

PARTIES PRESENT

DIVISION OF SECURITIES

Tom Brady	Division Director
Sabrina Afridi	Administrative Assistant
Ken Barton	Manager of Compliance
Dave Hermansen	Manager of Enforcement
Bryan Cowley	Manager of Registration and Licensing
Dee Johnson	Manager of Investor Education
Chip Lyons	Securities Analyst
Francswai Grayson	Securities Analyst
Liz Blaylock	Investigator
Sean Fuller	Investigator
Sally Stewart	Receptionist
Tyler Hardman	Investigator

SECURITIES COMMISSION

Gary Cornia	Chair
Brent A. Cochran	Commissioner
Lyle White	Commissioner
Lyndon Ricks	Commissioner
Peggy Hunt	Commissioner

ASSISTANT ATTORNEY GENERALS

Tom Melton
Jen Korb
Paula Faerber
Robert Wing

DEPARTMENT OF COMMERCE

Bruce Dibb	Administrative Law Judge
Nathaniel Gallegos	Law Clerk

PUBLIC

Stephen Mouritsen	Attorney, representing ProLung, Inc.
Chad Pehrson	Attorney, representing ProLung, Inc.
Mark Griffin	Attorney, representing Jared Bauer

WELCOME AND CALL TO ORDER

9:00AM

Meeting commenced.

Gary Cornia

APPROVAL OF MINUTES

August 7, 2019

Gary Cornia made a motion to approve the minutes, Brent Cochran made an amendment that all Commissioners are present today and the motion was unanimously approved.

SECTION REPORTS

ENFORCEMENT

DAVE HERMANSEN

Staffing - Megan Sybor resigned as an Investigator to accept a position with the SEC. Thus, we're currently in hiring stages to fill said position.

Complaint Status - after a slight decrease of incoming complaints during the summer, there has been a total of 6 complaints for the month of November.

Current case load - total number of cases is 131, as follows:

- 46 are under investigation
- 32 are backlogged (well over 1 year)
- 19 outstanding Administrative Actions
- 12 Order to Show Causes to be drafted
- 3 Civil Filings and
- 20 Criminal Prosecutions, including 4 guilty pleas entered. In regard to criminal prosecutions, Rick Koerber was sentenced on October 15th in federal court to serve 14 years in the federal penitentiary system.

COMPLIANCE

KEN BARTON

2019 YTD Exam Statistics

- 39 compliance examinations: 21 of which were for-cause and opened as a result of investor complaint or Regulatory Agency Referral (54% year-to-date percentage are for-cause) and lastly, 18 routine exams.
- 16 new Investment Advisor application exams
- 55 exams since the beginning of the year 2019; in 2018 we initiated 58 exams. At our current run rate, we are on track to complete approximately the same number of compliance exams in 2019 as 2018

Administrative Action updates

UTAH DIVISION OF SECURITIES | COMMISSION MEETING AND HEARING

PENDING MINUTES | NOVEMBER 7, 2019 | ROOM 451 | 9AM-10:21AM;10:46-12:29PM

- Eric Sampson (SD-17-0009) -- concluded with a sentencing hearing, on September the 5th, Sampson was placed in the Bureau of Prisons custody for a term of 36 months upon release. Sampson will be placed on supervised release for a term of 36 months. Court ordered restitution totaled \$3,089,783.23. At sentencing Sampson paid \$721,124.90 to investors. Since the Division's case was initially filed, Sampson and his entities have paid \$1,091,884.87 back to investors. Jacob Strain was the Assistant U.S. Attorney prosecuting the case.
- Nikki Sampson (SD-17-0003 et al) -- Administrative Action had been stayed pending the sentencing of her husband's Eric Sampson's criminal trial. Following the September 5, 2019 criminal sentencing the stay was lifted on this matter. The Division seeks to resolve the Niki Sampson Administrative case via a Stipulation and Consent Order which is on today's Commission meeting agenda seeking your approval. Francswai Grayson was the Division's case examiner.
- Stephen Abraham Ashton/One for the Money Financial matter (SD-16-0017) -- October 18th, 2019 the Utah Court of Appeals filed its Opinion. The Court declined to disturb the Department of Commerce's Executive Director review of the Commission's findings relating to Ashton acting as an unlicensed Investment Adviser. However, the Court did conclude the Department of Commerce review of the Commission's ruling erroneously concluded Ashton's interference with the Division's investigation violated Section 61-1-19 of the Utah Uniform Securities Act. As a result, the Court vacated the entire fine amount of \$250,000 and returned the case back to the Commission to recalculate a fine amount consistent with the Court's conclusions.
- Stanley Secor (SD-19-0036) -- October 31st, 2019, the Division filed a petition to censure and fine, along with the Notice of Agency Action against Cetera Investment Advisor Representative and Broker-Dealer Agent, Mr. Secor. The administrative action cites 7 causes of action against Mr. Secor and the initial hearing in this matter is scheduled for December 19th, 2019.

LICENSING AND REGISTRATION

BRYAN COWLEY

Staffing: Rebecca Taylor resigned as an Examiner and last day was October 18th, 2019 due to her family relocating to another state.

Applications:

- 503 that have been escalated for further review. Individual license cases have been transitioned to physical files to electronic, which has been a success given the quantity of letter back and forth in those specific cases.
- RIA applications are as follows: Sheila Thomas is the main licensing Examiner and has been with the Division for about 20 years and for the past 6 years has been licensing RIAs. In 2017 we had 44 total applications, in 2018 we had 47 and in 2019 we have had 46, thus far. so far. Due to Sheila being tasked with helping develop our STRES database, the rest of the Division got the opportunity to cross train in licensing and are better Examiners because of the experience they have gained. The Division goal is to get the applications approved within 90 days and many are completed within 30 days. However, because of our STRES database implementation, more complex applications and staff turnover, this year they have taken a little longer. RIA applications are an area of strength in Utah and 3rd party compliance professionals will attest to that fact.

INVESTOR EDUCATION

DEE JOHNSON

- **Year-to-Date Events:** 49 events with an attendance over 44 hundred individuals.
- **Upcoming Events:** 6 in the month of November and 2 in December.
- **Recent Partners:** AARP, BYU, Public Nonprofit organizations, Public Employees Health Plan, U.S. Attorney's Office, Utah Financial Planning Association, Utah Retirement Systems and VentureCapital.Org.

- **Success Story:** Seniors who have participated in an Investor Education open seminar/lunch are contacting (Investor Education) Coordinator, Karen McMullin and/or the Division with significant inquiries regarding their investments, to make certain everything is in order. Considering Investor Education's events are largely centered around the outreach to seniors, the influx of inquiries is extremely significant.
- **Upcoming Events** – there are 6 events scheduled in November, including PEHP seminars in Southern Utah and the last URS seminar for 2019.

DIRECTOR'S REPORT

KEN BARTON

STRES Database: Fortunately, the Division has gone live with the rebuilt database which is operational and on schedule. STRES now has a modernized interface, which will expand functionality, increase security, and we'll be an asset to the Division as whole. It's been a successful transition with Sheila Thomas, who has been the spearhead of the STRES implementation in addition to the support from the Department of Technology Services. The Division is appreciative of the Commission's support on funding this project.

Staffing: The Division currently has 3 vacancies as follows:

- Compliance section, currently in the hiring process to replace Examiner, Russ Bulloch
- Enforcement section, currently in the hiring process to replace Investigator, Megan Sybor.
- Licensing and Registration section, currently in the hiring process to replace Examiner, Rebecca Taylor

Legislation: Director, Brady is currently working with Representative Mike **McKell** and Senator Dan Hemmert to run Legislation during the upcoming General Session. The bill is considered a, "clean-up bill" as it's meant to update certain provisions of the code and clarify existing Policy. There are *some* minor tweaks that Director Brady and the Division believe need to be included on the basis of the Division to act in the best interest of the investing public.

EDUCATION AND TRAINING FUND REPORT

BRYAN COWLEY

Commissioner Brent Cochran made a motion to approve the report, Lyle White seconded the motion.

- ✓ The motion was passed unanimously.

CONSIDERATION AND APPROVAL OF PROPOSED ORDERS 9:25AM

Sampson, Eric Larson CRD #3269514 | SD-17-0009 | Stipulation and Consent Order

Presenter: Ken Barton

Sampson agreed to the Proposed Order and it had been signed by his attorney, Mark Pugsley. Under this Order, Sampson neither admits or denies the Division's Findings of Facts and Conclusions of Law. Sampson agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state. Sampson agrees to be barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent of any issuer soliciting investor monies in Utah. The Division imposes a fine

of \$1,000,000 – the fine shall be offset by restitution paid by Sampson as order in the criminal action. Sampson agrees to pay a fine of \$100,000 due immediately, with no offset for restitution paid. Failure to comply/pay said fine, a Notice of violation will be provided with a 10-day responding window.

Commissioner, Brent Cochran made a motion to approve the Order and Commissioner, Lyndon Ricks seconded the motion.

- ✓ The Commission approved the Order unanimously

Sampson, Niki | SD-17-003-0008 | Stipulation and Consent Order
Presenter Ken Barton

Miss Sampson agreed to the Proposed Order and it had been signed by her attorney, Mark Pugsley. Under this Order, Miss Sampson neither admits or denies the Division's Findings of Facts and Conclusions of Law. Miss Sampson agrees to the following: cease and desist from violating the Act, to be barred from associating with any broker dealer or investment adviser licensed in Utah, and from acting as an agent of any issuer soliciting investor monies in Utah. Division imposes a fine, jointly and severally, of \$100,000 and the fine shall be offset by restitution paid by Miss Sampson as order in the criminal action. Miss Sampson consents to paying a fine of \$100,000, jointly and severally due immediately, with no offset for restitution paid.

Commissioner, Lyle White made a motion to approve the Order and Commissioner, Peggy Hunt seconded the motion.

- ✓ The Commission approved the Order unanimously

DeLuna, Fernando | SD-19-0009 | Stipulation and Consent Order
Presenter: Francswai Grayson

DeLuna agreed to the Proposed Order and it had been signed by his attorney, S. Grace Acosta. Under this Order, DeLuna neither admits or denies the Division's Findings of Facts and Conclusions of Law. DeLuna agrees to the following: cease and desist from violating the Act, to be barred from associating with any broker dealer or investment adviser licensed in Utah, and from acting as an agent of any issuer soliciting investor funds in Utah. The Division imposes that DeLuna agrees to pay restitution in the total amount of \$12,000 as follows: Investor 1: \$3,092.78; Investor 2: \$3,092.78; Investor 3: \$4,577.32; and \$1,237.12. If DeLuna makes timely payments at the end of the 36-month period, the Division will waive all but \$1,500 of the fine amount ordered against DeLuna.

Commissioner, Peggy Hunt made a motion to approve the Order and Commissioner, Lyle White seconded the motion.

- ✓ The Commission approved the Order unanimously

Campbell, Clark A. | SD-19-0016 | Stipulation and Consent Order
Presenter Francswai Grayson

Campbell agreed to the Proposed Order and it had been signed by his attorney, Mark Pugsley. Under this Order, Campbell neither admits or denies the Division's Findings of Facts and Conclusions of Law. Campbell agrees to the following: cease and desist from violating the Act, to be barred from associating with any broker-dealer or investment licensed in the state of Utah, and Campbell agrees to cooperate with the Division's investigation of ProLung, to return 24,188 shares of ProLung stock. The Division imposes a fine of \$34,000 against Campbell, in addition to another fine and disgorge of totaling \$15,000 to the Division to be paid within 5 business days of entry of the final Order, and pay the remaining \$27,613 to the Division, set forth in ¶ 46 of this Order.

Commissioner, Brent Cochran made a motion to approve the Order and Commissioner Peggy Hunt seconded the motion.

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- ✓ The Commission approved the Order unanimously

Treu, Tim | SD-19-0017 | Stipulation and Consent Order
Presenter Francswai Grayson

Treu agreed to this Proposed Order and it had been signed by his attorney, Mark Pugsley. Under this Order, Treu neither admits or denies the Division's Findings of Facts and Conclusions of Law. Treu agrees to the following: cease and desist from violating the Act, to be barred from associating with any broker-dealer or investment licensed in the state of Utah, agrees to cooperate with the Division's investigation of ProLung, and provide testimony in this proceeding or others if requested. The Division imposes a fine of \$12,500 that Treu agrees to pay within 5 business days following this Order.

Commissioner, Brent Cochran made a motion to approve the Order, Commissioner Peggy Hunt and Commissioner Lyle White seconded the motion.

- ✓ The Commission approved the Order unanimously

Morgan, Todd Mark | SD-19-0018 | Stipulation and Consent Order
Presenter Francswai Grayson

Morgan agreed to this Proposed Order and it had been signed by his attorney, Mark Pugsley. Under this Order, Morgan neither admits or denies the Division's Findings of Facts and Conclusions of Law. Morgan agrees to the following: cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah; agrees to a bar from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; from being licensed in any capacity in the securities industry in the state of Utah, Morgan agrees to cooperate with the Division's investigation of ProLung, and provide testimony in this proceeding or others if requested. Morgan agrees to return 12,188 shares of ProLung stock to ProLung's treasury within 5 business following this Order and provide copies of said returned stock certificates. The Division imposes a fine of \$6,000 and Morgan agrees to pay the fine within 5 business following this Order.

Commissioner, Brent Cochran made a motion to approve the Order, Commissioner Peggy Hunt and Commissioner Lyle White seconded the motion.

- ✓ The Commission approved the Order unanimously

Raybould, Robert | SD-19-0019 | Stipulation and Consent Order
Presenter Francswai Grayson

Raybould agreed to this Proposed Order and it had been signed by his attorney, Mark Pugsley. Under this Order, Raybould neither admits or denies the Division's Findings of Facts and Conclusions of Law. Raybould agrees to the following: cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah; agrees to a bar from associating with any broker-dealer or investment adviser licensed in Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah, to cooperate with the Division's investigation of ProLung, and provide testimony in this proceeding or others if requested. Raybould agrees to return 27,000 shares of ProLung stock to ProLung's treasury within 5 business days following this Order, and provide copies of said returned stock certificates. The Division imposes a fine of \$31,000 against Raybould who agrees to pay \$31,000 to the Division within 5 business days following this Order.

Commissioner, Peggy Hunt made a motion to approve the Order and Commissioner, Lyle White seconded the motion.

- ✓ The Commission approved the Order unanimously

**Che Financial Research, LLC and Clemons, William Ray | SD-19-0024-0025 | Default Order
Presenter Paula Faerber**

Under this Order, the Respondents are ordered to cease and desist from engaging in any further conduct in violation Act and comply with the requirements of the Act in all future business in the state of Utah; to be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah. Respondents are ordered to pay the Division a fine of \$40,000 and restitution to the victims in the amount of \$110,982, due within 5 business days following this Order

Commissioner, Lyle White made a motion to approve the Order and Commissioner, Peggy Hunt seconded the motion

- ✓ The Commission approved the Order unanimously

HEARING

10:46AM

**In the matter of: ProLung, Inc. | SD-19-0014 and Bauer, Jared | SD-19-0015
Fourth Motion for Summary Judgment (Shareholder meeting on January 31, 2019)**

Bruce Dibb, Administrative Law Judge stated that the purpose of the Hearing is Fourth Motion for Summary Judgment, which is the shareholder meeting that took place on January 31, 2019. Judge Dibb indicated that Chair, asked him to conduct this hearing. Judge Dibb, then deferred to Commissioner Lyndon Ricks, who disclosed a prior legal relationship with one of the ProLung shareholders, which has now ended. Commissioner, Lyndon Ricks believes he can participate in this hearing in an unbiased fashion.

Oral arguments took place from both the Respondents: Attorneys Stephen Mouritsen and Chad Pehrson who represented ProLung, Inc. and Attorney, Mark Griffin who represented Jared Bauer. The Division who were represented by, Assistant Attorney Generals Tom Melton and Jen Korb. Judge Dibb, allotted approximately 20 minutes per oral arguments to each side, with the exception of questions from the Commissioners and rebuttals

Prior to Judge Dibb concluding the hearing, Commissioner Peggy Hunt, made a disclosure regarding a legal relationship with Leavitt Partners, who she & her firm (Dorsey & Whitney, LLP) represented, but the legal matters are to unrelated to this hearing. Peggy explained she was unaware that Leavitt Partners was on the board of ProLung and when it was brought to her attention she took the appropriate steps to make certain there weren't any conflicts. Tom Melton for the Division had no objection to Peggy's Disclosure. Respondents for ProLung, Inc. and Jared Bauer also had no objection. Judge Dibb then explained, that objecting (or not) to Peggy's disclosure doesn't affect a Commissioner's recusal in Administrative Hearings.

MOTION TO ADJOURN

12:29PM

Judge Dibb, called for the Hearing to adjourn so the Commission could deliberate on this Hearing. The next Securities Commission Hearing is scheduled January 28-31, 2020.

PENDING

APPROVED: _____ DATE
GARY CORNIA