

DIVISION OF SECURITIES
KEITH WOODWELL, DIRECTOR
DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711

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

IN THE MATTER OF

NEW POINTE DEVELOPMENT, LLC,
and

DONNIELLE K. SCHROEDER,

Respondents.

ORDER ON MOTION FOR DEFAULT

Case Nos.: **SD-17-043**
SD-17-044

BY THE UTAH SECURITIES COMMISSION:

The Presiding Officer's Recommended Order on Motion for Default in this matter is hereby approved and entered, as amended in this Order 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 as follows:

Respondents are ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 or any other section of the Utah Uniform Securities Act.

Respondents are ordered to pay a fine of \$521,000 to the Utah Division of Securities, due and payable in full upon receipt of the final order. Of this fine amount, \$421,000 shall be subject

to offset on a dollar-for-dollar basis for any restitution paid to the investor pursuant to the restitution order in the criminal case against Donnielle Schroder.

Respondents are permanently 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.

DATED this 22nd day of March, 2018.

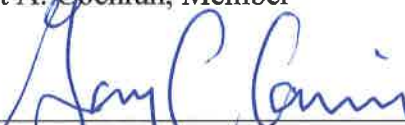
UTAH SECURITIES COMMISSION:



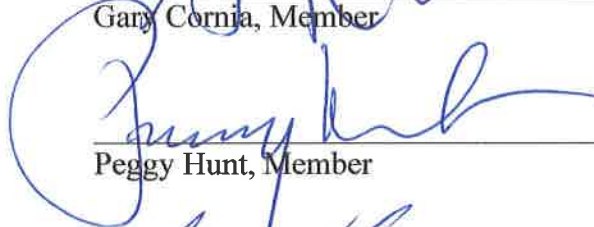
Brent R. Baker, Member



Brent A. Cochran, Member



Gary Cornia, Member



Peggy Hunt, Member



Lyle White, Member

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

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

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2018, the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR DEFAULT and of the RECOMMENDED ORDER ON MOTION FOR DEFAULT by mailing a copy through first-class mail, postage prepaid, to:

Utah State Prison
[REDACTED]

NEW POINTE DEVELOPMENT
2350 CORPORATE CIRCLE – STE. 400
HENDERSON, NV 89074-7722

NEW POINTE DEVELOPMENT
4928 DUNCAN MEADOW LANE
HERRIMAN, UT 84096

and by email to

Jennifer Korb
Tom Melton
Assistant Attorneys General
jkorb@agutah.gov
tmelton@agutah.gov

DATED March 23rd, 2018.



LeeAnn Clark
Administrative Secretary

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

**NATIONAL GOLD, INC.,
JAMES C. BARRUS,
BRENT C. ALDER,
KARLTON W. KILBY,
BRENT H. GUNDERSEN, and
LLOYD B. SHARP,**

Respondents.

**FINDINGS OF FACT AND
RECOMMENDED ORDER OF DEFAULT
OF NATIONAL GOLD, INC., JAMES C.
BARRUS, BRENT C. ALDER AND
BRENT H. GUNDERSEN**

Case Nos.: **SD-2017-045
SD-2017-046
SD-2017-047
SD-2017-048
SD-2017-049
SD-2017-050**

BY THE PRESIDING OFFICER:

The Order to Show Cause and the Notice of Agency Action (the "NOAA"), in this matter was sent by the Division on October 31, 2017. The prehearing conference was held on December 19, 2017. The presiding officer was informed that the Respondent, Karlton W. Kilby, had entered into a stipulation with the Division to settle the claims made against him.

Of the remaining Respondents, all but Lloyd B. Sharp has had some communication with the Division or with the presiding officer, which communication confirms that such Respondents have received a copy of the NOAA and the Order to Show Cause in this matter.

The Division has filed a motion for default against National Gold, Inc., James C. Barrus, Brent C. Alder and Brent Gunderson (the "Named Respondents").

The Named Respondents, though duly noticed by regular and/or certified mail, failed to appear or participate in the prehearing. Mr. Barrus, on behalf of himself and of National Gold, Inc., contacted the presiding officer by phone after the conclusion of the December 19, 2017, prehearing conference. At that time, Mr. Barrus was informed by the presiding officer that a Scheduling Order was going to issue, requiring him to file a responsive pleading.

FINDINGS OF FACT

The Presiding Officer finds that:

1. The Scheduling Order and Notice of Hearing issued in the matter on December 19, 2017, was duly served on the Named Respondents.
2. Each of the Named Respondents were directed by the Scheduling Order to file by January 2, 2018, a responsive pleading, or an amended responsive pleading (if they had filed some prior document in this matter). Such response was to provide the information required by U.C.A. §63G-4-204.
3. Each of the Named Respondents were advised by the Scheduling Order that the present administrative proceeding is a formal proceeding and that U.C.A. §63G-4-209 provides that:
 - (1) The presiding officer may enter an order of default against a party if . . .
 - (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
 - (c) a respondent in a formal adjudicative proceeding fails to file a response under *Section 63G-4-204*.
4. Each of the Named Respondents has failed to attend or participate in the properly scheduled prehearing conference and each has failed to file a Section 63G-4-204 response to the Order to Show Cause in this matter.

5. The administrative fine to be assessed under R164-31-1 is to be proportional to the gravity of the Respondents' offenses, as guided by the principles set forth in the United States Supreme Court decision of the *United States v. Hoep Krikor Bajakajian*, 524 U.S. 321, 1998 U.S. LEXIS 4172 (1998).
6. The analysis of the amount of the fine is further aided by the principles set forth in the Utah Court of Appeals case of *Brent Brown Dealerships v. Tax Commission*, 139 P.3d 296, 2006 Utah App. LEXIS 275 (2006).
7. The *Bajakajian* case and the *Brent Brown* case are both discussed in that portion of the recent decision of the Utah Court of Appeals in *Phillips v. Department of Commerce*, 397 P.3d 863, 873-874, 2017 Utah App. LEXIS 84. The *Phillips* case addresses the constitutional law constraints on the amount of a fine. The principles of these cases give guidance to the outside parameters of an appropriate fine.
8. In the *Brent Brown* case, the Utah Court of Appeals cited favorably the Eight Circuit case, *United States v. Lippert*, 148 F.3d 974, 978 (8th Cir. 1998), holding that a penalty equal to two times the amount Lippert received in violation of the applicable federal statute was not grossly disproportionate. Here, the Respondents raised \$549,975 from investors in violation of state securities laws. Based upon this amount of investor losses, the *Brent Brown* and *Lippert* cases would support a fine in excess of \$1,090,000.

RECOMMENDED ORDER

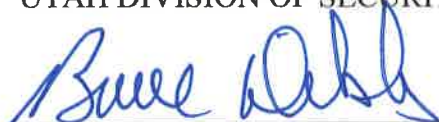
National Gold, Inc., James C. Barrus, Brent C. Alder and Brent Gunderson are in default and a judgment should be entered against them as follows:

- a. The Named Respondents shall cease and desist from engaging in any further conduct in violation of U.C.A. §61-1-1 et seq.;

- b. The Named Respondents should be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; and
- c. The Named Respondents should be ordered to pay to the Division, jointly and severally, a fine of \$850,000.

DATED March 9th, 2018.

UTAH DIVISION OF SECURITIES

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

Bruce L. Dobb, Presiding Officer

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

**NATIONAL GOLD, INC.,
JAMES C. BARRUS,
BRENT C. ALDER,
KARLTON W. KILBY,
BRENT H. GUNDERSEN, and
LLOYD B. SHARP,**

Respondents.

**ORDER OF DEFAULT
OF NATIONAL GOLD, INC., JAMES C.
BARRUS, BRENT C. ALDER AND
BRENT H. GUNDERSEN**

Case Nos.: **SD-2017-045
SD-2017-046
SD-2017-047
SD-2017-048
SD-2017-049
SD-2017-050**

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 Respondents, National Gold, Inc., James C. Barrus, Brent C. Alder and Brent Gunderson (the "Named Respondents"), is entered pursuant to this Order.

The Commission further orders that:

- a. The Named Respondents shall cease and desist from engaging in any further conduct in violation of U.C.A. §61-1-1 *et seq.*;
- b. The Named Respondents are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; and
- c. The Named Respondents are ordered to pay to the Division, jointly and severally, a fine of \$850,000.

DATED March 22nd, 2018.

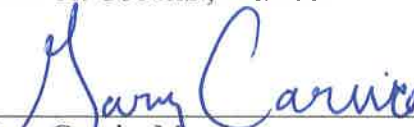
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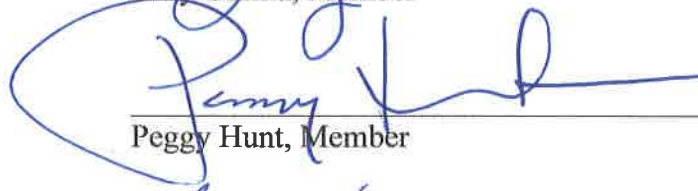
Brent R. Baker, Member



Brent A. Cochran, Member



Gary Cornia, Member



Peggy Hunt, Member



Lyle White, Member

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 I have this day served this ORDER OF DEFAULT OF NATIONAL GOLD, INC., JAMES C. BARRUS, BRENT C. ALDER AND BRENT H. GUNDERSEN and a copy of the FINDINGS OF FACT AND RECOMMENDED ORDER OF DEFAULT OF NATIONAL GOLD, INC., JAMES C. BARRUS, BRENT C. ALDER AND BRENT H. GUNDERSEN on the parties of record in this proceeding set forth below by mailing a copy thereof, properly addressed by first class mail, with postage prepaid, to:

NATIONAL GOLD, INC.
JAMES C. BARRUS
3761 WEST 3200 SOUTH
WEST VALLEY CITY, UTAH 84124



and by email to

NATIONAL GOLD, INC.
c/o James C. Barrus
jim@barrus.org

JAMES C. BARRUS
jim@barrus.org

KARLTON W. KILBY, through counsel
Lawton Graves
MURPHY ANDERSON
LGraves@murphyandersonlaw.com

PAULA FAERBER, AAG
pfaerber@agutah.gov
Counsel for the Division

DATED March 23rd, 2018.



DEPARTMENT OF COMMERCE
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114
Telephone: (801) 530-6628

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

IN THE MATTER OF

LANE BIRD,

RESPONDENT.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND RECOMMENDED ORDER ON
MOTION FOR SUMMARY JUDGMENT**

Case no. **SD-2011-026**

This matter is before the presiding officer on a Motion for Summary Judgment filed by the Utah Division of Securities (the "Division"), on January 26, 2018. Although the Respondent was properly served through counsel, no opposition was filed to the Motion for Summary Judgment, and this matter is ripe for decision.

PROCEDURAL SETTING

This adjudicative proceeding was initiated pursuant to a March 24, 2011 Notice of Agency Action and Order to Show Cause.

On April 4, 2011, Respondent was charged in a criminal action in Utah's Second District Court, Farmington, Case Number 111700523 (the "Criminal Action"). The facts underlying the criminal case are the same as those in the administrative action.

On April 18, 2011, Respondent filed, and was granted, a motion to stay the administrative action pending resolution of the Criminal Action. The stay was temporarily lifted in September

2013, and Respondent filed an answer. In October 2013, a motion to re-enter the stay was granted.

On August 29, 2012, Respondent was found guilty of one 2nd degree felony count of securities fraud. On December 2, 2013, Second District Court Judge Michael G. Allphin ordered Respondent to pay restitution in the amount of \$164,723.17. Following an appeal on the issue of the amount of the restitution, the Utah Court of Appeals affirmed the trial court's order of restitution.

On August 28, 2017, the Division filed a Motion to Lift Stay. That Motion was granted by the Administrative Law Judge, who scheduled and conducted a prehearing conference on October 26, 2017.

The Respondent was represented at the prehearing conference through legal counsel. The Presiding Officer issued a Scheduling Order and Hearing Notice shortly after the pretrial conference, and such Order was served on counsel for the Respondent. On November 30, 2017, the Division made a timely filing of an Amended Order to Show Cause.

SUMMARY JUDGMENT

U.C.A. §63G-4-102(4) provides in relevant part that Chapter 4 of Title 63G “does not preclude . . . the presiding officer during an adjudicative proceeding from . . . granting a timely motion . . . for summary judgment if the requirements of . . . Rule 56 of the Utah Rules of Civil Procedure are met by the moving party.” This statutory language, therefore, provides that this tribunal is to rely upon Rule 56 of the Utah Rules of Civil Procedure in addressing the motion of the Division.

Rule 56 of the Utah Rules of Civil Procedure provides that the moving party is entitled to summary judgment if it demonstrates that there is “no genuine dispute as to any material fact and

the moving party is entitled to judgment as a matter of law” Utah R. Civ. P. 56(a) (2016). Rule 56(c) requires that this demonstration be made by “citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials” Utah R. Civ. P. 56(c)(1)(A). The non-moving party must support the assertion that a fact is genuinely disputed in the same fashion. *Id.*

Once the moving party asserts that there are no issues of material fact in dispute, the burden shifts to the non-moving party “to present evidence that is sufficient to establish a genuine issue of material fact.” *Orvis v. Johnson*, 2008 UT 2, ¶ 7, 177 P.3d 600, 602 (citing *Waddoups v. Amalgamated Sugar Co.*, 2002 UT 69, 54 P.3d 1054). In applying this standard for summary judgment, a tribunal must view the material facts to which there is no genuine issue “in the light most favorable to the nonmoving party.” *Hillcrest Inv. Co. v. Utah Dep't of Transp.*, 2012 UT App 256, ¶ 11, 287 P.3d 427.

The Respondent has not filed any opposition memorandum or affidavit in support thereof. As a consequence, the Respondent, as the non-moving party, has not presented evidence that is sufficient to establish a genuine issue of material fact, and the Division is entitled to judgment as a matter of law.

FINDINGS OF FACT

The Presiding Officer finds that:

1. The investment agreement offered and sold to investors by the Respondent, and the stock to be received thereunder, were securities under §61-1-13 U.C.A.
2. The total amount paid for these securities by the investors was an aggregate of \$247,000.

3. In selling securities to the investors in this matter, the Respondent made material false statements and failed to disclose material information about the transactions, which information was necessary in order to make the statements that were made by the Respondent not misleading.
4. In the parallel Criminal Action, Respondent was convicted of the same securities violations involving the same two investors that are the subject of the Amended Order to Show Cause in this administrative proceeding.
5. In the parallel Criminal Action, Respondent was order to pay restitution to investors in the amount of \$164,723.17 pursuant to a December 2, 2013 Ruling and Order on State's Request for Restitution (the "Order of Restitution"). See Exhibit "E" to the Motion for Summary Judgment and Memorandum in Support. To date, the Respondent has only paid \$7,200.00 of restitution.

CONCLUSIONS OF LAW

In addition to the conclusions of law inherent in the foregoing findings, this tribunal makes the following additional conclusions of law

- A. By reason of the fact that the Respondent was convicted in the parallel Criminal Action of the same securities violations involving the same two investors that are the subject of the Amended Order to Show Cause in this administrative proceeding, the Respondent is collaterally estopped from denying the facts and conclusions of the Amended Order to Show Cause.
- B. The allegations outlined in the Division's Amended Order to Show Cause are true and provide a sufficient factual and legal basis for the entry of a judgment against the Respondent.

- C. In selling securities to the investors in this matter, the Respondent made material false statements and failed to disclose material information about the transactions, which information was necessary in order to make the statements that were made by the Respondent not misleading.
- D. The actions of the Respondent constituted violations of, and securities fraud under, §61-1-1 U.C.A.
- E. The Division is entitled to the sanctions requested in the Amended Order to Show Cause.
- F. U.C.A. Section 61-1-20 “allows the Division to use adjudicative procedures in the administrative forum to petition the Division of Securities director to enter cease and desist orders, impose fines and bar persons from the securities industry in the state of Utah.” *Mack v. Utah State Dep't of Commerce*, 2009 UT 47, ¶ 27, 221 P.3d 194, 202. In evaluating whether to impose these sanctions, the presiding officer and the Commission should look to the facts and circumstances of each case to determine an appropriate sanction. A cease and desist order is appropriate in this proceeding.
- G. The Commission has the ability to permanently bar persons from the securities industry in Utah. In evaluating whether to bar someone from being a licensed representative, federal law provides a template. The Commission should look to “[t]he egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction . . . the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.” *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981).

- H. Respondent's actions were egregious. He committed securities fraud in connection with the offer and sale of securities to at least two investors, which resulted in losses of \$247,000. Respondent has provided the Division with no assurances against future violations or any recognition of the wrongful nature of his conduct. A permanent bar is appropriate.
- I. The Division has the ability to impose a fine. When this proceeding was initiated in March 2011, the Utah Administrative Code included guidelines for the Division to use in determining the appropriate amount of a fine. *See* Utah Admin. Code R164-31-1(B). In 2016, the administrative rule was codified in Section 61-1-31 of the Act.
- J. The factors to be considered have been noted above and include the seriousness, extent and persistence of the conduct constituting the violation; the resulting harm; the lack of cooperation by the Respondent; and the need to deter future violation. *See* R164-31-1(B)(1)(a), (b), (d) and (e). Another factor to be considered is Respondent's efforts to mitigate the harm caused by the violation by payment of restitution to investors. *Id.* b(1)(d). Although he was ordered to pay Restitution to the investors in this matter, to date he has only paid \$7,200 of that restitution. Based on the consideration of the referenced factors, the fine in the recommended order below is appropriate.

RECOMMENDED ORDER

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

1. That Respondent cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 *et seq.*;
2. That Respondent pay a fine of \$275,000 to the Utah Division of Securities, with \$110, 276.83 of the fine due and payable in full upon entry of the final order of the

Commission in this matter and the remaining \$164,723.17 of the fine subject to offset for a period of one year following the date of the final order on a dollar-for-dollar basis for any restitution paid to the harmed investors (including the \$7,200 previously paid);

3. That, should Respondent fail to provide proof of restitution payments to the investors within the one year period following the date of the final order, the remaining balance of \$164,723.17 of the fine (less any proven restitution amounts), shall immediately become due, payable and subject to collection; and
4. That Respondent be permanently 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.

DATED February 22nd, 2018.

UTAH DEPARTMENT OF COMMERCE


Bruce Dibb, Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2018, the undersigned served a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER ON MOTION FOR SUMMARY JUDGMENT by mailing a copy through first-class mail, postage prepaid, to:

Derek G. Williams
Wasatch Legal Services
497 North Main Street
Kaysville, Utah 84037

and by email to:

Lane Bird, through counsel
Derek G. Williams
dwilliams@wasatchlegalservices.com

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

A handwritten signature in blue ink, appearing to read "Paula W. Faerber", is written over a horizontal line.

DEPARTMENT OF COMMERCE
P.O. BOX 146741
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711

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

IN THE MATTER OF:

LANE BIRD,

RESPONDENT.

**ORDER ON MOTION FOR SUMMARY
JUDGMENT**

Case no. **SD-2011-026**

BY THE UTAH SECURITIES COMMISSION:

The Presiding Officer's Findings of Fact, Conclusions of Law and Recommended Order on Motion for Summary Judgment in this matter are 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 as follows:

1. That Respondent cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 *et seq.*;
2. That Respondent pay a fine of \$275,000 to the Utah Division of Securities, with \$110,276.83 of the fine due and payable in full upon entry of the final order of the Commission in this matter and the remaining \$164,723.17 of the fine subject to offset for a period of one year following the date of the final order on a dollar-for-

dollar basis for any restitution paid to the harmed investors (including the \$7,200 previously paid);

3. That, should Respondent fail to provide proof of restitution payments to the investors within the one year period following the date of the final order, the remaining balance of \$164,723.17 of the fine (less any proven restitution amounts), shall immediately become due, payable and subject to collection; and
4. That Respondent be permanently 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.

DATED this 23rd day of March, 2018.

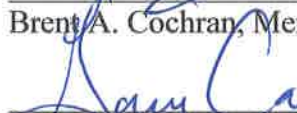
UTAH SECURITIES COMMISSION:



Brent R. Baker, Member



Brent A. Cochran, Member



Gary Cornia, Member



Peggy Hunt, Member



Lyle White, Member

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

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

CERTIFICATE OF SERVICE

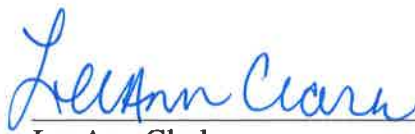
I hereby certify that on the 23rd day of March, 2018, the undersigned served a true and correct copy of the foregoing ORDER ON MOTION FOR MOTION FOR SUMMARY JUDGMENT by mailing a copy through first-class mail, postage prepaid, to:

Derek G. Williams
Wasatch Legal Services
497 North Main Street
Kaysville, Utah 84037

and by email to:

Lane Bird, through counsel
Derek G. Williams
dwilliams@wasatchlegalservices.com

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



LeeAnn Clark
Administrative Secretary

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

**COPPER BASIN, LLC,
BRANDON EDWARD CLARK and
ADRAIN JEREMY TUTTLE,**

Respondents.

**FINDINGS OF FACT AND
RECOMMENDED ORDER OF DEFAULT**

Case Nos.: **SD-2017-053**
SD-2017-054
SD-2017-055

BY THE PRESIDING OFFICER:

The Order to Show Cause (the “OSC”), and the Notice of Agency Action (the “NOAA”), in this matter were mailed by the Division on November 28, 2017 to the last known address of the three named respondents (the “Respondents”). The prehearing conference was scheduled for January 22, 2018, and notice of this hearing was included in the NOAA. None of the Respondents appeared personally or through counsel at the prehearing conference.

The Division has filed a motion for default against the Respondents. A copy of the motion for default was mailed to the same addresses as used for the OSC and NOAA for Copper Basin, LLC and Adrian Jeremy Tuttle.

FINDINGS OF FACT

The Presiding Officer finds that:

1. The OSC and the NOAA issued in the matter on November 28, 2017, were duly served on the Respondents as provided in U.A.C. R151-4-402(3).

2. Each of the Respondents were directed in the NOAA to file a responsive pleading within thirty days of the mailing of the NOAA and to appear at the January 22, 2018 hearing. None of the Respondents filed a responsive pleading and each failed to appear at the January 22, 2018 hearing noticed in the NOAA.
3. U.C.A. §63G-4-209 provides that:
 - (1) The presiding officer may enter an order of default against a party if . . .
 - (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or
 - (c) a respondent in a formal adjudicative proceeding fails to file a response under *Section 63G-4-204*.
4. The Division received Mr. Tuttle’s return receipt on the mailing of the OSC and NOAA showing a signature of “David Tuttle.” The Division received the Copper Basin return receipt on the mailing of the OSC and NOAA showing an illegible signature.
5. The administrative fine to be assessed under U.A.C. R164-31-1 is to be proportional to the gravity of the Respondents’ offenses, as guided by the principles set forth in the United States Supreme Court decision of the *United States v. Hoep Krikor Bajakajian*, 524 U.S. 321, 1998 U.S. LEXIS 4172 (1998).
6. The analysis of the amount of the fine is further aided by the principles set forth in the Utah Court of Appeals case of *Brent Brown Dealerships v. Tax Commission*, 139 P.3d 296, 2006 Utah App. LEXIS 275 (2006).
7. The *Bajakajian* case and the *Brent Brown* case are both discussed in that portion of the recent decision of the Utah Court of Appeals in *Phillips v. Department of Commerce*, 397 P.3d 863, 873-874, 2017 Utah App. LEXIS 84, that addresses the amount of the fine to be imposed. The *Phillips* case addresses the constitutional law constraints on the amount of the fine. The principles of these cases give guidance to the outside parameters of an appropriate fine.

8. In the *Brent Brown* case, the Utah Court of Appeals cited favorably the Eight Circuit case, *United States v. Lippert*, 148 F.3d 974, 978 (8th Cir. 1998), holding that a penalty equal to two times the amount Lippert received in violation of the applicable federal statute was not grossly disproportionate. Here, the Respondents raised \$76,300.00 from Utah investors in violation of state securities laws. Based upon this amount of investor losses, the *Brent Brown* and *Lippert* cases would support a fine in excess of \$150,000.
9. Based upon the seriousness of the violations, the harm to other persons, including the amount of the investor losses, and the need to deter Respondents from committing securities violations in the future, the principles relating to the amount of the fine in this matter, as enunciated in *Phillips* regarding the regulatory guidance of U.A.C. R164-31-1, have been satisfied.

RECOMMENDED ORDER

The three named Respondents are in default and a judgment should be entered against them as follows:

- a. The Respondents should be ordered to cease and desist from engaging in any further conduct in violation of U.C.A. §61-1-1 et seq.;
- b. The Respondents should be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; and
- c. The Respondents should be ordered to pay to the Division, jointly and severally, a fine of \$128,000.

DATED March 20th, 2018.

UTAH DIVISION OF SECURITIES



Bruce L. Dibb, Presiding Officer

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

**COPPER BASIN, LLC,
BRANDON EDWARD CLARK and
ADRAIN JEREMY TUTTLE,**

Respondents.

ORDER OF DEFAULT

Case Nos.: **SD-2017-053**
SD-2017-054
SD-2017-055

BY THE UTAH SECURITIES COMMISSION:

The Presiding Officer's Recommended Order on the 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 Respondents, Copper Basin, LLC, Brandon Edward Clark and Adrian Jeremy Tuttle is entered pursuant to this Order.

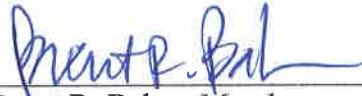
The Commission further orders that:

- a. The Respondents shall cease and desist from engaging in any further conduct in violation of U.C.A. §61-1-1 *et seq.*;
- b. The Respondents are permanently barred from associating with any broker-dealer or investment adviser licensed in Utah; and

c. The Respondents are ordered to pay to the Division, jointly and severally, a fine of \$128,000.

DATED March 22nd, 2018.

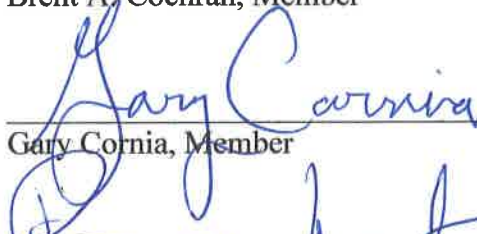
UTAH SECURITIES COMMISSION:



Brent R. Baker, Member



Brent A. Cochran, Member



Gary Cornia, Member



Peggy Hunt, Member



Lyle White, Member

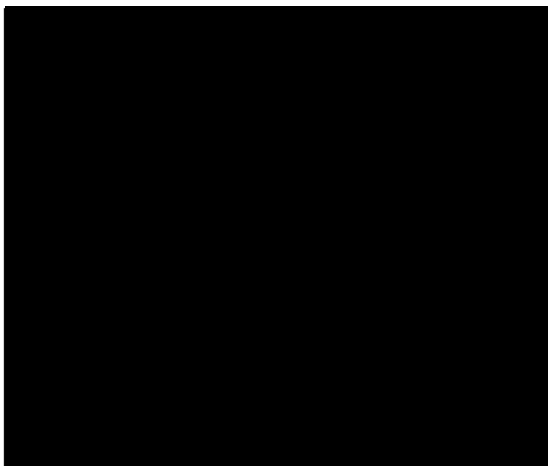
NOTICE

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 I have this ^{23rd} day of March, 2018, served this ORDER OF DEFAULT and a copy of the FINDINGS OF FACT AND RECOMMENDED ORDER on the parties of record in this proceeding set forth below by mailing a copy thereof, properly addressed by first class mail, with postage prepaid, to:

COPPER BASIN, LLC
2759 WEST AMINI WAY
SOUTH JORDAN, UTAH 84095



and to the Division by email:

Paula Faerber
Assistant Attorney General
pfaerber@agutah.gov

LeeAnn Clark
leeannclark@utah.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:

CORTNEY BLAINE PIERCE

Respondent.

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-16-0046

The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave Hermansen, and Respondent Cortney Blaine Pierce (“Respondent” or “Pierce”), 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(2) (securities fraud), and 61-1-1(3) (securities fraud) while engaged in the offer or sale of securities in the state of Utah.
2. On or about November 7, 2016, the Division initiated an administrative action against Respondent by filing an Order to Show Cause.

3. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order (“Order”). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the Order to Show Cause.
4. Respondent admits that the Division has jurisdiction over him and over 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.

FINDINGS OF FACT

THE RESPONDENT

7. Respondent was at all relevant times a resident of Vernal, Utah and has never been licensed to sell securities in any capacity.

GENERAL ALLEGATIONS

8. From approximately May 2014 until October 2014, while conducting business in or from Uintah County, Pierce offered and sold securities to B.W., a resident of Utah, and collected approximately \$68,600.00. The funds were subsequently used in a manner inconsistent with what B.W. was told at the time of solicitation.
9. The investment opportunities offered and sold by Respondent are interests in limited

liability companies and/or investment contracts.

10. Interests in limited liability companies are securities as defined by §61-1-13 of the Act.
11. Investment contracts are securities as defined by §61-1-13 of the Act.
12. During all times relevant to this action, Pierce was not licensed to offer or sell securities in the state of Utah.
13. In connection with the offer and/or sale of securities, Respondent, either directly or indirectly, made untrue statements of material facts and/or omitted to state material facts that a reasonable investor would have relied upon when deciding whether to invest.
14. Respondent used investor funds in a manner inconsistent with what he told the investor at the time of solicitation.

INVESTOR B.W.

OFFER AND SALE OF A SECURITY

First Investment

15. B.W. is a resident of Utah. At all times relevant to the transactions relating to this investigation, B.W. was located in Utah.
16. In or about May 2014, Pierce, who worked for B.W. as an insurance producer, approached B.W. about a purported mobile application, or “app”, Pierce wished to develop. Pierce told B.W. that the app would allow trucking companies to bid on projects posted on the app. The projects would involve moving oil drilling equipment from one site to another. This app would also purportedly allow trucking companies to bid for projects based on the trucking company’s availability. Pierce asked B.W. if he

knew of anyone who would be interested in investing. B.W. told Pierce that he might be interested, but that he would have to discuss it with his wife.

17. In or about May 2014, after discussing the opportunity with his wife, B.W. met with Pierce to express his interest to invest in the app. During this meeting, Pierce made the following representations about the app:
 - a. That Pierce needed \$65,000 to develop the app;
 - b. That B.W.'s money would be used solely to develop the app;
 - c. That B.W. would receive 50% ownership in the company created to develop the app (25% in B.W.'s name, 25% in J.W.'s name), and the other 50% ownership would be in the name of Pierce and his wife, Lynette Pierce;
 - d. That B.W. would receive a return of 100% on his investment within 3 months;
 - e. That trucking companies would pay \$1,000 per year for access to the app;
 - f. That at least 100 companies would purchase the app;
 - g. That Pierce planned on selling the app in 100 different basins;
 - h. That Pierce expected 100 different companies in each basin to purchase the app; and
 - i. That based on the number of companies purchasing the app, profits would total approximately \$10,000,000 per year.
18. On or about June 8, 2014, both B.W. and his wife met with Pierce at B.W.'s office in Vernal, Utah. During this meeting, B.W., his wife, and Pierce executed a "Business Agreement." Pursuant to the Business Agreement, the parties agreed that the business entity would be registered in the name of BizPatch, LLC.

19. Also during this meeting, Pierce instructed B.W. to open a bank account for BizPatch, and that BizPatch would hire Velocity Web Works to build the website and web-based app for \$65,000.
20. Based on the above representations by Pierce, B.W. decided to invest in Pierce's development of an app through BizPatch.
21. On or about June 9, 2014, B.W. withdrew funds from his 401k retirement plan and presented Pierce with a cashier's check in the amount of \$35,000 made payable to "Teton Enterprises," as instructed by Pierce. Pierce told B.W. that Teton Enterprises was a shell company he used for tax purposes.
22. Teton Enterprises is an active Utah dba with a last known address in Vernal, Utah. Pierce's wife is the applicant and registered agent for Teton Enterprises.
23. Based on conversations between Pierce and B.W. leading up to the June 9, 2014 investment, B.W. was told that his investment would be used for the development of the app. B.W. did not authorize Pierce to use his investment monies for purposes unrelated to the development of the app.
24. On June 9, 2014, Pierce deposited B.W.'s cashier's check into an account ending in 7469 belonging to Pierce and his wife, Lynette Pierce, dba Teton Enterprises, at Mountain America Credit Union. Both Pierce and his wife had signature authority on the account.
25. On or about August 4, 2014, B.W. obtained additional funds through a home equity loan and provided Pierce with a second cashier's check in the amount of \$30,000 to complete his \$65,000 investment. The check was made payable to "Teton Enterprises", as

instructed by Pierce. The cashier's check was deposited into a Mountain America Credit Union account ending in 7469.

26. Pierce used B.W.'s investment monies in a manner inconsistent with the representations made to B.W. before and during their June 8, 2014 meeting. Pierce used the funds, among other things, for undisclosed credit card payments and for personal expenses.
27. B.W. and his wife opened a BizPatch bank account at Mountain America Credit Union and participated in the decision regarding a logo for BizPatch. They were not involved with any other decisions relating to development of the app.

CONCLUSIONS OF LAW

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

28. Based on the Division's investigative findings, the Division concludes that the investment opportunities offered and sold by Respondent are interests in limited liability companies and/or investment contracts.
29. The interests in limited liability companies and/or investment contracts offered and sold by Respondent are securities under §61-1-13 of the Act.
30. In connection with the offer or sale of securities to investor B.W., Pierce, directly or indirectly, made false statements including, but not limited to, the following:
 - a. That B.W.'s funds would be used to develop the app when, in fact, at least a portion of the funds were used for undisclosed credit card payments and personal expenses, among other things;

- b. That B.W. would receive a return on his investment of 100% within 3 months, paid using revenue generated by the app, when Pierce had no reasonable basis to make such a statement; and
 - c. That the returns would equal \$10,000,000 per year when, in fact, Pierce had no reasonable basis to make such a statement.
31. In connection with the offering to B.W., Pierce failed to disclose material information which was necessary in order to make statements made not misleading including, but not limited to, the following:
- a. Documents or other information indicating how B.W.'s first \$35,000 investment was utilized for the development of the app before B.W. invested the remaining \$30,000 in August 2014;
 - b. That Lynette Pierce is listed as the applicant and registered agent for Teton Enterprises dba and is also an authorized person on the bank account;
 - c. Some or all of the information typically provided in an operating agreement, offering circular, or prospectus, such as:
 - i. Business and operating history
 - ii. Background information regarding principals;
 - iii. Financial statements;
 - iv. Risk factors;
 - v. Conflicts of interests;
 - vi. Suitability factors for the investment;

- vii. Whether Pierce was licensed to sell securities in the state of Utah;
- viii. Whether the offering was registered, federally covered, or exempt from registration in the state of Utah.

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

- 32. The interests in limited liability companies and/or investment contracts offered and sold by Respondent are securities under §61-1-13 of the Act.
- 33. In violation of §61-1-1(3) of the Act, Respondent engaged in an act, practice, or course of business which operated as a fraud by making misrepresentations and omitting material information from B.W., and converting B.W.'s investment funds for personal use while causing B.W. to believe it would be properly invested and earn the interest promised.
- 34. Respondent failed to use B.W.'s investment funds in accordance with representations made to B.W. at the time of solicitation of his investment.

REMEDIAL ACTIONS/SANCTIONS

- 35. Respondent admits the Division's Findings of Fact and Conclusions of Law, and consents to the below sanctions being imposed by the Division.
- 36. Respondent represents that the information he has provided to the Division as part of its investigation is accurate and complete.
- 37. Respondent 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 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.
39. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a total fine amount of \$10,000 against Respondent.¹ Respondent agrees to pay \$5,000 on or before March 31, 2018 and the remaining balance of \$5,000 to be paid in full on or before March 31, 2019.

FINAL RESOLUTION

40. 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.
41. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Respondent consents to entry of an order in which any payments owed by Respondent pursuant to this Order become immediately due and payable. Notice of the violation will

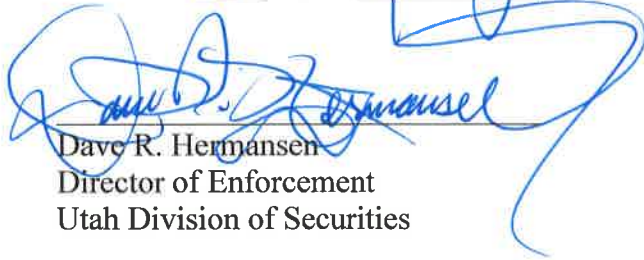
¹ The Respondent was referred for criminal prosecution in October 2016, where Respondent entered a plea of guilty and paid full restitution to investor B.W. in the amount of \$68,600. See case number 161800684, filed in Utah’s Eighth District Court, Uintah County.

be provided to Respondent at his last known address, and to his counsel if he has one. If Respondent fails to request a hearing within ten (10) days following the 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.

42. 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.
43. 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 31 day of January, 2018




Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 24 day of January, 2018



Courtney Blaine Pierce

Approved:



Jennifer Korb
Assistant Attorney General
Counsel for Division

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Respondent admits 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 the state of Utah.
3. Respondent 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.
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 Respondent shall pay a fine of \$10,000 to the Division pursuant to the terms set forth in paragraph 39.

BY THE UTAH SECURITIES COMMISSION:

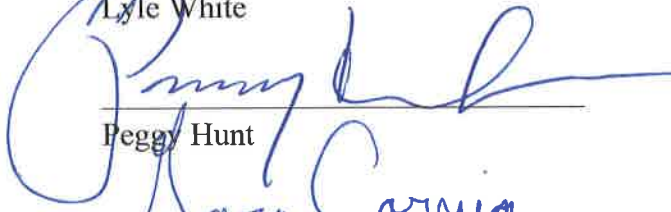
DATED this 22nd day of March, 2018.



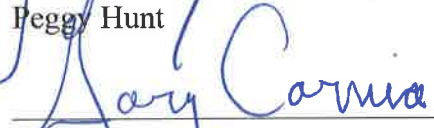
Brent Baker



Lyle White



Peggy Hunt



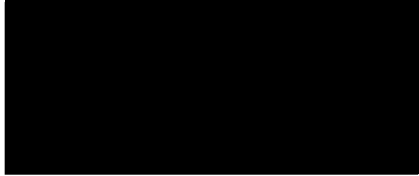
Gary Cornia



Brent Cochran

CERTIFICATE OF MAILING

I certify that on the 23rd day of March, 2018, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:



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

Executive Secretary

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

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

IN THE MATTER OF:

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

This Stipulation and Consent Order supersedes the Stipulation and Consent Order entered into on December 7, 2017. 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 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 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 has been resolved. The action against 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:

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.

- 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 \$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.

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 not to solicit investor funds in the State of Utah for a period of 2 years. At the end of the two-year period, Wilson can apply for a securities license in Utah following the standard licensing procedures.
29. Respondent agrees to pay \$1,725.00 in disgorgement of commissions to the Division. The Division received this disgorgement on January 5, 2018.

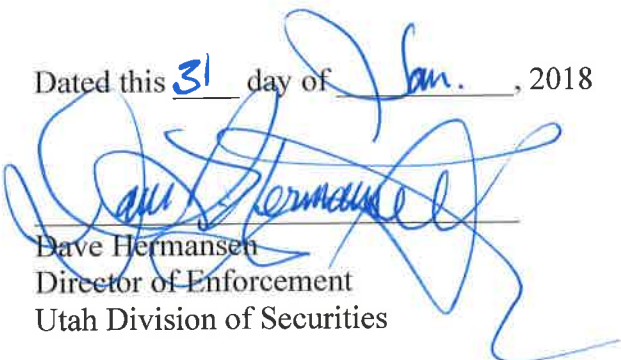
FINAL RESOLUTION

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 and supersedes the previously entered Stipulation. Respondent Wilson acknowledges that the Commission is not required to approve this Order, in which case the original Stipulation and Consent Order will remain in effect.
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 31 day of Jan., 2018



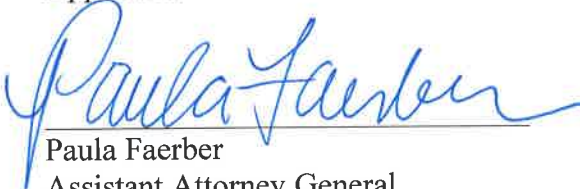
Dave Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 12th day of JANUARY, 2018



Casey L. Wilson

Approved:



Paula Faerber
Assistant Attorney General
Counsel for Division

Approved:



David Emerzian
Counsel for Respondent Wilson

ORDER

IT IS HEREBY ORDERED THAT:

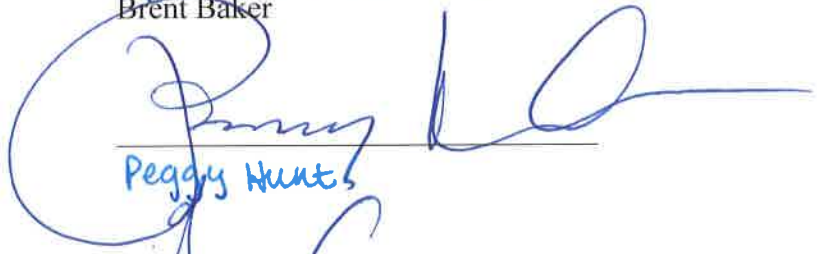
- 35. Respondent Wilson shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the State of Utah.
- 36. Respondent Wilson shall be prohibited from soliciting investor funds in the State of Utah for a period of two years. At the end of the two-year period, Wilson is permitted to apply for a securities license in Utah following the standard licensing procedures.
- 37. Pursuant to Utah Code Ann. §61-1-20, the Securities Commission orders disgorgement of commission in the amount of \$1,725.00.

BY THE UTAH SECURITIES COMMISSION:

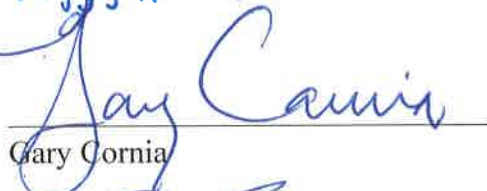
DATED this 22nd day of March, 2018



Brent Baker



Peggy Hunt



Gary Cornia



Brent Cochran



Lyle White

CERTIFICATE OF MAILING

I certify that on the 23rd day of March, 2018, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

David Emerzian
McCormick Barstow LLP
7647 North Fresno Street
P.O. Box 28912
Fresno, CA 93729



Executive Secretary