

Utah Division of Securities Commission
Meeting Minutes
March 21, 2019
9:00 a.m. – 12:00 p.m
Room 451

Division of Securities Staff Present

Tom Brady, Division Director
Vickie Cutler, Commission Secretary
Kenneth Barton, Compliance Director
Dave Hermansen, Enforcement Director
Bryan Cowley, Registration and Licensing Director
Chip Lyons, Securities Analyst
Francswai Davis, Securities Analyst
Elizabeth Blaylock, Investigator
Sean Fuller, Investigator
Halee Rogers, Intern
Shantel Sanders, Intern

Other State of Utah Employees

Jennifer Korb, Assistant Attorney General
Paula Faerber, Assistant Attorney General
Tom Melton, Assistant Attorney General
Robert Wing, Assistant Attorney General

Public Present:

Jenifer Connors, Utah Financial Planning Association President
Dan Luke, Utah Financial Planning Association Chair
Devin Bennett, Utah Financial Planning Association Student Representative
Dion Barron
Paul Barron

Commissioners Present

Brent Baker, Clyde, Snow & Sessions
Gary Cornia
Brent A. Cochran, Crewe Advisors Wealth Management
Lyle White, Fidelity Investments

Minutes: At a 9:05 the meeting was called to order by Commissioner **Brent Baker**. Commissioner **Lyle White** made a motion to approve the minutes from the January 24, 2019 Commission meeting and Commissioner **Brent Cochran** seconded the motion off the record because of technical difficulties. The motion was approved unanimously off the record.

Director's Report:

Division Director Thomas Brady reported:

1. **Investigative Tools** - The Division recently purchased a bulk scanner as well as a software subscription that analyzes bank records. These two purchases have greatly improved the efficiency of the investigations. Following the money is a key aspect to these investigations. Traditionally the majority of the investigators' time has been spent on scanning the records, combing through them, reconciling transactions, categorizing them, spotting trends, inputting the information into spreadsheets, etc. What has required weeks and weeks of time can now be done in a matter of hours. We appreciate the Commission and the Executive Director's approval of these expenditures and they are well worth the investment. The Division hired two interns from BYU's MPA program, Halee Rogers and Shantel Sanders, and they were tasked with figuring out these two products.
2. **Legislation** - The 2019 General Session has recently concluded. Without question the issue that continued to surface for the Division centered on cryptocurrency. As legislators are becoming more familiar with blockchain technology they are interested in bringing those benefits to the state of Utah. We have been working and will continue to work legislators on how best to balance bringing the benefits of blockchain technology to businesses while also protecting investors. There were no substantial changes to the way cryptocurrency is managed this year but there may be in the coming years or interim session.

Enforcement Section Report:

Enforcement Director Dave Hermansen reported:

1. Complaints have slowed down which is believed to be delayed reporting. The Division has 40 cases they are actively investigating and 28 on backlog.
2. Administrative case status update. Currently the Division has 7 OSC's waiting to be drafted, 20 outstanding, 6 new OSC's issues and 1 Stipulation and Consent Order with Lee C. Rasmussen which will be presented today.
3. Criminal cases status update. The Division 17 cases with prosecutors; 1 new case filed with Salt Lake County against Maria Masynes/My Trader Coin; 4 cases to screen 2 of which will be reviewed with the AG's Office and the other 2 with Utah and Salt Lake Counties.

4. Trials schedule and a brief recap of each case were provided: Copper Basin May 21, 2019 (Telemarketing); Keith Lignel, June 10, 2019 (Real Estate); Daniel Energy June 21, 2019 (Oil); Affluent Planning Strategies July 9, 2019 (Breathalyzer) and Stove-in-a-can July 22, 2019 (canned fuel).
5. Upcoming court sentencing and a brief recap of each were provided: Lars Johnson / Arenal Energy March 22, 2019 (Pattern of unlawful activity); Shannon Fitzgerald April 5, 2019 (Guilty on 11 counts of securities' fraud); Tobey Waggoner / Accelerated Wealth April 29, 2019 (Real Estate Seminar) and Dean Causett / Real Marketing Network May 1, 2019 (Real estate seminar and pattern of unlawful activity).
6. Elizabeth Blaylock presented an update on Rust Rare Coin. The case is large and complex and in various stages of the legal process. In court a week ago, a Stay was entered for the 3 main Defendants. The Receiver has produced various status reports, taken over and has begun liquidated assets. The Division's case was formally referred to the US Attorney General's Office. Tom Melton, AG Office, included the sale of assets were important because of the monthly expenditures, confirmed our portion will be stayed for a period of time and advised that more reports are coming in each week. Tom Melton also provided an overview of the case for the Commission Members. Jonathan Hafen is the Court appointed Receiver.

Compliance Section Report:

Compliance Director Ken Barton reported:

1. 2019 YTD Exam Statistics- The Compliance Section has initiated twenty-three (23) compliance examinations, (6) exams were for-cause exams opened as a result of an investor complaint or regulatory agency referral, seventeen (17) were routine examinations. The increase in routine exams is a function of a focus on state covered RIA firms without a place of business in Utah. We have been working with the firm's home state regulators across the country to complete these desk exams. The Section initiated six (6) new Investment Adviser licensing approval exams. The Compliance Section has originated a total of twenty-nine (29) exams since the beginning of the year.
2. Action Updates: The Compliance Section is currently working on three (3) administrative orders and (2) criminal actions.
 - Two administrative actions have a proposed negotiated settlement agreement prepared and signed by the parties. These matters will be addressed by the Commission on April 9th and if needed April 10th.
 - One administrative action is currently stayed pending the completion of the sentencing phase of a criminal action.
 - Regarding the two referred criminal actions: The case involving Eric Sampson is awaiting a sentencing hearing which has been rescheduled for May 2019 to allow the Sampson to raise funds for victim restitution. The second case Scott Stewart's securities fraud trial is scheduled to resume in May 2019 in Utah's Third District Court.

Question 1: Gary Cornia requested to know how many RAI's are operating in Utah. Director Cowley provided statistics of 1,402 investment advisor firms with 5,499 Advisors, 236 are state covered. Commission Brent Baker asked to clarify if that included State and Federal Advisors and Director Cowley confirmed it did. Commissioner Lyle White asked if that included those that are licensed by Fidelity and Director Cowley confirmed it did. A year on year, 2017 & 2018 primarily, was provided to see if the Adviser community growth is parallel with our economic growth. Director Barton advised since Regulation BI is available, which is an alternative to the Dept. of Labor rules, the Division should see an increase in the total number of individuals that want to use the Investment Adviser model over the Broker Dealer model.

Registration and Licensing:

Registration and Licensing Director Bryan Cowley reported:

1. Broker Dealer Firms: 1,482 and Agents 124,464 along with Investment Adviser Firms: 1402 and Advisors 5499 with 236 State Covered. The total amount of fees for 2018 was 8,167,290 a continuing increase from 2016 & 2017.
2. With the receipt of a high fee amounts it would be easy for the public to believe we were disinterested or unaware of individuals who would merit consideration for a fee refund.
3. A FINRA Senior Analyst contacted the Division with a report called the Individual – Active Military Duty Download report. She encouraged us to consider renewal fee refunds for individuals currently on active military duty. After running the report (and thanks to Michele Black) the Division refunded the broker dealer agent and/or investment adviser representative licensing fee of 19 individuals who are in active military service to our great country.

Education and Training Fund Report:

Bryan Cowley presented the Division of Securities Education and Training Fund Report. Following the presentation of the Education and Training fund Commissioner **Brent Baker** called for a motion to approve. Commissioner **Lyle White** made the motion to approve the funding request to the Education and Training Fund. Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously.

Grant Request:

Utah Financial Planning's grant request was presented by Jenifer (Jenie) Connors, Dan Luke and Devin Bennett. Application was submitted for \$10,000.00 from the Utah Financial Planning Association however after review the Commission requested an increase on their behalf to \$12,500.00 for final approval from the Executive Director.

Consideration and Approval of Proposed Orders:

1. **Cetera, SD-18-0014 and Paul Neuenswander, SD-18-0015:: Stipulation and Consent Order**
Tom Brady clarified the cases were planned to be presented for approval; we have a signed agreement in place. Individuals who were going to be at the meeting were confused by the date and are not present. We are asking that the Division be allowed to present that approval at the 4/9th hearing date and will not be reviewing the documents.
2. **Dallas Tall, SD-17-0015: Order on Motion for Summary Judgment**
Paula Faerber presented this Order on Motion for Summary Judgment confirming the Motion for Summary Judgment by the Division is denied and the administrative hearing is scheduled for May 23, 2019.

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Lyle White** made the motion to approve the proposed Stipulation and Consent Order. Commissioner **Brent Cochran** seconded the motion. The motion was approved unanimously.

3 Lee Charles Rasmussen, SD-19-0003: Stipulation and Consent Order

Sean Fuller presented this Stipulation and Consent Order. He initiated this report by providing a full case history. Mr. Rasmussen is agreeing and admitting to the Division's Finding of Facts and Conclusions of Law; Represents the information he provided to the Division as accurate; Agrees to cease and desist from violating the act in the future; Agrees to a bar from acting as an Agent or Issuer; Agrees to a fine of \$7,500.00 payable within 5 business days of the entry of the final order.

Commissioner **Brent Baker** called for a motion to approve. Commissioner **Brent Cochran** made the motion to approve the fine. Commissioner **Brent Baker** seconded the motion. The motion was approved unanimously

Back on Record at 10:40

Hearing:

1. Kenny Andam, SD-16-0034

Jennifer Korb presented the hearing for this case. Mr. Andam currently has no active counsel; formerly, he was represented by Mary Corporon who was allowed to withdraw in February 2019. Mr. Andam was notified of the hearing as early as December 2018 when his former counsel petitioned the Division to remove her as counsel. Jennifer reached out to discuss a settlement and did not receive a response from Mr. Andam until March 20, 2019 stating he would like to discuss settlement but had computer issues and his email went to his spam folder. Mr. Andam stated that he was not prepared for this hearing and asked to postpone, his request was denied. Mr. Andam was let know there was not enough time to discuss settlements, Jennifer represents the Division and is not authorized to postpone. Mr. Andam emailed Judge Dibb bringing up the same request to postpone the hearing mentioning computer issues, other separate issues and health issues. Dept. of Commerce Deputy Direct, Mr. Jacob Hart, responded to Mr. Andam's request as Judge Dibb is out of the country. Mr. Hart denied his request sighting the untimeliness of the request and based on his prior counsel's request to withdraw he was made aware of the hearing in December 2018. Mr. Andam was provided the option to appear telephonically by the Division, emailed instructions and a set up was ready for him to appear in the Administrative Court room. Mr. Andam did not connect utilizing the telephonic option and the connection was left open in excess of 45 minutes. Commissioner Brent Baker inquired on whether we could reach out during the hearing however the only method of contact for Mr. Andam is an email. Jennifer Korb then provided a procedural history of the case including that this administrative case was formerly stayed pending resolution of Mr. Andam's criminal matter. Evidentiary exhibits were entered into evidence by Mrs. Korb during the hearing and reviewed by the Commission. Mrs. Dion Dittman Barron was called to testify and provided her testimony and was sworn in by Mr. Jacob Hart. After her testimony she was excused from the remainder of the hearing. Mrs. Elizabeth Blaylock, Securities' Investigator, was called to testify regarding Mr. Andam's cooperation, investigation, history of previous violations, etc. Mrs. Blaylock was sworn in by Mr. Jacob Hart. Fine recommendations and reasoning were provided to the Commissioners. The commission members requested time to deliberate

Back on the record at 12:12

Commission had conferred regarding the fine. It was agreed to approve the order but increase the amount of the fine from \$25,000 to \$50,000. A corrected order showing the new fine will be provided to the Commission for approval.

Future Meeting/Hearing Schedule:

April 9 & 10, 2019 (hearing, no business meeting) – room 451 at 9:00 am
May 23, 2019 (regular meeting) - room 451 at 9:00 am

Commissioner **Brent Baker** called for a motion to adjourn the March 21, 2019 Division of Securities Commission Meeting. Commissioner **Gary Cornia** made a motion adjourn the Commission meeting and Commissioner **Lyle White** seconded the motion. The motion was approved unanimously. Meeting adjourned at 12:15 am.

Date:

05/23/2019

Approved:

Gary Cornia
Gary Cornia, Acting Chairman