

NOV 17 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**

<p>IN THE MATTER OF:</p> <p>TOWN & COUNTRY BANK, INC.;</p> <p>Respondent.</p>	<p>STIPULATION AND CONSENT ORDER</p> <p>Docket No. SD-17-0040</p>
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The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave Hermansen, and Respondent Town & Country Bank, Inc., hereby stipulate and agree as follows:

1. Town and Country Bank, Inc. (“TCB”) has been the subject of an investigation by the Division relating to allegations that it violated the Utah Uniform Securities Act (“Act”), Utah Code Ann. § 61-1-1 (securities fraud) while engaged in the offer or sale of securities in the State of Utah.
2. On or about September 20, 2017, the Division initiated an administrative action against TCB by filing an Order to Show Cause (the “OSC”).

3. Respondent TCB 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 OSC.
4. Respondent TCB admits that the Division has jurisdiction over TCB and over the subject matter of this action.
5. Respondent TCB hereby waives any right to a hearing to challenge the Division’s evidence and present evidence on its behalf.
6. Respondent TCB 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 TCB to enter into this Order, other than as described in this Order.
7. Respondent TCB is represented by attorney Daniel Daines and is satisfied with the legal representation received.

FINDINGS OF FACT

THE RESPONDENTS

8. TCB is a bank incorporated in the state of Utah since May 23, 2007.
9. On May 31, 2017, TCB announced its merger with Bank of American Fork (incorporated as People’s Intermountain Bank (“PIB”), which is a wholly owned subsidiary of People’s Utah Bancorp, referred to herein as “PUB”)¹.

¹ Neither PIB nor PUB were parties to this investigation. The Findings of Fact, Conclusions of Law, and Order in this document apply solely to the Respondent TCB.

GENERAL ALLEGATIONS

10. Beginning on February 1, 2015, TCB began offering up to 80,000 shares of its 6% Series A Noncumulative Convertible Preferred Stock (“Series A Preferred Stock”), at an offering price of \$25.00 per share, to investors under Rule 506 of Regulation D, for a total capital raise of two million dollars (\$2,000,000.00).
11. Sometime in early 2016, TCB commenced merger and acquisition discussions and negotiations with Bank of American Fork, a banking division of PIB. TCB terminated these discussions due to a failure of TCB and PIB to agree on the sales price.
12. Although TCB was interested in potential merger and acquisition discussion with other banking institutions, TCB was unable to find other interested parties.
13. On February 1, 2017, TCB’s offering of its Series A Preferred Stock closed with 37,200 unsold shares.
14. In February 2017, TCB began negotiating with an individual to serve as a consultant (“Consultant”) in TCB’s efforts to find other institutions interested in merger and acquisition discussions. On February 23, 2017, the Board of Directors (“Board”) voted to have the consultant contact banks interested in possible mergers. On March 8, 2017, the consultant was invited to the Board meeting, where he reported on his meeting with PUB. On March 9, 2017, TCB signed the contract engaging the consultant for his services.
15. Prior to his retention as a consultant, and as a matter separate from the Consultant’s compensation package, the Consultant expressed interest in purchasing the remaining

shares of TCB's Series A Preferred Stock. The Consultant indicated that this would allow him to have "skin in the game," referring to the merger and acquisition discussions.

16. On February 23, 2017, to allow the Consultant to purchase the remaining 37,200 shares of TCB's Series A Preferred Stock, TCB's Board of Directors voted in favor of a motion to extend the preferred stock offering from February 1, 2017 to March 31, 2017.
17. Current Series A Preferred Stock and/or Common Stock shareholders were not informed of TCB's extension of its Series A Preferred Stock offering.
18. . On February 28, 2017, the Consultant purchased the remaining 37,200 shares of TCB's Series A Preferred Stock for \$930,000.00.
19. TCB did not amend its offering circular, issue an addendum to its offering circular, or contact its current Series A Preferred Stock shareholders in any other manner to inform investors about new material information relating to the facts described in paras. 14 through 18, which had arisen subsequent to the date of TCB's offering of its Series A Preferred Stock had initially closed.
20. In connection with the offer or sale of securities to investors in or from the state of Utah, TCB omitted material facts from investors when TCB and/or its Officer and Directors failed to notify investors who had previously purchased Series A Preferred Stock of new material information arising after the date that TCB's Series A Preferred Stock offering had initially closed, including, but not limited to, the following:
 - a. That on February 23, 2017, TCB's Board of Directors extended its preferred stock offering from February 1, 2017 to March 31, 2017;
 - b. That at the time TCB's Board of Directors voted to extend the preferred stock

offering from February 1 through March 31, 2017, TCB was interested in pursuing merger and acquisition discussions with PUB;

- c. That beginning in February 2017, TCB began negotiating with a consultant who met with PUB to discuss a potential merger. On March 8, 2017, the consultant attended the TCB board meeting and reported the results of his meetings with PUB. On March 9, 2017, TCB officially engaged the consultant for his services.

21. The investment opportunities offered and sold by Respondents are stocks.

22. Stocks are securities under §61-1-13 of the Act.

CONCLUSIONS OF LAW

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

23. As described herein, in connection with the offer or sale of securities, Respondent TCB directly or indirectly 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) of the Act.

REMEDIAL ACTIONS/SANCTIONS

24. Respondent TCB neither admits nor denies the Division's Findings of Fact and Conclusions of Law set forth herein, , and consents to the imposition of sanctions by the Division.

25. Respondent TCB represents that the information Respondent provided to the Division as part of its investigation is accurate and complete.

26. Respondent TCB 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.
27. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondent TCB also agrees to the imposition of a total fine amount of \$15,000.00 against Respondent TCB. Respondent agrees to pay the full fine to the Division within 10 days after the entry of this Order.

FINAL RESOLUTION

28. Respondent TCB acknowledges that this Order, upon approval by the Utah Securities Commission (“Commission”), shall be the final compromise and settlement of this matter. Respondent TCB 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 TCB expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.
29. If Respondent TCB 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 TCB consents to entry of an order in which any payments owed by Respondent TCB pursuant to this Order become immediately due and payable.
30. 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 a judicial proceeding against Respondent TCB 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 TCB or to otherwise enforce the terms of this Order. Respondent TCB 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.

31. Respondent TCB 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 TCB 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.
32. 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.
33. This Order is not intended to indicate that Respondent shall be subject to any disqualification contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws, including any disqualifications from relying upon the registration exemptions or safe harbor provisions contained therein. In addition, this Order is not intended to form the basis for any such disqualifications and to the extent applicable, this Order hereby waives any disqualification from the same. Further, this Order is not

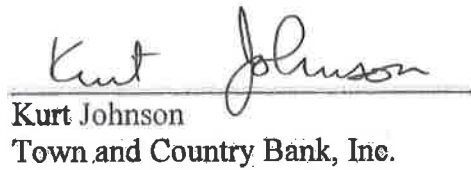
intended to form the basis of a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934.

Dated this 11 day of October 2017




Dave Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 3rd day of November, 2017



Kurt Johnson
Town and Country Bank, Inc.

Approved:



Paula W. Faerber
Assistant Attorney General
Counsel for Division

Approved:



Daniel Daines
Counsel for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent TCB 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. 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 Respondent TCB. The total fine amount shall be paid to the Division within 10 days after entry of this Order.

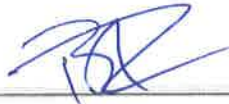
This Order is not intended to indicate that Respondent shall be subject to any disqualification contained in the federal securities laws, the rules and regulations thereunder, the rules and regulations of self-regulatory organizations or various states' securities laws, including any disqualifications from relying upon the registration exemptions or safe harbor provisions contained therein. In addition, this Order is not intended to form the basis for any such disqualifications and to the extent applicable, this Order hereby waives any disqualification from the same. Further, this Order is not intended to form the basis of a statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934.

BY THE UTAH SECURITIES COMMISSION:

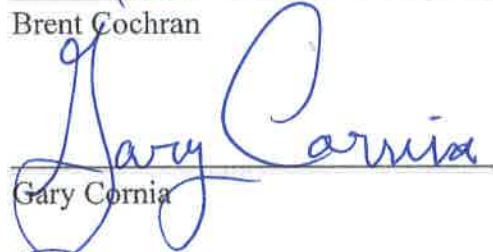
DATED this 7th day of December, 2017



Brent Baker



Brent Cochran



Gary Cornia



Peggy Hunt



Lyle White

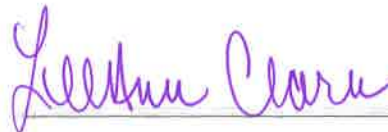
CERTIFICATE OF MAILING

I certify that on the 8th day of December, 2017, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Daniel Daines
170 S. Main Street, Suite 1500
Salt Lake City, Utah 84101

And an electronic copy to:

Daniel Daines
ddaines@joneswaldo.com



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:

CUNNINGHAM ENERGY, LLC;

KEVIN K. THIBEAU;

JAN P. BOLTON;

SCOTT A. JOHNSON;

CASEY J. WILSON.

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. _____

Docket No. _____

Docket No. _____

Docket No. _____

Docket No. SD-17-0035

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Casey J. Wilson ("Respondent" or "Wilson"), hereby stipulate and agree as follows:

1. Cunningham Energy and its agents, Kevin Thibeu ("Thibeu"), 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 Cunningham Energy and its agents by filing an Order to Show Cause.
3. Respondent Wilson 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 Cunningham Energy, Thibeau, Bolton, and Johnson is still pending.
5. Respondent Wilson admits that the Division has jurisdiction over him and over the subject matter of this action.
6. Respondent Wilson hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
7. Respondent Wilson 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 Wilson to enter into this Order, other than as described in this Order.
8. Respondent Wilson is represented by attorney David Emerzian and is satisfied with the legal representation he 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. Wilson was employed as a sales agent of Cunningham Energy. Wilson has never been licensed in the securities industry.

GENERAL ALLEGATIONS

11. 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.
12. 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.
13. 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.
14. 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.
15. On August 15, 2016, the Division received a letter from Cunningham Energy indicating that, between March 16, 2011 and December 30, 2014, Bolton, Johnson, Thibeau, and Wilson, while employed as sales agents of Cunningham Energy, collected a combined total of \$123,398.00 in sales commissions for selling oil and gas securities to 13 Utah residents.
16. The investment opportunities offered and sold by 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.
17. 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.

18. A review of FINRA's Central Registration Depository ("CRD")¹ indicates that, during the period relevant to the transactions described herein, Wilson was not licensed to offer or sell securities in any capacity.
19. In connection with the offer or sale of securities to an investor in the state of Utah, Wilson was employed and/or engaged by Cunningham Energy and acted as an agent of Cunningham Energy.
20. Between March 16, 2011 and December 30, 2014, Wilson received a combined total of \$1,725.00 in commissions for the sale of securities in the state of Utah.

Wilson Sales

21. While employed as an unlicensed sales agent of Cunningham Energy, Wilson received 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.
22. During all times relevant to the transactions described herein, Wilson was not licensed to sell 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.

CONCLUSIONS OF LAW

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

23. 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.
24. As described herein, Wilson was not licensed in the securities industry in any capacity when he solicited investments from at least one Utah resident, provided investment advice to investors, and received a combined total of \$1,725.00 in commissions for engaging in the offer or sale of securities in the state of Utah.

REMEDIAL ACTIONS/SANCTIONS

25. Respondent Wilson 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.
26. Respondent Wilson represents that the information he has provided to the Division as part of its investigation is accurate and complete.
27. Respondent Wilson 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.
28. Respondent Wilson agrees 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 the State of Utah.
29. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Respondent Wilson also agrees to the imposition of a total fine amount of \$2,500.00 against Respondent Wilson. Respondent agrees to pay

\$1,725.00 in disgorgement of commissions to the Division. The full disgorgement and fine amount shall be paid to the Division within 10 days after the entry of this Order.

FINAL RESOLUTION


30. Respondent Wilson acknowledges that this Order, upon approval by the Utah Securities Commission (“Commission”), shall be the final compromise and settlement of this matter. Respondent Wilson 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 Wilson expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.
31. If Respondent Wilson 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 Wilson consents to entry of an order in which any payments owed by Respondent Wilson pursuant to this Order become immediately due and payable.
32. 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 Wilson 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 Wilson or to otherwise enforce the terms of this Order. Respondent Wilson 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.

33. Respondent Wilson 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 Wilson 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.
34. 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 1st day of December, 2017


Dave Hermansen *Keith Woodwell*
Director of Enforcement
Utah Division of Securities


Dated this 17th day of October, 2017


Casey J. Wilson

Approved:


Paula Faerber
Assistant Attorney General
Counsel for Division

Approved:


David Emerzian
Counsel for Respondent Wilson

ORDER

IT IS HEREBY ORDERED THAT:

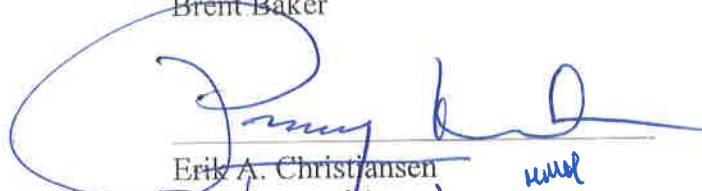
35. Respondent Wilson shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the State of Utah.
36. Respondent Wilson is barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor funds in the State of Utah.
37. 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 \$2,500.00 against Respondent Wilson, and orders disgorgement of profits in the amount of \$1,725.00. The total fine amount and disgorgement (\$4,250.00) shall be paid to the Division within 10 days after entry of this Order.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of December, 2017



Brent Baker



Erik A. Christiansen

Peggy Hant



Gary Cornia



Brent Cochran



Lyle White

CERTIFICATE OF SERVICE

I certify that on the 8TH day of December, 2017 I mailed, by certified USPS mail, true and correct copy of Stipulation and Consent Order to:

David L. Emerzian
McCormick Barstow, LLP
7647 N. Fresno St.
Fresno, CA 93720
demerzian@mccormickbarstow.com

Electronic copy to:

Bruce Dibb
Department of Commerce Administrative Law Judge
bdibb@utah.gov

Dave Hermansen
dhermans@utah.gov

Paula Faerber
pfaerber@agutah.gov



Executive Secretary

DEPARTMENT OF COMMERCE
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114

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, and
BENJAMIN D. WILLIAMS,**

Respondents.

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

Case Nos.: **SD-17-021**

SD-17-022

SD-17-023

SD-17-024

SD-17-025

SD-17-026

SD-17-027

SD-17-028

BY THE PRESIDING OFFICER:

This adjudicative proceeding was initiated pursuant to a June 15, 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 regular mail and certified mail. In this matter, the OSC was delivered to Daniel at the Salt Lake County Metro Jail where he was incarcerated at the time. On August 16, 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 October 4, 2017 and mailed it via regular mail to Daniel at the Salt Lake County Metro Jail. Daniel failed to respond to the Motion.

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; 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, the eight respondents raised at least \$1,970,113.00 from eight investors over the course of three years. Of this amount, Daniel participated in raising \$700,000.00 from three of the investors, and the three investors are still owed \$670,000.00 in principal alone. Daniel participated with the other respondents in raising these funds by misrepresenting and omitting material facts related to the sale of securities, and by engaging in other fraudulent conduct. Daniel has made no effort to cooperate with the Division’s investigation and has taken no actions to mitigate the harm caused by his violations.

Starting in 2002, Daniel served 735 days in the Utah State Prison after being convicted of forgery. He also served time in the Utah State Prison (off and on due to parole violations) from

2004 to 2011 after being convicted of three counts of communication fraud. A criminal proceeding was recently filed against Daniel that parallels this administrative proceeding, and he is currently incarcerated as a result. Daniel's recidivist behavior signals a need for deterrence.

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 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 \$400,000.00 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.

DATED December 15th, 2017.

UTAH DEPARTMENT OF COMMERCE

Bruce Dobb, Presiding Officer

Division of Securities
DEPARTMENT OF COMMERCE
P.O. BOX 146711
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6760

BEFORE THE UTAH DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE

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, and
BENJAMIN D. WILLIAMS,**

Respondents.

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

Case Nos.: **SD-17-021**

SD-17-022

SD-17-023

SD-17-024

SD-17-025

SD-17-026

SD-17-027

SD-17-028

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 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 \$400,000.00 to the Utah Division of Securities within five (5) days of entry of the final order; and
- c. Respondent, Donald A. Daniel, be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah.

DATED this 7th day of December, 2017

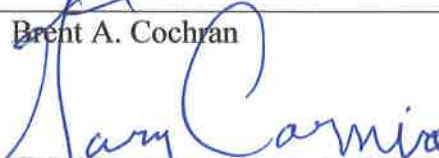
UTAH SECURITIES COMMISSION:




Brent R. Baker



Brent A. Cochran



Gary Cornia



Peggy Hunt



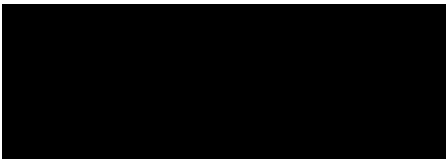
Lyle White

CERTIFICATE OF SERVICE

I hereby certify that I have this day served this ORDER OF DEFAULT OF DONALD A. DANIEL and a copy of the FINDINGS OF FACT AND RECOMMENDED ORDER OF DEFAULT OF DONALD A. DANIEL on the parties of record in this proceeding set forth below by delivering a copy by regular or email to:

Accelerated Wealth, LLC
11778 South Election Road, Ste. 210
Draper, Utah 84020

Accelerated Wealth Group, LLC
10179 North 6650 West
Highland, Utah 84003



and by email to:

Dallas H. Tall, through counsel
Joseph Rupp
Logan Collins
Joseph.rupp@collinsrupp.law
Logan.collins@collinsrupp.law

Ryan L Farr, through counsel
Brett C. Anderson
brett@andersonroger.com

Benjamin D. Williams, through counsel
Mark W. Pugsley
Eric G. Benson
mpugsley@rqn.com
ebenson@rqn.com

Kendall T. Turley, through counsel
Walter F. Bugden, Jr.
wally@bilaw.net

Tobey R. Waggoner, through counsel
Matthew R. Howell
mhowell@fslaw.com

Jennifer Korb, AAG
Thomas M. Melton, AAG
Assistant Attorneys General
jkorb@agutah.gov
tmelton@agutah.gov

DATED December 8th, 2017.



Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, UT 84114-6760
Telephone: 801 530-6600

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

IN THE MATTER OF:	STIPULATION AND CONSENT ORDER
JACK PHILLIPS,	SD-12-0001
JAMES D. ELLIOTT,	SD-12-0002
Respondents.	

This Stipulation and Consent Order (“Consent Order”) will resolve the pending fine amount owed to the Utah Division of Securities (“Division”) by Jack Phillips, (“Phillips” or “Respondent”) in Docket No. SD-12-0001. All other issues in the Order to Show Cause, dated January 3, 2012, were addressed in the Utah Securities Commission Order entered on May 23, 2014 and appeals to the Department of Commerce and the Utah Court of Appeals. This Stipulation does not affect the findings of fact and conclusions of law contained in those opinions, but serves only to settle the amount of the outstanding fine.

STIPULATION

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

1. Respondent and James Elliott (“Elliott”) were the subject of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.*, as amended (the “Act”).
2. On or about January 3, 2012, the Division initiated an administrative action against Respondent and Elliott¹ through the issuance of an Order to Show Cause and Notice of Agency Action. The Order to Show Cause alleged that Respondent and Elliott violated § 61-1-1(2) (Securities Fraud) of the Act, while engaging in the offer and sale of securities in or from Utah.
3. The securities offered and sold by Respondent included investments in a condominium card business that engaged in FOREX trading and a business that imported raw emeralds from Brazil. The named investors invested \$65,000 in the condominium cards and received a partial return of their investments. The named investors invested \$330,000 in the emerald business and have not received any money back from that investment.
4. The matter against Respondent was heard by the Utah Securities Commission (“Commission”) on March 27, 2014 and April 21, 2014.
5. Following the hearing, the Commission entered its Findings of Fact, Conclusions of Law, and Order (“Order”) finding in favor of the Division, and ordering Respondent to cease and desist from further violations of the securities act, permanently barring him from associating with any broker-dealer or investment adviser licensed in Utah, from acting as an agent for any issuer or solicitor of investor funds in Utah; and from being licensed in any capacity in the securities industry in Utah. In addition, Respondent was ordered to pay a

¹ Elliott did not participate in the proceedings, and an Order of Default was issued against him on February 20, 2014.

civil penalty of \$413,750, calculated as \$315,000 in investors losses, \$78,750 as a fine, and \$25,000 in investigative costs.

6. On June 9, 2014, Respondent filed a request for agency review. On January 9, 2015, the Department of Commerce entered its Findings of Fact, Conclusions of Law and Order on Review, affirming the Commission's Order and remanding the case for the sole purpose of the Commission providing a more detailed Order that discussed the Commission's analysis on the fine.
7. On February 4, 2015, the Commission issued Amended Findings of Fact, Conclusions of Law, and Order, addressing the amount of the fine.
8. On July 2, 2015, Respondent filed a Petition for Review ("Petition for Review"), with the Utah Court of Appeals. The Petition for Review included issues pertaining to statute of limitations, statutory and regulatory authority to assess a civil penalty, a limitation on fines, ability to order restitution, and the amount of the civil penalty. The opinion of the Court of Appeals recognizes that "Phillips challenges only the monetary penalty the Commission imposed." *Phillips v. Department of Commerce*, 2017 UT App 84, P7, 297 P.3d 863 ("Opinion"). Phillips did not challenge the findings of fact in the Order.
9. On May 18, 2017, the Court of Appeals issued its Opinion that the Division was not time-barred from seeking enforcement of any of Phillips' violations of the Act and that the civil penalty that included \$315,000 in investor losses did not constitute an impermissible order of restitution. *Phillips v. Department of Commerce*, 2017 UT App 84, ¶ 7, 397 P.3d 863 ("Opinion"). The Court of Appeals concluded that the Commission had erroneously interpreted and applied the fine assessment guidelines in the Utah Administrative Code. It

set aside the Commission's civil penalty assessment and directed the Commission to reconsider the fine in light of the Opinion.

10. Respondent is represented by attorney Maria Windham of Ray, Quinney & Nebeker and is satisfied with her representation in this matter.
11. Respondent has read this Consent Order, understands its contents and submits to it voluntarily.
12. No promises, threats or other forms of inducement have been made by the Division, nor by any representative of the Division, to encourage Respondent to enter into this Consent Order, other than as set forth in this document.
13. Respondent admits the jurisdiction of the Division over him and over the subject matter of this action.
14. Pursuant to § 61-1-20(1)(f) of the Act and in consideration of the guidelines set forth in Utah Administrative Code Rule R164-31-1, the Division imposes a fine of \$75,000 against Respondent payable to the Division. Respondent agrees to pay \$25,000 to the Division, \$41,500 to the Perschs and \$8,500 to the Reutlingers. Respondent's obligation to make these payments to the Perschs and the Reutlingers is contingent upon the Division providing Phillips' counsel with payment directions within 5 days of entry of this Consent Order. Otherwise, Phillips agrees to pay the full \$75,000 to the Division. The Division agrees to consider the fine fully satisfied if those payments are made following the payment information provided by the Division within 10 days of entry of the Order. If those amounts are not timely paid, the Division will send the \$75,000 fine to the Office of State Debt Collection.

15. Failure to comply with the payment provisions in the Consent Order as described in paragraph 14 above may result in the referral of the fine to the State Office of Debt Collection.

FINAL RESOLUTION

16. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission (the "Commission"), shall be the final compromise and settlement of this matter. Respondents further acknowledge that if the Commission does not accept the terms of the Consent Order, it shall be deemed null and void and without any force or effect whatsoever.
17. Respondent acknowledges that the Consent 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 Consent 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 action brought by third parties against them have no effect on, and do not bar, this administrative action by the Division.
18. Respondent acknowledges that a willful violation of this Consent Order is a third-degree felony pursuant to § 61-1-21(1) (b) of the Act.²³ The Consent Order constitutes the entire agreement between the parties as it pertains to payment of the fine 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 Consent Order in any way. The Consent Order may be docketed in a court of competent

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

Dated this 30 day of November, 2017


Utah Division of Securities:

Respondents:

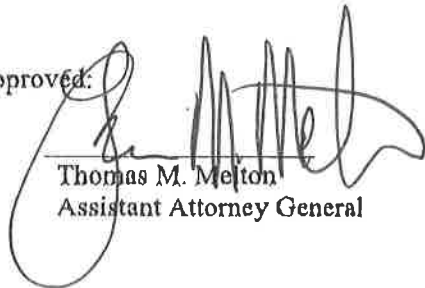
Date: _____

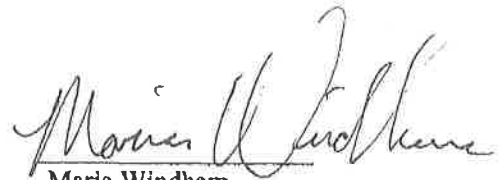
Date: 11/30/2017

By: Dave R. Hermansen
Director of Enforcement


Jack Phillips, Jr.

Approved:


Thomas M. Melton
Assistant Attorney General


Maria Windham
Attorney for Respondents

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions pertaining to the fine amount are hereby entered.
2. Respondent Phillips shall pay to the Division a fine of \$75,000. Respondent agrees to pay \$25,000 to the Division, \$41,500 to the Perschs and \$8,500 to the Reutlingers. If these payments are fully paid within 10 days of the date of this Order, the Division will consider the fine fully satisfied. If the payments are not timely made, the fine of \$75,000 will be sent to the Office of State Debt Collection.

BY THE UTAH SECURITIES COMMISSION:


DATED this 7th day of December, 2017



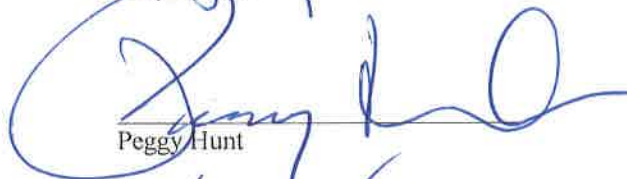
Brent Baker



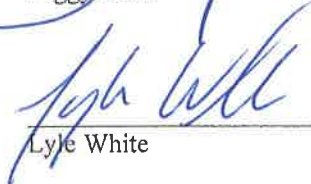
Brent Cochran



Gary Cornia



Peggy Hunt



Lyle White

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December 2017, the undersigned served a true and correct copy of the foregoing Stipulation and Consent Order, by electronic mail to:

Respondent, through counsel:

Maria E. Windham
mwindham@rqn.com
Beth Ranschau
branschau@rqn.com
Mark Pugsley
mpugsley@rqn.com


LeeAnn Clark

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146711
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6760

BEFORE THE UTAH DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE

IN THE MATTER OF

**ASCENDUS CAPITAL MANAGEMENT,
LLC and RICHARD T. SMITH,**

Respondents.

DEFAULT ORDER

Case Nos.: **SD-2010-070**

SD-2010-071

REASONS FOR DECISION

On July 28, 2017, the Presiding Officer sent Respondents a Notice of Prehearing Conference in this matter to be held August 31, 2017. The Prehearing Conference Hearing was held as scheduled. Respondents failed to appear.

On October 27, 2017, the Utah Division of Securities ("Division") filed a Motion for Default and Memorandum in Support in the above entitled matter. The Respondents failed to respond to the Division's Motion for Default and previously failed to respond to the Division's Motion to Lift Stay, Request to Submit for Decision, Order to Show Cause, and Notice of Agency Action. The time for an objection or response to the Motion for Default has expired without any opposition by the Respondent. The Notice of Agency Action and the Order to Show Cause sent to Respondents by the Division provide that if Respondents fail to file a response or

fail to appear at any hearing, the presiding officer may enter a default order against Respondents without any further notice.

On November 27, 2017, the Division filed a Request to Submit for Decision with regard to its Motion for Default and Memorandum in Support.

Therefore, for good cause appearing and pursuant to Utah Administrative Procedures Act § 63G-4-209, it is hereby ORDERED that:

1. The allegations contained in the Division's Order to Show Cause are accepted as true;
2. Respondents shall cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 et seq.;
3. Respondents shall pay a fine of \$115,000 payable to the Division with a dollar for dollar credit of up to \$100,000 for amounts Respondent Smith pays in court-ordered restitution in Case No. 111906892 (3rd District Court, Salt Lake, Salt Lake County, Utah); and
4. Respondents are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah.

At the conclusion of Respondent Smith's criminal court ordered probation, any unpaid fine amount will be imposed, jointly and severally, upon Respondents.

The amount of the fine has been determined in accordance with the provisions of §61-1-31 of the Utah Uniform Securities Act.

DATED December 4th, 2017.

DEPARTMENT OF COMMERCE


Justin Barney, Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2017, I served this DEFAULT ORDER on the parties of record in this proceeding by mailing or by email as indicated below to:

Richard T. Smith, individually and as registered agent for:
Ascendus Capital Management, LLC
443 North 750 East
Orem, Utah 84097

Certified No.

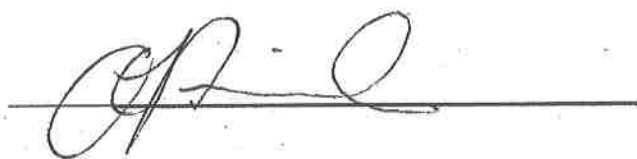
Certified Article Number
9414 7266 9904 2081 6570 79
SENDERS RECORD

John K. Johnson
Law Office of John K. Johnson
50 West Broadway, Suite 300
Salt Lake City, Utah 84101
Counsel for Mr. Smith in criminal proceeding

and by email to

Thomas M. Melton and
Paula Faerber
Assistant Attorneys General
tmelton@agutah.gov
pfaerber@agutah.gov
Counsel for the Division

LeeAnn Clark
leeannclark@utah.gov



BY THE UTAH SECURITIES COMMISSION

DATED this 8th day of December, 2017



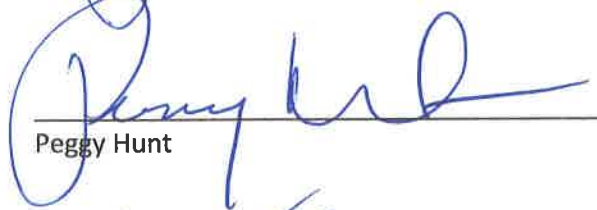
Brent Baker



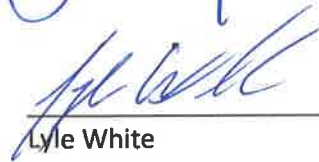
Brent Coghlan



Gary Cornia



Peggy Hunt



Lyle White

CERTIFICATE OF SERVICE

I certify that on the 8TH day of December, 2017 I mailed, by certified USPS mail, true and correct copy of Motion for Default to:

Richard T. Smith
Individually and as Registered Agent for:
Ascendus Capital Management, LLC
443 North 750 West
Orem, UT 84097

Electronic copy to:

Justin Barney
Department of Commerce Presiding Officer
justinbarney@utah.gov

Ken Barton
Director of Compliance
kbarton@utah.gov

Paula Faerber
pfaerber@agutah.gov



Executive Secretary