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: **ROY A. CLARKSTON;** **MASADA CAPITAL LIMITED, LLC;** **VIRGIL G. SMOCK; and** **E&V INVESTMENTS, INC.** **Respondents.**	**ORDER TO SHOW CAUSE** **Docket no.** SD-05-0062 **Docket no.** SD-05-0063 **Docket no.** SD-05-0064 **Docket no.** SD-05-0065

TO: **Roy A. Clarkston**
2232 Taylor Ave.
Ogden, UT 84401

Masada Capital Limited, LLC
2232 Taylor Ave.
Ogden, UT 84401

Virgil G. Smock
2156 West Aspen Ave.
Bluffdale, UT 84065

E&V Investments, Inc.
180 South 300 West, #209
Salt Lake City, UT 84101

It appears to the Director of the Utah Division of Securities (Director) that Roy A. Clarkston, Masada Capital Limited, LLC, Virgil G. Smock and E&V Investments, Inc. (collectively Respondents) have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Having reviewed the relevant facts discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over the Respondents and the subject matter is appropriate in this matter because the Division alleges that the Respondents violated § 61-1-1 (Securities Fraud), § 61-1-3 (Sale by Unlicensed Agent) and § 61-1-3 (Employing an Unlicensed Agent) of the Act while engaged in the offer and sale of securities in Utah.

STATEMENT OF FACTS

THE PARTIES AND ENTITIES

2. Roy A. Clarkston (Clarkston) is a Utah resident. Clarkston's last known address is 2232 Taylor Avenue, Ogden, Utah.

3. Masada Capital Limited, LLC (Masada Capital), formerly Masada Mortgage and Business Finance Center, LLC (Masada Mortgage), is a Utah limited liability company. Masada Capital has been registered as a limited liability company since June 16, 2000, and its current status is "Active". Masada Capital's last known business address is 2232

Taylor Avenue, Ogden, Utah. Clarkston is the registered agent of Masada Capital, and is one of two members.

4. Virgil G. Smock (Smock) is a Utah resident. Smock's last known address is 2156 West Aspen Avenue, Bluffdale, Utah.

5. E&V Investments, LLC (E&V) is a Delaware corporation that was first registered in Utah on October 30, 1995. E&V's Utah registration expired on December 1, 1997. E&V's last known business address is 180 South 300 West, #209, Salt Lake City, Utah. Smock is listed as the director and president of E&V.

GENERAL ALLEGATIONS

6. Petra Tech, Inc. (Petra Tech), a Utah corporation, provides network security to federal agencies.

7. In 2003, Petra Tech needed funding and was unable to get a loan from traditional sources so Mark Dawood (Dawood), the sole owner of Petra Tech, contacted Clarkston about getting a loan through Masada Mortgage.

8. In June 2003, Dawood met with Clarkston, at Dawood's home in Layton, Utah, to discuss the loan. During that meeting, Clarkston told Dawood about a loan guarantee program (Loan Program) offered by Smock and E&V Investments, Inc.

9. Clarkston told Dawood that under the Loan Program, a leading insurance company would guarantee Petra Tech future loan financing. Clarkston told Dawood that Petra Tech's loan would be locked in and guaranteed through the payment of an advanced fee of 4 to

5.5% of the total amount to be borrowed. Clarkston told Dawood that Clarkston and Masada Mortgage acted as the middle-men between Smock, E&V, and the prospective borrower.

10. Clarkston told Dawood that Smock controlled millions of dollars in various banking institutions. When Dawood asked Clarkston how he knew this, Clarkston replied that he had seen Smock's financial statements.

11. Clarkston told Dawood that he knew and trusted Smock, and that he felt good about the Loan Program.

12. On June 24, 2003, Dawood received a letter from Clarkston, stating that Masada Mortgage had tentatively arranged for Dawood to deposit an advanced fee of $5,000, on behalf of Petra Tech, into an escrow account at Premier Title Insurance Agency, and that the $5,000 would immediately be released to E&V for administrative costs.

13. On July 8, 2003, Clarkston delivered loan documents for Petra Tech to Dawood at Dawood's home. The documents included an Escrow Account Commitment for Insurance Guarantee Premium and Funding (Letter of Commitment) and a General Fee Agreement.

14. According to the Letter of Commitment, Petra Tech was to receive a loan in the amount of $5 million within thirty banking days of Clarkston's and Masada Mortgage's receipt of the signed documents. In consideration for the loan, Dawood was to establish an escrow account with Premier Title Insurance Agency, on behalf of Petra Tech, in the amount of

$17,750 for administrative costs, $5,000 of which was to be released to E&V prior to Petra Tech's receipt of the loan funds.

15. According to the General Fee Agreement, Masada Mortgage would receive a commission of $31,500 for arranging the loan for Petra.

16. Dawood told Clarkston that Petra Tech could only afford to put up $5,250 in advanced cash. Clarkston told Dawood that $5,250 was enough to get the loan started.

17. On July 8, 2003, after reviewing the Letter of Commitment and General Fee Agreement, Dawood called Clarkston and told Clarkston he would like to have his attorney look at the documents before signing. Clarkston told Dawood that submitting the documents to an attorney would cause too much delay and that Smock was leaving on a trip the next day and needed the documents in the morning.

18. Dawood agreed to sign the Letter of Commitment and General Fee Agreement, and told Clarkston that he could get the documents and Dawood's personal check for $5,250 in the morning.

19. On July 9, 2003, Clarkston picked up the Letter of Commitment, General Fee Agreement and $5,250 check from Dawood's home. The Letter of Commitment was signed by Dawood on behalf of Petra Tech on July 9, 2003, by Clarkston on behalf of Masada Mortgage on July 10, 2003, and by Smock on behalf of E&V on July 11, 2003. The General Fee Agreement was signed by Dawood on behalf of Petra Tech on July 9, 2003 and Clarkston on behalf of Masada Mortgage on July 10, 2003. Dawood's personal

check #1341 is made out to Premier title Insurance Agency in the amount of $5,250, and dated July 9, 2003.

20. When picking up the documents from Dawood, Clarkston told Dawood that the loan would be funded within four to six weeks.

21. On July 16, 2003, Premier Title Insurance Agency released $5,000 of the $5,250 check to Smock by check.

22. Shortly thereafter, Dawood researched Smock on the Internet and discovered that Smock declared bankruptcy in 1996 and that E&V was no longer registered to do business in Utah.

23. On August 13, 2003, Dawood met with Clarkston at Clarkston's home in Ogden, Utah. Dawood confronted Clarkston with the information he had gathered about Smock, and Clarkston admitted that he was aware of Smock's past. Clarkston again told Dawood that he trusted Smock, and that Smock controls over $650 million dollars in various banks. Clarkston told Dawood to be patient and that he would get his money soon.

24. At the same meeting, Clarkston had Dawood sign several more documents on behalf of Petra Tech, including a Non-Circumvention & Non-Disclosure Agreement, Client Wire Instructions / Pay Order, and a Promissory Note in the amount of $5 million. Clarkston said these documents needed to be completed before the loan would go through.

25. Several months passed without Petra Tech receiving the $5 million dollar funding, and Dawood received excuse after excuse directly from Clarkston, and from Smock via Clarkston regarding delay.

26. Dawood and Petra Tech received nothing from their investment in Clarkston and Smock's Loan Program.

CAUSES OF ACTION

COUNT I
Securities Fraud under § 61-1-1 of the Act
(Roy A. Clarkston, Masada Capital, Virgil G. Smock & E&V Investments)

27. The Division incorporates and re-alleges paragraphs 1 through 27.

28. The Loan Program offered and sold by Clarkston and Smock falls within the definition of a security under § 61-1-13(1)(x)(i)(F) (evidence of indebtedness) of the Act, because Clarkston and Smock sold the Letter of Commitment to Dawood for substantial consideration, and Dawood received what appeared to be an enforceable obligation which contemplated the flow of funds.

29. Section 61-1-1 of the Act states

> It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to: (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

30. In connection with the offer and sale of a security to Dawood, Clarkston, Masada Capital, Smock and E&V, directly and/or indirectly, misrepresented to Dawood that for a sizable

advanced fee, Dawood was guaranteed funding in the amount of $5 million dollars. In fact, Dawood received nothing from his payment of the advanced fee.

31. In connection with the offer and sale of a security to Dawood, Clarkston, Masada Capital, Smock and E&V, directly and/or indirectly, failed to disclose material information, including, but not limited to, the following:

a. In 1995, Clarkston pled guilty to money laundering and served 42 months in a Texas federal prison;

b. In 1996 Smock filed bankruptcy, and received a discharge in 2000;

c. In 1997 and 1998 Smock had three non-dischargeable fraud judgments entered against his bankruptcy estate totaling $666,331;

d. The risk factors associated with the investment;

e. Whether anyone related to the investment was licensed in securities; and

f. Whether the investment was registered or exempt from registration.

32. Clarkston, Masada Capital, Smock and E&V violated § 61-1-1(2) of the Act by making the above mentioned misrepresentation and failing to disclose the above mentioned material information to Dawood prior to his investing in the Loan Program.

COUNT II
Sale by an Unlicensed Agent under § 61-1-3
(Roy A. Clarkston)

33. The Division incorporates and re-alleges paragraphs 1 through 32.

34. Section 61-1-3(1) of the Act states:

> It is unlawful for any person to transact business in this state as a broker-dealer or agent unless the person is licensed under this chapter.

35. Section 61-1-13(2) of the Act defines an "Agent" as:

> [A]ny individual other than a broker-dealer who represents a broker-dealer or isuer in effecting or attempting to effect purchases or sales of securities.

36. Despite being unlicensed, Clarkston transacted business in this state as an agent of Virgil G. Smock and E&V Investments in violation of § 61-1-3.

COUNT III
Employing an Unlicensed Agent under § 61-1-3
(Virgil G. Smock & E&V Investments)

37. The Division incorporates and re-alleges paragraphs 1 through 36.

38. Section 61-1-3(2)(a) of the Act states:

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

39. Virgil G. Smock and E&V Investments employed Clarkston, an unlicensed agent, to offer and sell its securities in violation of § 61-1-3 of the Act.

ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63-46b-4 and 63-46b-6 through -10, and held before the Utah Division of Securities. The hearing will occur at a date, time and place agreed upon by the parties after an answer has been filed. If Respondents fail to

file an answer and appear at the hearing, an order to cease and desist may be issued and a fine imposed by default against Respondents, as provided by Utah Code Ann. §63-46b-11. At the hearing, Respondents may show cause, if any they have:

a. Why Respondents should not be found to have engaged in the violations alleged by the Division;

b. Why Respondents should not be barred from obtaining a securities license in the future under the provisions of Utah Code Ann. § 61-1-6;

c. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. §§ 61-1-1, 61-1-7, or any other section of the Act;

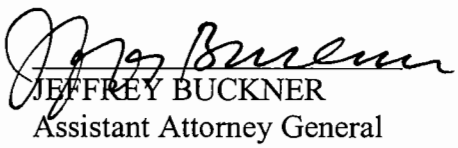
d. Why Respondents Clarkston and Smock should not be ordered to pay a fine of $2,500 each to the Division, to be reduced by $2,000 each if any one of the Respondents returns Mark Dawood and Petra Tech's initial investment of $5,250; and

e. Why Respondents Masada Capital and E&V should not be ordered to pay a fine of $5,000 each to the Division, to be reduced by $4,000 each if any one of the Respondents returns Mark Dawood and Petra Tech's initial investment of $5,250.

DATED this 3rd day of October, 2005.

DAVID PREECE
Director, Utah Division of Securities

Approved:



JEFFREY BUCKNER
Assistant Attorney General

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:	**NOTICE OF AGENCY ACTION**
ROY A. CLARKSTON; **MASADA CAPITAL LIMITED, LLC;** **VIRGIL G. SMOCK; and** **E&V INVESTMENTS, INC.** **Respondents.**	**Docket no.** SD-05-0062 **Docket no.** SD-05-0063 **Docket no.** SD-05-0064 **Docket no.** SD-05-0065

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

The purpose of this Notice of Agency Action is to inform you that the Division hereby commences a formal adjudicative proceeding against you as of the date of the mailing of the Order to Show Cause. The authority and procedure by which this proceeding is commenced are provided by Utah Code Ann. §§63-46b-3 and 63-46b-6 through 11. The facts on which this action is based are set forth in the foregoing Order to Show Cause.

Within thirty (30) days of the date of this notice, you are required to file a written response with the Division. The response you file may be helpful in clarifying, refining or narrowing the facts and violations alleged in the Order to Show Cause. After your response is filed, a hearing will be set and a date and time agreed upon by the parties.

If you fail to file a written response, as set forth herein, or fail to appear at the hearing, the Division of Securities will hold you in default, and a fine will be imposed against you in accordance with Utah Code Ann. §64-46b-11, without the necessity of providing you with any further notice.

The presiding officer in this case is David Preece, Director, Division of Securities, 160 East 300 South, P.O. Box 146760, Salt Lake City, UT 84114-6760, telephone (801) 530-6600.

The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. At such hearing, the Division will be represented by the Utah Attorney General's Office, 160 East 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310. At the hearing, you may appear and be heard and present evidence on your behalf.

You may attempt to negotiate a settlement of the matter without filing an answer or proceeding to a hearing. Should you so desire, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause and Notice of Agency Action should be directed to Jeff Buckner, Assistant Attorney General, 160 E. 300 South, P.O. Box 140872, Salt Lake City, UT 84114-0872, telephone (801) 366-0310.

DATED this 3rd day of October, 2005.

DAVID PREECE
Director, Division of Securities
Utah Department of Commerce

Certificate of Mailing

I certify that on the 4TH day of OCTOBER, 2005, I mailed, by certified mail, a true and correct copy of the Order to Show Cause and Notice of Agency Action to:

Roy A. Clarkston
2232 Taylor Ave.
Ogden, UT 84401

Certified Mail # 7005 1160 0003 7034 0333

Masada Capital Limited, LLC
2232 Taylor Ave.
Ogden, UT 84401

Certified Mail # 7005 1160 0003 7034 0357

Virgil G. Smock
2156 West Aspen Ave.
Bluffdale, UT 84065

Certified Mail # 7005 1160 0003 7034 0364

E&V Investments, Inc.
180 South 300 West, #209
Salt Lake City, UT 84101

Certified Mail # 7005 1160 0003 7034 0371

E&V Investments, Inc.
2263 Scenic Drive
Salt Lake City, UT 84109

Certified Mail# 7005 1160 0003 7034 0388

PAMALA RADZINSKI
Executive Secretary