to the imposition of a total fine amount of \$25,000.00 against Respondent Cunningham Energy, \$15,000.00 of which shall be paid within 10 days upon the entry of this Order. The remaining \$10,000 shall be paid to the Division within 60 days after the entry of this Order.

FINAL RESOLUTION

40. Respondent Cunningham Energy acknowledges that this Order, upon approval by the Utah Securities Commission (“Commission”), shall be the final compromise and settlement of this matter. Respondent Cunningham Energy 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 Cunningham Energy expressly waives any claims of bias or prejudice of the Commission, and such waiver shall survive any nullification.
41. If Respondent Cunningham Energy 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 Cunningham Energy consents to entry of an order in which any payments owed by Respondent Cunningham Energy pursuant to this Order become immediately due and payable.
42. 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 Respondent Cunningham Energy 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 Respondent Cunningham Energy or to otherwise enforce the terms of this Order. Respondent Cunningham Energy further agrees 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.
43. Respondent Cunningham Energy acknowledges 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

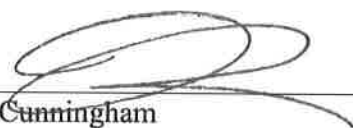
part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent Cunningham Energy also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against them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

44. 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 ____ day of _____, 2017

Dated this 18th day of Sept., 2017

Dave Hermansen
Director of Enforcement
Utah Division of Securities



Ryan Cunningham
Cunningham Energy, LLC

Approved:

Approved:

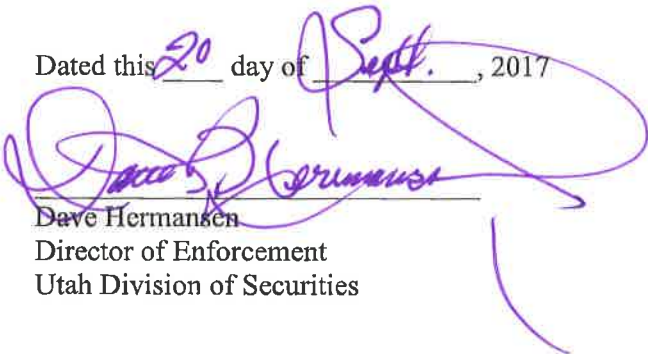
Paula Faerber
Assistant Attorney General
Counsel for Division

Edwin J. Tomko
Counsel for Respondent Cunningham Energy

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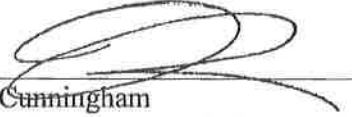
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Dated this 20 day of Sept., 2017




Dave Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 18th day of Sept., 2017



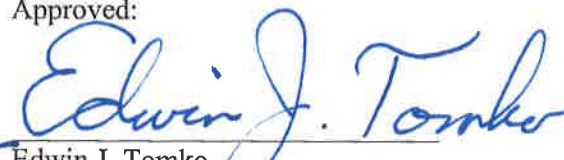
Ryan Cunningham
Cunningham Energy, LLC

Approved:



Paula Faerber
Assistant Attorney General
Counsel for Division

Approved:



Edwin J. Tomko
Counsel for Respondent Cunningham Energy

ORDER

IT IS HEREBY ORDERED THAT:

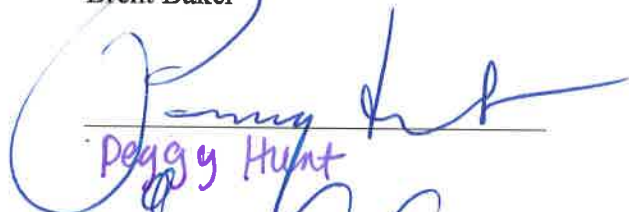
1. Respondent Cunningham Energy shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the State of Utah.
2. Respondent Cunningham Energy is barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in the State of Utah for a period of two years from the date of the Order.
3. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Securities Commission imposes a total fine amount of \$25,000.00 against Respondent Cunningham Energy, \$15,000 of which shall be paid within 10 days upon the entry of this Order. The remaining \$10,000 shall be paid to the Division within 60 days after entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this 19th day of October, 2017



Brent Baker



Peggy Hunt



Gary Cornia



Brent Cochran



Lyle White

CERTIFICATE OF MAILING

I certify that on the 19th day of October, 2017, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Edwin Tomko
Dykema Cox Smith
1717 Main Street
Suite 4200
Dallas, TX 75201

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

Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
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:

ACCELERATED WEALTH, LLC;
ACCELERATED WEALTH GROUP, LLC;
DALLAS H. TALL;
TOBEY R. WAGGONER;
RYAN L. FARR;
KENDALL T. TURLEY;
DONALD A. DANIEL;
BENJAMIN D. WILLIAMS.

Respondents.

**STIPULATION AND CONSENT
ORDER AS TO RESPONDENT
KENDALL T. TURLEY**

Docket No. SD-17-0021
Docket No. SD-17-0022
Docket No. SD-17-0023
Docket No. SD-17-0024
Docket No. SD-17-0025
Docket No. SD-17-0026
Docket No. SD-17-0027
Docket No. SD-17-0028

The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave Hermansen, and Respondent Kendall T. Turley (“Respondent” or “Turley”), hereby stipulate and agree as follows:

1. Accelerated Wealth, LLC (“Accelerated Wealth” or “AW”), Accelerated Wealth Group,

LLC (“Accelerated Wealth Group” or “AWG,” and collectively “AW Entities”)¹, and their agents, Dallas H. Tall (“Tall”), Tobey R. Waggoner (“Waggoner”), Ryan L. Farr (“Farr”), Kendall T. Turley (“Turley”), Donald A. Daniel, (“Daniel”), and Benjamin D. Williams (“Williams”) 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 (securities fraud) and § 61-1-3 (unlicensed activity) while engaged in the offer or sale of securities in the State of Utah.

2. On or about June 14, 2017, the Division initiated an administrative action against AW Entities and their agents by filing an Order to Show Cause.
3. Respondent Turley 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. The administrative action against the AW Entities, Tall, Waggoner, Farr, Daniel, and Williams is still pending.
5. Respondent Turley admits that the Division has jurisdiction over him and over the subject matter of this action.
6. Respondent Turley hereby waives any right to a hearing to challenge the Division’s evidence and present evidence on his behalf.
7. Respondent Turley 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

¹ Respondents used the names Accelerated Wealth, LLC and Accelerated Wealth Group, LLC interchangeably during communications with investors.

Turley to enter into this Order, other than as described in this Order.

8. Respondent Turley is represented by attorney Walter F. Bugden, Jr. and is satisfied with the legal representation he has received.

FINDINGS OF FACT

9. Accelerated Wealth is a Utah Limited Liability Company organized on or about August 11, 2011. Oracle Capital Investments, LLC (“Oracle”) is listed as the registered agent, and Oracle and Tall are listed as the managers of the entity. Accelerated Wealth’s status with the Utah Department of Commerce, Division of Corporations and Commercial Code expired on November 26, 2013. Accelerated Wealth has never been registered with the Division as an issuer of securities.
10. Accelerated Wealth Group is a Utah Limited Liability Company organized on or about October 31, 2011. Waggoner is listed as the registered agent, and Waggoner and Tall are listed as the managers of the entity. Accelerated Wealth Group’s status with the Utah Department of Commerce, Division of Corporations and Commercial Code expired on January 27, 2014. Accelerated Wealth Group has never been registered with the Division as an issuer of securities.
11. Turley was a resident of Utah during all times relevant to the allegations asserted herein. Turley has never been licensed to sell securities in any capacity.

GENERAL ALLEGATIONS

12. In or about 2012, Turley in or from Utah, offered and sold investment opportunities to at least one individual and raised at least \$135,000.00 in connection therewith.
13. Turley received \$400.00 in commissions from the sale of securities to one investor.

14. The investment opportunities offered and sold by Respondent are investment contracts and/or promissory notes.
15. Investment contracts and promissory notes are securities under §61-1-13 of the Act.
16. In connection with the offer or sale of securities in or from the state of Utah, Turley acted as an agent of AW and AWG.
17. To date, the investor is still owed approximately \$82,000.00 in principal alone.

INVESTOR A.L.

First Investment

18. A.L. and her husband, J.L., residents of Snohomish, Washington, first heard about the AW Entities from a radio broadcast in 2012. The advertisement indicated that the AW Entities assisted people with obtaining financial freedom through real estate related business practices.
19. A.L. attended the AW Entities' class in Bellevue in the fall of 2012. In or about December 2012, A.L. and J.L. paid \$15,000.00 to attend another real estate bus tour in California conducted by the AW Entities.
20. While on the bus tour in California, A.L. met Williams who told A.L. about various investment opportunities with the AW Entities and with Daniel. A.L. was aggressively solicited by AW Entities staff members to purchase investment properties and other services provided by the AW Entities.
21. Turley made numerous representations to A.L., including, but not limited to, the following:
 - a. that the rental properties were remodeled, rented out, and already had property

managers in place;

- b. that the AW Entities could grow A.L.'s income and that it was possible that her investment could appreciate by \$2,000.00 immediately, another \$2,000.00 within six months, and that A.L. would be earning in the six figure range by the end of 2013; and
 - c. If A.L. became a "Joint Venture Affiliate"² with the AW Entities, she could purchase the properties at \$6,000.00 to \$7,000.00 below AW Entities' cost.
22. Sometime in early January 2013, after returning home from the conference in California, A.L. received a phone call from Turley to further discuss the investment.
23. In reliance on what A.L. learned on the bus tour in California and on the statements and representations made by Turley, A.L. decided to invest \$85,000.00 with the AW Entities, for the purchase of two rental properties. One of the rental properties was located in Indianapolis, Indiana, and one in Kansas City, Missouri.
24. Turley told A.L. that each house was valued between \$60,000.00 and \$70,000.00, and therefore, A.L. could sell the properties for a profit.
25. A.L. signed a "Purchase and Sale Agreement of (REO) Real Estate w/ Joint Instructions" ("Purchase and Sale Agreement"), on January 9, 2013, in which AWG was the seller and A.L. the buyer.
26. The Purchase and Sale Agreement allowed AWG to use A.L.'s investment funds "for any purpose required to perform under the terms of this real property purchase contract up to and including but not limited to: property managers, municipalities, contractors, utility

² Becoming a "Joint Venture Affiliate" purportedly allows investors to receive discounts on properties through AW.

companies, inventory suppliers, title companies, construction material suppliers, and local taxing authorities.”

27. On or about January 10, 2013, A.L. wire transferred \$85,000.00 from A.L.’s 401(k) account at Provident Trust Group to AW’s Wells Fargo account ending in 5907.
28. A.L. received a total of \$6,966.00 in purported rental income from the AW Entities in the form of monthly distribution checks over a period of approximately six months for each of the two properties she purchased. A.L. has since sold the two properties for a fraction of the price she paid for them: the house in Indianapolis sold for approximately \$13,000.00, and the house in Kansas City sold for approximately \$3,000.00. The properties turned out to be in terrible condition and nothing like Turley and the AW Entities had represented.
29. The AW Entities used A.L.’s investment monies in a manner that was inconsistent with what was represented to A.L. at the time of the solicitation of her investment.
30. Specifically, A.L.’s investment funds were used for payroll for AW Entities, commissions paid to Turley, business expenses, and to repay a business loan.
31. In connection with the offer or sale of securities, Turley made untrue statements of material fact to A.L., including, but not limited to, the following:
 - a. that the properties sold by AW Entities were “turnkey” and already had renters, when in fact, the properties were dilapidated and appeared to have been vacant for some time;
 - b. that A.L. would be earning \$2,000.00 per month, \$4,000.00 per month within six months, and into the hundreds of thousands of dollars by the end of 2013, and A.L.

only received \$6,966.00 total in rental income for a period of approximately six months;

- c. that A.L. was purchasing the properties for \$6,000.00 to \$7,000.00 below AW Entities' cost; and
- d. that the properties sold to A.L. by AW were worth between \$60,000.00 and \$70,000.00, when in fact, the actual value of the properties was significantly lower and A.L. was only able to sell one for \$3,000.00 and the other for \$13,000.00.

32. In connection with the offer or sale of securities, Turley omitted material facts to A.L. including, but not limited to, the following:

- a. that Tall had an extensive criminal history including convictions for theft, theft by deception, illegal use of credit cards, crimes relating to forgery, crimes relating to drugs, and that Tall had spent several years in the Utah State Prison as a result;
- b. that Tall had over \$16,000.00 in unsatisfied judgments;
- c. Waggoner, Tall, and other AW Entities staff were involved in a large lawsuit in Bexar County, Texas starting in June 2012 that resulted in a \$7,949,779.00 judgment against Waggoner, Tall, and others involved with the AW Entities;
- d. that Turley and Williams were not licensed in the securities industry in any capacity; and
- e. Some or all of the information typically provided in an offering circular or prospectus concerning Tall, Waggoner, and AW Entities.

Second Investment

33. In reliance on the statements and representations made on the bus tour and the statements

and representations made by Turley previously, A.L. also decided to become an “AW Joint Venture Affiliate” by investing \$50,000.00 with the AW Entities.

34. On or about January 10, 2013, A.L. transferred \$50,000.00 from her 401(k) account at Provident Trust to AW’s Wells Fargo account ending in 5907.
35. In return for A.L.’s investment, AW Entities issued a promissory note for \$50,000.00 with 2% interest with principal and interest due in five years from January 4, 2013. The promissory note stated that A.L.’s funds would be used as “working capital to help Accelerated Wealth LLC with building its company.” On January 9, 2013, A.L. and Waggoner signed a promissory note.
36. In April 2013, the AW Entities filed for bankruptcy and ceased operations.
37. The AW Entities used A.L.’s investment monies in a manner inconsistent with what they told A.L. upon solicitation.
38. Specifically, A.L.’s investment funds were used to pay commissions to Williams, to pay an American Express bill, and as payment for a business loan.
39. In connection with the offer or sale of securities, Turley made untrue statements of material fact to A.L., including, but not limited to, the following:
 - a. that the funds would be used as “working capital to help Accelerated Wealth LLC with building its company,” when in fact, the funds were used to pay commissions to Williams, to pay an American Express Bill, and as payment for a business loan; and
 - b. that A.L. would receive 2% interest with principal due in five years from January 4, 2013, when in fact, to date, no payments were made to A.L., no statements were issued reflecting the accrued interest, and AW ceased operations and filed for

Bankruptcy in April 2013.

40. In connection with the offer or sale of securities, Turley omitted material facts including, but not limited to, the following:
 - a. that Tall had an extensive criminal history including convictions for theft, theft by deception, illegal use of credit cards, crimes relating to forgery, crimes relating to drugs, and had spent several years in the Utah State Prison;
 - b. that Tall had over \$16,000.00 in unsatisfied judgments;
 - c. that Waggoner, Tall, and other AW Entities staff were involved in a large lawsuit in Bexar County, Texas starting in June 2012 that resulted in a \$7,949,779.00 judgement against Waggoner, Tall and others involved with AW Entities; and
 - d. that Turley and Williams were not licensed in the securities industry in any capacity.
41. In the parallel criminal action in the Third District Court – State of Utah, Case #161910789, Turley was ordered to pay \$30,000.00 in restitution to A.L. As of September 1, 2017, Turley has paid full restitution. On August 11, 2017, Turley pled guilty to one amended count of Attempted Sale by an Unlicensed Broker-Dealer or Agent (Class A Misdemeanor) under Section 61-1-3 of the Act. Turley was placed on good behavior probation to the court for 18 months, and ordered to complete 50 hours of community service by February 1, 2018.
42. To date, A.L. is owed approximately \$82,000.00 in principal alone on her first and second investments.

**FIRST CAUSE OF ACTION
Securities Fraud under § 61-1-1(2) of the Act**

43. As described herein, in connection with the offer, sale or purchase of securities to

Investor A.L., Respondent directly or indirectly misrepresented material facts and/or omitted material facts necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading, in violation of Section 61-1-1(2).

**SECOND CAUSE OF ACTION
Securities Fraud under § 61-1-1(3) of the Act**

44. As described herein, in connection with the offer, sale or purchase of securities, Respondent directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on investors, in violation of Section 61-1-1(3) of the Act. That conduct includes but is not limited to Respondent's conversion and misuse of client monies for purposes not disclosed to or authorized by investors, including personal use of monies.

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

45. It is unlawful for a person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.
46. As described herein, Turley was not licensed in the securities industry in any capacity when he solicited investments, provided investment advice to investors, and/or engaged in trading on behalf of investors.

REMEDIAL ACTIONS/SANCTIONS

47. Respondent Turley admits the Division's Findings of Fact and Conclusions of Law, and consents to the below sanctions being imposed by the Division.

48. Respondent Turley represents that any information he provided to the Division as part of its investigation is accurate and complete.
49. Respondent Turley agrees 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.
50. Respondent Turley agrees not to seek licensure in the securities industry in Utah for a period of five years from the date that this Order is approved by the Utah Securities Commission (the "Commission").
51. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondent Turley agrees to the imposition of a total fine amount of \$5,000.00. Respondent also agrees to disgorge \$400.00 in commissions to the Division. Turley agrees to make a first payment including half of the fine (\$2,500.00) plus the full amount of disgorgement (\$400.00) within 60 days of the Commission's approval of the Order, and to make a second and final payment of half of the fine (\$2,500.00) within 12 months of the first payment.


FINAL RESOLUTION

52. Respondent Turley acknowledges that this Order, upon approval by the Commission, shall be the final compromise and settlement of this matter. Respondent Turley 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 Turley expressly waives any claims of bias or prejudice of the Commission, and such waiver shall survive any nullification.

53. If Respondent Turley 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 Turley consents to entry of an order in which any unpaid portion of the fine or disgorgement becomes immediately due and payable. Notice of the violation will be provided to Respondent's counsel and sent to Respondent's last known address. If Respondent fails to request a hearing within ten (10) days following notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against Respondent Turley 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 Respondent Turley or to otherwise enforce the terms of this Order. Respondent Turley further agrees 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.
54. Respondent Turley 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 Turley 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.
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 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 26 day of Sept., 2017




Dave Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 23 day of SEPTEMBER, 2017



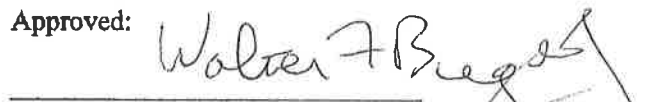
Kendall T. Turley

Approved:



Jennifer Korb
Assistant Attorney General
Counsel for Division

Approved:



Walter F. Bugden, Jr.
Counsel for Respondent Turley
9/24/17

ORDER

IT IS HEREBY ORDERED THAT:

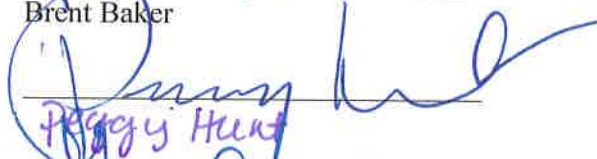
1. The Division's Findings and Conclusions, which are admitted by Respondent, are hereby entered.
2. Respondent Turley shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. Respondent Turley shall not seek licensure in the securities industry in Utah for a period of five years from the date of this Order.
4. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondent shall pay a fine in the amount of \$5,000.00 to the Division, and disgorge \$400.00 in commission to the Division, pursuant to the terms set forth in paragraph 51.

BY THE UTAH SECURITIES COMMISSION:


DATED this 19th day of October 2017



Brent Baker



Peggy Hunt



Gary Cornia



Brent Cochran



Lyle White

CERTIFICATE OF MAILING

I certify that on the 19th day of October, 2017, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Walter F. Bugden, Jr.
BUGDEN & ISAACSON, LLC
445 East 200 South, Suite 150
Salt Lake City, UT 84111
Counsel for Respondent Kendall T. Turley



Executive Secretary

RECEIVED

AUG 23 2017

Utah Department of Commerce
Division of Securities

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

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

IN THE MATTER OF:

**WHEELER RESOURCE RECOVERY, LLC;
SCOTT A. JOHNSON;**

Respondents.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-17-0017

Docket No. SD-17-0020

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondents Wheeler Resource Recovery, LLC ("Wheeler"), and Scott A. Johnson ("Johnson" and collectively "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. § 61-1-3 (unlicensed activity) while engaged in the offer or sale of securities in the State of Utah.
2. On or about March 30, 2017, 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 attorney Mark Pugsley and are satisfied with the legal representation they have received.

FINDINGS OF FACT

THE RESPONDENTS

8. Wheeler is a limited liability company that has been registered with the State of Texas Secretary of State since February 26, 2015. Wheeler is a secondary oil recovery company that offers oil and gas projects exclusively to accredited investors.
9. Scott A. Johnson, ("Johnson") born July 4, 1975, is listed as a Project Manager (and formerly listed as "Petroleum Investor Relations Consultant") for Wheeler. Johnson was previously employed as an Account Executive with Cunningham Energy, based in Charleston, West Virginia. Johnson is not licensed in the securities industry in any capacity.

10. On or about June 30, 2016, the Division received an anonymous phone call alleging that Wheeler was selling oil and gas investments without registration in the state of Utah.
11. From approximately June 2015 to March 2017, in violation of the Act, Wheeler employed and/or engaged Johnson, an unlicensed issuer agent who solicited investments on behalf of Wheeler and received at least \$26,393.74 in commissions.
12. The investment opportunities offered and sold by Respondents are investment contracts and/or certificates of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease.
13. Investment contracts and certificates of interest or participation in an oil, gas, or mining title or lease or payments out of production under such a title or lease are securities under §61-1-13 of the Act.
14. A copy of Johnson's contract of employment with Wheeler, titled "INDEPENDENT CONTRACTOR AGREEMENT," ("Employment Contract") contains a "Scope of Services" section, which states that Johnson is to "[p]romote and sale [sic] to prospective, qualified investors certain interests in private investment projects developed by the Company and all related duties, as determined by the Company."
15. The Employment Contract also states that Johnson will be paid a bonus of 3% to 12% of the total investment amount paid to Wheeler by a solicited investor.
16. A review of FINRA's Central Registration Depository ("CRD") indicates that, during the period relevant to the transactions described herein, Johnson was not licensed to offer or sell securities in any capacity.
17. In connection with the offer or sale of securities to investors in the state of Utah, Johnson

was employed and/or engaged by Wheeler and acted as an agent of Wheeler. Between June 17, 2015 and September 9, 2016, as a result of these solicitations, Johnson received approximately \$26,393.74 in commissions.

Investor S.Q.

18. Investor S.Q., a Utah resident, invested in Wheeler after receiving a phone call and email from Johnson describing the investment opportunity. Respondents told S.Q. that his money would be utilized for purposes related to drilling in two separate projects, Madison #1 and Madison #2.
19. In connection with the offering, S.Q. was provided with several documents by Johnson, including a letter dated January 22, 2016, titled "WHEELER RESOURCE RECOVERY, LLC MADISON COUNTY;" a "WRR – Madison #1, LP Partnership Agreement;" a "WRR – Madison #1, LP Confidential Offering Memorandum;" a "WRR – Madison #1, LP Subscription Application and Agreement;" and a "WRR – Madison #1, LP Turnkey Drilling, Completion and Rework Agreement."
20. In reliance on these documents and the representations and statements made by Johnson, S.Q. invested with Wheeler on two occasions.
21. On or about February 5, 2016, S.Q. invested in Madison #1 by purchasing a 3% interest for \$119,350.00. On or about February 12, 2016, Johnson received \$13,204.00 in commissions from this investment.
22. In or about June 2016, S.Q. invested in Madison #2 by purchasing by purchasing a 2% interest for \$68,000.00. On or about June 10, 2016, Johnson received \$8,160.00 in commissions from this investment.

Investor C.B.

23. Investor C.B., a Utah resident, did not cooperate with the Division's investigation. However, records obtained from Wheeler reveal that C.B. invested \$59,675.00 on March 15, 2016, under his company, Kestrel Energy, LLC.
24. On March 18, 2016, Johnson received commission payments from Wheeler in the amount of \$5,029.74 for soliciting this investment from C.B.¹

CAUSES OF ACTION

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

Respondent Johnson

25. It is unlawful for a person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.
26. As described herein, Johnson was not licensed in the securities industry in any capacity when he solicited investments from at least two Utah residents, provided investment advice to investors, and received \$26,393.74 in commissions for engaging in the offer or sale of securities in the state of Utah.

**SECOND CAUSE OF ACTION
Unlicensed Activity under § 61-1-3(2)(a) of the Act**

Respondent Wheeler

27. It is unlawful for a broker-dealer or issuer to employ or engage an agent unless the agent is licensed.

¹ A portion of Johnson's commissions, as described by Wheeler, includes commissions for both C.B. and for an investment received from a non-Utah resident, for a total of \$11,736.00. Wheeler did not provide the Division with an accurate breakdown of commissions for each of these investors. However, as calculated on a pro rata basis, Johnson received approximately \$5,029.74 in commissions for C.B.'s investment alone.

28. As described herein, Wheeler acted as an issuer at the time of this offering, and employed and/or engaged Johnson, an unlicensed issuer agent of Wheeler.

CONCLUSIONS OF LAW

29. 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. Respondent Johnson violated §61-1-3 of the Act by engaging in the offer or sale of securities in the state of Utah without a license.
 - c. Respondent Wheeler violated §61-1-3 of the Act by employing Johnson, an unlicensed agent, to offer and sell its securities in Utah.

REMEDIAL ACTIONS/SANCTIONS

30. Respondents neither admit nor deny the Division's Findings of Fact and Conclusions of Law, and consent to the below sanctions being imposed by the Division.
31. Respondents represent that the information they have provided to the Division as part of its investigation is accurate and complete.
32. 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.
33. Respondents agree not to seek licensure in the securities industry in Utah for a period of two years from the date that this Order is approved by the Securities Commission
34. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Securities Commission imposes a total fine amount of \$15,000.00 against Respondents, jointly and severally, paid upon the entry of this Order. Additionally, Respondent Scott A. Johnson shall disgorge \$26,393.74 in commissions to

the Division, paid in equal monthly payments over a period of 12 months.

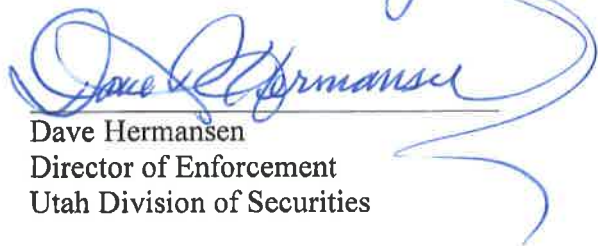
FINAL RESOLUTION

35. 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.
36. 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 any payments owed by Respondents pursuant to this Order become immediately due and payable.
37. 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.
38. 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.

39. 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 24 day of August, 2017



Dave Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 11 day of August, 2017

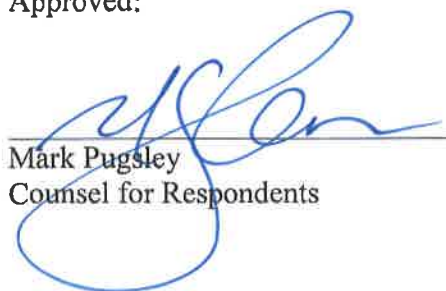

Kevin Thibau
Wheeler Resource Recovery, LLC


Scott A. Johnson
Wheeler Resource Recovery, LLC

Approved:


Paula Faerber
Assistant Attorney General
Counsel for Division

Approved:


Mark Pugsley
Counsel for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

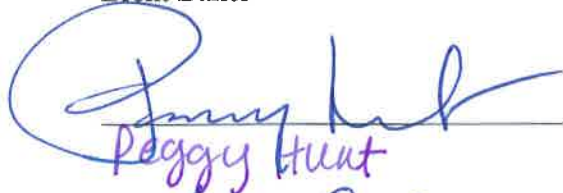
1. The Division's Findings and Conclusions, which Respondents neither admit nor deny, are hereby entered.
2. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. Respondents agree not to seek licensure in the securities industry in Utah for a period of two years from the date that this Order is approved by the Securities Commission.
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 Securities Commission imposes a total fine amount of \$15,000.00 against Respondents, jointly and severally, paid upon the entry of this Order. Additionally, Respondent Scott A. Johnson shall disgorge \$26,393.74 in commissions to the Division, paid in equal monthly payments over a period of 12 months.

BY THE UTAH SECURITIES COMMISSION:

DATED this 19th day of October, 2017



Brent Baker



Peggy Hunt



Gary Cornia



Bryan Cochran

Brent



Lyle White

CERTIFICATE OF MAILING

I certify that on the 19th day of October, 2017, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Mark Pugsley
Ray Quinney & Nebeker
36 South State Street Suite 1400
Salt Lake City, Utah 84111

A handwritten signature in blue ink, reading "Lee Ann Cleary", is written over a horizontal line.

Executive Secretary

DIVISION OF SECURITIES
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6600

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

IN THE MATTER OF:

DONALD A. DANIEL;

DALLAS H TALL;

RESPONDENT.

**FINDINGS OF FACT AND
RECOMMENDED ORDER OF DEFAULT
OF DONALD A. DANIEL**

Docket No. SD-17-0014

Docket No. SD-17-0015

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a March 8, 2017 Notice of Agency Action and Order to Show Cause (“OSC”) which was sent to Respondent Donald A. Daniel (Daniel”) at his last known address via certified mail. On May 3, 2017, the Division filed a First Amended Order to Show Cause (“Amended OSC”). The Amended OSC was delivered to Daniel on May 10, 2017 at the Salt Lake County Metro Jail where he was incarcerated at the time. On June 15, 2017, the Presiding Officer conducted the initial hearing at the Division’s offices. Daniel failed to appear at the hearing, either in person, by telephone or through counsel, and has made no contact with the Division or its counsel.

The Division filed a Motion for Default Order and Memorandum in Support (the “Motion”) on July 12, 2017 and mailed it via certified mail to Daniel at the Salt Lake County Metro Jail. The Motion was received on July 17, 2017. Daniel failed to respond to the Motion. On September 14, 2017, Division counsel emailed Daniel’s criminal counsel about the Motion for Default and received no response.

The Presiding Officer finds that, pursuant to Utah Code § 63G-4-209(1), proper factual and legal bases exist for entering a default order against Respondent.

The fine amount requested in the Motion was determined in accordance with the provisions of §61-1-31 of the Utah Uniform Securities Act. In arriving at this amount, the Division considered the seriousness, nature, circumstances, extent and persistence of the conduct constituting the violation; the harm to other persons resulting either directly or indirectly from the violation; cooperation by Respondent and any remedial measures taken by him; any prior offenses by the Respondent; the need for deterrence; the circumstances surrounding the vulnerability of the investors; and other matters as justice may require, including any costs incurred by the Division over the course of the investigation and litigation of this matter.

In the present case, Daniel raised \$1,063,000.00 from eight investors over the course of five years by misrepresenting and omitting material facts related to the sale of these securities and engaging in other fraudulent conduct. The investors received approximately \$45,000.00 back, but are still owed \$1,018,000.00 in principal alone. Daniel did nothing to cooperate with the Division’s investigation and has taken no actions to mitigate the harm caused by the violations.

The Presiding Officer finds that a proper factual and legal basis exists for entering the requested fine against the Respondent.

RECOMMENDED ORDER

The Presiding Officer recommends that the Utah Securities Commission make findings and order as follows:

- a. That the allegations contained in the Division’s Amended Order to Show Cause are accepted as true;
- b. That Respondent, Donald A Daniel, cease and desist from engaging in any further conduct in violation of Utah Code Ann. §61-1-1 et seq.;
- c. That Respondent pay a fine of at least \$100,000.00 to the Utah Division of Securities within five (5) days of entry of the final order; and
- d. That Respondent be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah.

Finally, the Presiding Officer recommends that, upon entering the Default Order, the Commission dismiss any further proceedings in this case against Donald A. Daniel. This does not preclude the Division from pursuing actions against Respondent unrelated to this matter or from pursuing the collection of the fine assessed.

DATED September 28th, 2017.

UTAH DEPARTMENT OF COMMERCE



Bruce Dibb
Presiding Officer

DIVISION OF SECURITIES
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6600

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

IN THE MATTER OF:

DONALD A. DANIEL;

DALLAS H TALL;

RESPONDENT.

**ORDER OF DEFAULT OF DONALD A.
DANIEL**

Docket No. SD-17-0014

Docket No. SD-17-0015

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

The Utah Securities Commission ("Commission") accepts the allegations outlined in the Amended Order to Show Cause and finds that they are true. The Commission hereby orders that the default of the Respondent, Donald A. Daniel, is entered pursuant to this Order.

The Utah Securities Commission further orders that:

- a. Respondent, Donald A. Daniel, cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 et seq.;

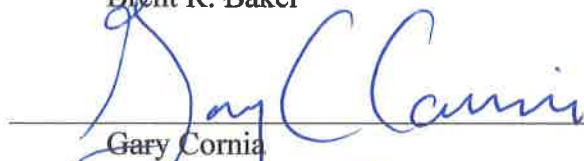
- b. Respondent, Donald A. Daniel, pay a fine of \$100,000.00 to the Utah Division of Securities within five (5) days of entry of the final order;
- c. Respondent be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; and
- d. Upon entering this Default Order, any further proceedings in this case against Donald A. Daniel are dismissed. This does not preclude the Division from pursuing actions against Respondent, Donald A. Daniel, unrelated to this matter or from pursuing the collection of the fine assessed.

DATED this 19th day of October, 2017

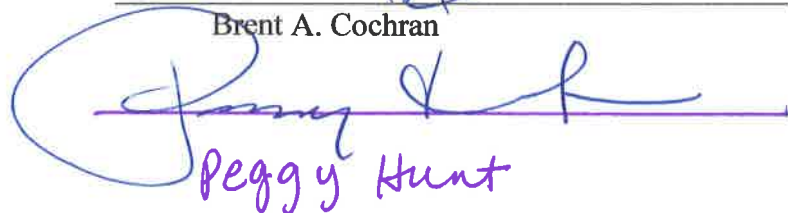
UTAH SECURITIES COMMISSION:


Lyle White


Brent R. Baker


Gary Cornia


Brent A. Cochran

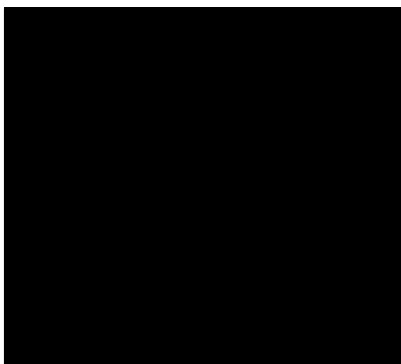

Peggy Hunt

NOTICE

Pursuant to U.C.A. §63G-4-209, a defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. A motion to set aside a default and any subsequent order shall be made to the presiding officer. A defaulted party may seek agency review under U.C.A. §63G-4-302, only on the decision of the presiding officer on the motion to set aside the default.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 2017 the undersigned served a true and correct copy of the FINDINGS OF FACT AND RECOMMENDED ORDER OF DEFAULT and of the foregoing ORDER OF DEFAULT OF DONALD A. DANIEL by mailing copies by regular mail, postage prepaid, to:



and by email to:

Paula W. Faerber, AAG
pfaerber@agutah.gov



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:

KIM D. ISAACSON, CRD#855618

Respondent.

STIPULATION AND CONSENT
ORDER

Docket No. SD-17-0016

The Utah Division of Securities (“Division”), by and through its Director of Compliance, Kenneth O. Barton, and Respondent Kim D. Isaacson (“Respondent”) 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 March 28, 2017 the Division initiated an administrative action against Respondent by filing a Petition to Revoke, Bar, and Impose a Fine. On May 31, 2017 Respondent filed an Answer to the Petition.
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 Petition.

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 is represented by Daniel D. Hill of Snow, Christensen & Martineau, and is satisfied with the legal representation he has received.

I. FINDINGS OF FACT

8. Isaacson is a Utah resident who has worked in the securities industry for approximately 38 years. Since February 26, 2014 he has been licensed in Utah as a broker-dealer agent and investment adviser representative of Ameriprise Financial Services, Inc., CRD#6363. Isaacson has taken and passed the FINRA¹ Series 7, 9, 10, 63 and 65 examinations.
9. From June 2009 until he resigned in February 2014, Isaacson was a licensed broker-dealer agent and investment adviser representative of Morgan Stanley Smith Barney LLC ("Morgan Stanley") (CRD# 149777). Between 1979 and 2009 Isaacson was licensed with a number of other financial services firms.

Complaint and Division Investigation

¹ The Financial Industry Regulatory Authority, formerly known as NASD.

10. In December 2015, the Division received a complaint from an advisory client of Isaacson's, K.M., who alleged that, among other things, between 2010 and 2014 Isaacson repeatedly verbally misrepresented the value of K.M.'s account - by approximately \$2,595,000 – during numerous telephone calls in order to conceal losses in the account.
11. The complaint further alleged that Isaacson admitted to that misconduct during a meeting recorded by K.M., and that Isaacson proposed several illegal solutions, which K.M. viewed as bribes, including having K.M. use a line of credit so that Isaacson could make additional trades to make up the losses, as well as Isaacson offering to give K.M. \$100,000 in gold coins each year until K.M. was fully repaid.

The Division's examination into the complaint revealed the following:

12. According to records contained in the Central Registration Depository ("CRD"),² on February 6, 2014, Isaacson resigned while under internal review by Morgan Stanley after acknowledging giving K.M. false account performance information since approximately March 2011.
13. In April 2014 K.M. filed a FINRA arbitration action against Isaacson and Morgan Stanley ("K.M. arbitration") based upon the conduct alleged in K.M.'s complaint to the Division.
14. Following an evidentiary hearing in the K.M. arbitration, on June 15, 2016 a FINRA panel found Isaacson and Morgan Stanley jointly and severally liable for fraud, breach of fiduciary duty and unsuitable investments, and ordered a total of \$3,586,969 in damages,

² CRD is an electronic database maintained by FINRA and the states. Among other things, CRD contains licensing and disciplinary information on broker-dealers, investment advisers, agents, and investment adviser representatives.

noting:

The Panel found that [Isaacson] testified he lied to [K.M.] about the balances in his portfolio and that he knew that [K.M.] relied on his oral representations. [Morgan Stanley] perpetuated the fraud by failing to supervise and monitor the ongoing fraud over a period of four years. Respondents Isaacson and [Morgan Stanley] shall pay to Claimants \$993,989.00 as disgorgement of brokerage fees and commissions paid by Claimants to [Morgan Stanley] and \$2,593,000.00 representing the difference between the actual account balance and the value verbally reported to [K.M.] by Respondent Isaacson.

15. On or about April 8, 2016, FINRA initiated an investigation into Isaacson based upon the K.M. complaint. That investigation resulted in a disciplinary enforcement proceeding filed against Isaacson on June 9, 2017, which is pending. Among other things, the FINRA action alleges fraudulent misrepresentations, omissions of material facts, and unauthorized trades.³
16. CRD records show another FINRA arbitration matter was filed against Isaacson and Morgan Stanley on February 1, 2016, involving allegations of unsuitability and misrepresentations with respect to equity investments and providing inaccurate information about account performance between 2008 and 2014. That action is pending.
Client K.M.
17. K.M. became a client of Isaacson in approximately 1993. He grew up in Utah but has been a resident of Florida during the period relevant to this action.
18. During 2009, K.M. sold several businesses and in December 2009 invested the proceeds of approximately \$20,600,000 with Isaacson, increasing the total value of his Morgan Stanley accounts to approximately \$28,000,000.

³ <http://disciplinaryactions.finra.org/Search/ViewDocument/69173>

19. As he had retired, K.M. discussed with Isaacson a more conservative portfolio and shifting towards income-producing investments and capital preservation.
20. K.M.'s monies were thereafter invested using a six "bucket" asset allocation strategy designed by Isaacson, which was intended to diversify the portfolio and offset market risk exposure. The portfolio was weighted heavily in fixed products and bond holdings, but also included individual stocks and alternative investments.
21. According to Isaacson, the account investment objective was an annual return between 4% and 6%.
22. K.M. believed Isaacson to be both a close friend and trusted adviser, and the two generally spoke daily - anywhere from two minutes to thirty minutes - and met in person once or twice annually to review K.M.'s investments.
23. According to Isaacson, since retiring K.M. was easily panicked by day-to-day market volatility and worried about daily fluctuations in his account's value.
24. At some point in 2010, Isaacson began to misrepresent to K.M. the fluctuations and value in K.M.'s account:

Q: Do you recall the day that ... the first time that you ... told him a number that was inaccurate?

A: No. And it was small ... It started off small in percentage terms, especially ... 20,000 ... 30,000 ... 100,000 ... or it would go down ... the one that was most meaningful to me and I've testified to this was the Flash Crash in May⁴ where he dropped 3 or 400,000 dollars in a day. I didn't tell him that.⁵
25. Isaacson told the Division he began telling K.M. "what he wanted to hear" rather than

⁴ Approximately six months after K.M.'s large deposit, the "Flash Crash" of May 6, 2010 occurred, causing the investment markets to plunge significantly and then rebound.

⁵ October 5, 2016 Division Interview of Isaacson.

addressing the reality of market activity on K.M.'s holdings.

26. Over the next several years, Isaacson's daily, ongoing false representations about the value of K.M.'s account resulted in a difference at times of more than \$2,500,000 between what Isaacson reported to K.M. and the actual value in K.M.'s account.
27. K.M. did not look at his account statements which were sent to K.M.'s personal assistant and accountant.
28. Because K.M. implicitly trusted Isaacson and spoke with him nearly every day, K.M. had no reason to question Isaacson's verbal representations about account performance.
29. On one occasion in September 2011, while Isaacson was in a meeting, K.M. called Morgan Stanley and spoke with Isaacson's assistant who provided an account balance that was one and a half to two million dollars less than what K.M. expected based on prior conversations with Isaacson. Isaacson immediately called K.M. back and explained the assistant had erroneously failed to include assets held outside Morgan Stanley. K.M. asked Isaacson to send that information to his accountant, and, trusting Isaacson, did not further pursue the issue.
30. Isaacson met in person annually with K.M. to review his account holdings, typically showing the various investments in different pieces. Isaacson did not provide an account summary and did not send K.M. the charts or graphs presented during those meetings.
31. On or about January 3, 2014 during a telephone call to review account performance, Isaacson made a mathematical error in the information he provided to K.M., which did not reconcile with the reported 2013 performance.
32. As a result of the discrepancy, on January 6, 2014, K.M. requested an audit of his

accounts.

33. Isaacson then called K.M. and confessed to his deceit.
34. Several days later, K.M. traveled to Utah to meet with Isaacson. Unknown to Isaacson at the time, K.M. recorded the conversation.
35. During the meeting, Isaacson admitted to his pattern of misrepresentations about the account values, and further admitted:
 - a. not disclosing a loss of \$1,000,000 in one month;
 - b. failing to liquidate a risky stock, as instructed by K.M., that resulted in losses of \$100,000; and
 - c. failing to disclose a \$288,000 loss in gold holdings.
36. K.M. told Isaacson that had Isaacson told him the true account values over the past few years, K.M. could have made changes to his holdings to reduce the risk of further loss, and could have taken action to reduce the amount of withdrawals he was taking and monies he was spending.
37. Isaacson acknowledged that if K.M. reported him to Morgan Stanley, Isaacson would lose his job, and if that happened he would owe Morgan Stanley approximately \$1,000,000 in monies paid up front and in deferred compensation.
38. Isaacson offered several solutions to make up the \$2,593,000 difference, including having K.M. use a \$2,500,000 line of credit so that Isaacson could make additional trades to make up the losses. In addition, Isaacson offered to give K.M. \$100,000 in gold coins each year until K.M. was fully repaid.
39. Shortly after the meeting with K.M., Isaacson disclosed his misconduct to Morgan

Stanley and resigned while an internal investigation was pending.

II. CONCLUSIONS OF LAW

Fraud Judgment Under § 61-1-6(2)(a)(ii)(M)(I), (III) and (IV)

40. As described herein, following an evidentiary hearing, on June 15, 2016 Isaacson was found liable for fraud, breach of fiduciary duty, and unsuitable investments by a FINRA panel, based upon his fraudulent and deceitful conduct - characterized by the panel as an "ongoing fraud" - over a period of four years.
41. The FINRA panel decision and award is a final judgment in a civil action against Isaacson on grounds of fraud, misrepresentation, or deceit, warranting revocation of his licenses and other sanctions under Subsections 61-1-6(2)(a)(ii)(M)(I), (III) and (IV) of the Act.

Securities Fraud – Misrepresentations or Omissions under § 61-1-1(2) of the Act

42. As described herein, in connection with the offer, sale or purchase of securities, Isaacson directly or indirectly misrepresented material facts or omitted material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, in violation of Section 61-1-1 (2) of the Act. Those misrepresentations and omissions include but are not limited to Isaacson repeatedly lying to K.M. about his account holdings, values, and losses over a period of four years.

Securities Fraud – Act, Practice, Course of Business Operating as a Fraud under § 61-1-1(3) of the Act

43. Isaacson's ongoing deception and misrepresentations about K.M.'s account holdings, values, and losses in the account constitute an act, practice or course of business

operating as a fraud on K.M. and Morgan Stanley, and exposed Morgan Stanley to civil liability, in violation of Section 61-1-1 (3) of the Act.

44. Isaacson's proposals that K.M. use a line of credit to obtain additional funds for Isaacson to trade in order to make up the losses, and offer to pay K.M. \$100,000 in gold coins each year - which K.M. understood to be bribes - constitute further acts, practices or courses of business that would operate as a fraud on K.M. and Morgan Stanley, in violation of Section 61-1-1(3) of the Act.

Dishonest or Unethical Business Practices under § 61-1-6(2)(a)(ii)(G) of the Act:

Breach of Fiduciary Duty

45. As was found by the FINRA arbitration panel, Isaacson's fraudulent and deceitful misconduct constitutes a breach of his fiduciary duty to K.M. - who trusted that Isaacson would put K.M.'s interests first - a dishonest or unethical practice under Utah Administrative Code ("UAC") Rules R164-6-1g(A)(2) and (E), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Daily Dishonesty-Account information

46. Isaacson's failure to provide accurate account information to K.M. regarding holdings, account values, and losses is a dishonest or unethical practice under UAC Rule R164-6-1g(C)(21), applicable to agents through (D)(7), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Sharing in Client Losses

47. Isaacson's offers to use K.M.'s line of credit or give K.M. gold coins without Morgan Stanley's approval are dishonest or unethical practices under UAC Rule R164-6-1g(D)(4)

and (E)(22), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Violation of FINRA Rule 2010

48. FINRA Rule 2010 requires that its members "shall observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. Isaacson's fraud and deceit violate Rule 2010, the violation of which is a dishonest or unethical practice under UAC Rule R164-6-1g(C)(28), applicable to agents through (D)(7), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

49. Respondent admits that he violated FINRA Rule 2010 in the conduct of his business, a violation of which is a dishonest or unethical practice under UAC Rule R164-6-1g(C)(28). Respondent neither admits nor denies the Division's other Findings and Conclusions, but consents to the sanctions below being imposed by the Division.
50. 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.
51. Respondent agrees that his license will be revoked and he will be barred from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting funds in Utah; and from being licensed in any capacity in the securities industry in Utah.
52. Pursuant to Utah Code Ann. Section 61-1-6 and in consideration of the factors contained in Utah Code Ann. Section 61-1-31, the Division imposes a fine of \$130,000.00 against Respondent. \$100,000.00 of the fine will be offset, dollar for dollar, by proof of restitution paid to the investor as a result of the K.M. arbitration. Proof of such payment shall be provided to the Division within thirty (30) days following entry of this Order.

Respondent shall pay the remaining fine of \$30,000.00 in three equal installments of \$10,000.00, with the first installment due within five (5) days of the entry of this Order, the second installment due on or by September 30, 2018, and the third and final installment due on or by September 30, 2019. Respondent agrees that on or by September 22, 2017, he will provide the full amount of the first installment on the fine to his undersigned counsel to hold in trust for no purpose other than payment to the Division.

IV. FINAL RESOLUTION

53. 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.
54. If Respondent 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, Respondent consents to entry of an order in which:
- a. Respondent admits the Division’s Findings and Conclusions as set forth in this Order; and
 - b. Any unpaid portion of the fine becomes immediately due and payable.


Notice of the violation will be provided to Respondent's counsel and sent to Respondent's last known address. If Respondent fails to request a hearing within ten (10) days following notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against Respondent 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 Respondent or to otherwise enforce the terms of this Order. Respondent further agrees 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.

55. Respondent shall notify the Division within thirty (30) days of any change of address.
56. 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.

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57. 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 8 day of August, 2017




Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 1 day of August, 2017



Kim D. Isaacson

Approved:



Jennifer Korb
Assistant Attorney General
Counsel for the Division

Approved:



Daniel D. Hill
Counsel for Respondent

is office

ORDER

IT IS HEREBY ORDERED THAT:


1. The Division's Findings and Conclusions, which are admitted in part as set forth in paragraph 49 but which are otherwise neither admitted nor denied 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's license is revoked and he is barred from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting funds in Utah; and from being licensed in any capacity in the securities industry in Utah.
4. Respondent shall pay a fine of \$130,000.00 to the Division pursuant to the terms set forth in paragraph 52.

BY THE UTAH SECURITIES COMMISSION:


DATED this 19th day of October 2017.



Brent Baker



Gary Cornia



Peggy Hunt



Lyle White



Brent Cochran

CERTIFICATE OF MAILING

I certify that on the 19th day of October, 2017, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

DANIEL D. HILL
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145
Counsel for Respondent



Executive Secretary