

SECURITIES COMMISSION MEETING MINUTES

January 24, 2013

Securities Staff Present

Keith Woodwell, Division Director
Benjamin Johnson, Corporate Finance Director
Dave Hermansen, Enforcement Director
Dee Johnson, Investor Education Director
Scott Davis, Assistant Attorney General
Jennie Jonsson, Administrative Law Judge
Richard Jaramillo, Securities Examiner
Sheila Thomas, Securities Examiner
Brandon Henrie, Securities Examiner
Adam Sweet, Securities Investigator
Karen McMullin, Investor Education Coordinator
Ann Skaggs, Securities Analyst
Chip Lyons, Securities Analyst
Nadene Adams, Administrative Assistant
Julie Price, Board Secretary

Commissioners Present

Laura Polacheck, AARP Utah
Tim Bangerter, Bangerter Financial Group
Erik Christiansen, Parsons Behle & Latimer
Brent Baker, Clyde Snow & Sessions

Commissioners Absent

Jane Cameron, Zions Bank

Public Present

Craig Taylor

Minutes: A motion was made and seconded to approve the October 29, 2012 minutes. The motion to approve the meeting minutes was passed unanimously.

Director's Report: Director Woodwell:

Budget:

Legislative session is about to begin. There will be no change in the fiscal year 2014 budget; it will be the same as 2013. \$1.618 million is our base budget for the division. We have our first meeting in front of the appropriations subcommittee on January 29, 2013. We are not asking for any additional items, we are not anticipating any issues. The Investor Education Fund balance as of January 9, 2013 was \$326,000. The trend is slightly downward over the past 6-8 months. In November the balance was \$362K and in October it was \$368K. In the beginning of August the balance was at \$469K. The trend is downward, but not alarming. We are trying to manage the costs by managing some of the items the Division has previously charged, we have told prosecutors that whatever they need to do, we will support them. Expert witnesses have been where a lot of the expenses are coming from. We are not seeing the larger fines that we had in

the past. There still is a steady flow of revenue coming into the fund. The \$326K figure we are at now, even though it is lower than 2010-2012, is still a healthy balance.

Division staffing:

Tom Brady who was our Director of Enforcement has been promoted to Deputy Director of The Department of Commerce.

Dave Hermansen who was in the Licensing and Compliance Section is now the Director of Enforcement.

Ken Barton was promoted to the Director of The Licensing and Compliance Section.

Brandon Henrie was given role of lead licensing examiner. We are currently in the process of hiring a new examiner. Brandon will be under the supervision of Ken and will oversee the process for approving new applicants, particularly IA licenses which are the most complex and involved that we deal with.

Julie Price has been promoted to Executive Secretary to The Department of Commerce. We are starting to look for a replacement for Julie Price. Thank you to Julie for all your hard work for making the Commission Meeting's function so well.

Investor Education Update: Karen McMullin: On December 18, 2012 we received the expo display which has several components which include: 2: IPad kiosks. We are currently double booking events; we will be able to take portions of it to different events. There are also literature stands that hold flyers and other hand-outs. We now have the ability to introduce people to our web-site, to do broker checks and view our on-line data base. Our 2012 totals were 61 events. At the beginning of 2013, I submitted requests to previous partners to continue the relationship this year and I received responses from 13 people. We currently have 15 events booked, 4 are expos and 11 are seminars. We have a new partner: Utah Association for Home Care, the focus will be on the financial exploitation of the elderly. Last year's efforts are paying off this year.

Licensing & Compliance Section Report: Dave Hermansen: We have just completed the last version of NEMO which is our electronic auditing program that we will be using for our examination process. We have not completed as many examinations as we wanted; however, a lot of our efforts have been going toward the Dee Randall case. We are looking at the agents that were involved with selling those particular products. We are finishing up on some criminal cases and in settlement negotiations on a few cases. We have opened 5 new cases since we last met; currently we have 4 outstanding Administrative cases that are currently in settlement talks right now. We are in the process of drafting 3 more Administrative cases. We also have two cases that settled today, that we will go through today's agenda. We are currently working 3 criminal cases and we are very close to.

Corporate Finance Section Report: Benjamin Johnson reported that the year-end numbers for 2012. We did see a slight drop off after three years of consistent increases, although registration filings were flat. We did have a 50% drop off in state level exemptions and a 16% drop off in 506 notice filings. Mutual funds were up slightly but less than 1%. The rule making process for implementing the JOBS Act has been slow, but we anticipate a busy 2013 when the new rules come online.

Enforcement Section Report: Dave Hermansen: I have only been in this position for 1-1 ½ weeks, we have met with the task force we meet biannually, that task force includes the

Division, the FBI and The Department of Justice, an IRS representative and the SEC. These are agencies that we share information with and in many cases participate in joint investigations. In these last 2 months we have drafted 6 new complaints, on the administrative side we have 6 more to be drafted. Drafting has become an issue for the whole division; we really have a back log of drafting. Other people are stepping in to help the void we have. Enforcement is working 32 open cases. We have 12 complaints that are sitting and have not been assigned as of yet. We have 13 cases that have been referred for criminal action, where charges have not yet been filed yet.

Education Fund Expenditure Report: Benjamin Johnson reviewed the updated expenditure report for the Education and Training Fund and discussed line items that were being requested by the Division for Commission approval. This included routine expenses. We have one grant request from AARP; apart from that what you see is routine costs. We tend to replenish those to a standard amount.

Action: Tim Bangerter made a motion to approve the Education Fund Expenditure Report. The motion was seconded and carried.

Consideration of Grant Request

AARP of Utah: Laura Polacheck presented this grant request.

Laura: The Division of Securities has partnered with AARP. We go around the state, about 4 times a year. Primary expense is mailing to invite people to attend. In the past we have requested \$10K to help fund these efforts. Expenses are securing the location, publicity and reimbursing our volunteers. The speakers are not compensated but expenses are covered. This year the request is \$20K because there is a change in the national policy. Before they would pay for our direct mail, which was several thousand per event. We will incur significant additional costs. Keith can attest the need and excitement for these events within our State. We are educating the public on the role of the Division and informing how to protect themselves against fraud. They can find information about brokers or notify the division of questionable investments within the state.

Keith: the Division enthusiastically supports the partnership with AARP. AARP consistently delivers the largest number of participants. In Layton last year there were well over 300 people there. We get a large number of inquiry and complaints from these events. People ask for business cards, share their experiences and we end up with a lot of referrals and new cases. AARP is great at getting people to these events. We want to keep the ongoing relationship. Ken and Tom have also participated with events.

The funds would support the 4 events and telethon where we would be calling people in their homes in a certain time period participating. People would not have to travel to these events. We call about 20-30 thousand people we usually get 8,000 to stay on the phone for a period of time. It is great way to spread the message in a very efficient way.

Action: Laura Polacheck recused herself. Brent Baker made a motion to approve the grant. The motion was seconded and carried.

Request from Administrative Rules Committee:

The following questions were proposed by the Administrative Rules Review Committee, which is chaired by Senator Howard Stephens on.

Questions/Requests from the Chair of the Administrative Rules Review Committee, Sen. Howard Stephenson, from the Oct. 19, 2012 committee hearing:

- What can be done to disconnect the documents relating to previous Division of Securities enforcement actions from internet searches for people who were involved in “small” or “minor” violations (those not involving fraud) that were settled through stipulations and consent orders, and where the subject of the previous action has a clean record since the time of the stipulation and consent order?
 - Particular concern for those cases dating back to the time period (2005-2008) reviewed in the Legislative Performance Audit of the Division.
 - Information regarding these people could still be accessed through a search in the Division’s Online Database, but could not be accessed through a general internet search (e.g., Google, Bing, Yahoo). Similar to court records accessible only through the courts database.

- Asked the Securities Commission to look at the fines that were imposed during this time period. If any of the fines were excessive, what remedy should be made to those who were subject to excessive fines?
 - Asked if we would need help with statutory authority to make restitution to those who were fined excessive amounts.

- In determining fine amounts in the future, should restitution and sanctions be separated into separate amounts? In this way the amount of restitution sought through an administrative fine would not be capped, but the amount of the sanction could be capped.
 - Offered help if we need statutory authority to bifurcate the fine into a restitution amount and a penalty amount.
 - Suggestion from Legislative Auditor that fine amounts be split into three categories: 1) restitution; 2) penalty; and 3) cost recovery for the Division’s investigative costs.

Erick Christiansen: These are important policy issues. They’re worthy of the public’s time and effort to evaluate within a legislative context. The Commission struggles with trying to hide any information from the public that when you favor public disclosure, people’s enforcement histories and that if you’re going to error in favor of one side or the other, it’s protecting the investor public. If the public disclosure of information helps even one person, it’s probably better than trying to hide it from the public.

Approval of Stipulation and Consent Orders

Jonathon R. Watts: Dave Hermansen reported that from November 2006 through January 2008, Mr. Watts offered and sold an investment opportunity to Utah investors, who invested a total of at least \$974,000.00. Mr. Watts in general told investors their money would be invested

in property in Cedar City, Utah. He gave investors documents entitled "Trust Deed Note" in return for their investments; however, the notes were unrecorded and failed to give investors any interest in real property. The terms of the notes promised various rates of interest for a term of anywhere from 30 days to one year.

Mr. Watts, directly or indirectly, made false statements in connection with the offer and sale of a security to investors. Mr. Watts failed to disclose material information which was necessary to make representations not misleading in connection with the offer and sale of a security. Mr. Watts was never licensed to sell securities. He was acting as an agent of an issuer, which violates the law by selling an unregistered security.

Mr. Watts will cease and desist from violating the Utah Uniform Securities Act. He will pay a fine of \$20,000.00, which will be waived contingent on no securities laws are violated during the abeyance period. Mr. Watts is permanently barred from the securities industry, and he will cooperate with the Division in any future investigations. Mr. Watts will pay restitution as ordered in the criminal case.

Action: Laura Polacheck made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Craig Tanner Daly and Joshua Carl Johnson: Dave Hermansen reported that from July 2010 to September 2010 the Respondents offered and sold investment contracts to an investor and collected at least \$165,000.00. The Respondents omitted information in connection with the offer and sale of securities to the investor. The investor lost \$160,800.00 of his principal. The Respondents failed to disclose material information, which was necessary in order to make proper investment decisions.

The Respondents will cease and desist from violating the Utah Uniform Securities Act, they agreed to be barred from the securities industry in Utah, and they agreed to cooperate with any further investigations. Fines were imposed of \$25,900.00 against Mr. Daly and \$11,616.00 against Mr. Johnson.

Action: Tim Bangerter made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Glen A. Larsen dba Financial Advisory Services: Dave Hermansen reported that the Division staff conducted an announced examination of Financial Advisory Services (FAS) in September 2011 and an unannounced examination in January 2012. The examination revealed that FAS has no policies and procedures manual existing in any form and does not conduct an annual review of such. An earlier examination in September 2002, Mr. Larsen agreed in writing to develop and implement these measures, however, in the Division's examinations in 2011 and 2012, Mr. Larsen could not produce that he had implemented these policy and procedure manuals. Failure to implement these procedures at least annually violates the books and records requirements of the Act.

Mr. Larsen consents to the sanctions being placed by the Division. Mr. Larsen also represents that the findings of the Division is accurate and complete. Mr. Larsen agrees to cease and desist from violating the Utah Uniform Securities Act, and to comply with the requirements of the Act in all future business in this state. The Respondent agrees to pay a fine of \$1,000.00 to the Division within 30 days.

Action: Tim Bangerter made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Subhash S. Kithany: Dave Hermansen reported that the Respondent (SK Group, Inc. or SKG) is an investment advisor. On July 31, 2012, SKG initiated the process to become a Utah licensed investment advisor. During the review of SKG's application, it was discovered that Mr. Kithany was not licensed as an investment adviser representative. Mr. Kithany reported that he thought he was properly licensed and had been submitting fees for licensing through the CRD systems since 2002. In reality, the respondent submitted the required for the firm, but not for an individual license. The Respondent mistakenly believed that he had been renewing his investment adviser representative license while paying the firm's fees. Once the Respondent realized the mistake that he was not licensed as an investment adviser representative, he immediately filed his Form U4 through the CRD and paid the fees to become licensed.

The Respondent consents to the sanctions imposed by the Division, and agrees that the findings are accurate and complete. The Respondent agrees to cease and desist from violating the Utah Uniform Securities Act and to comply with the requirements of the Act in all future business in this state. The Respondent agrees to pay a fine of \$5,000.00 to the Division.

Action: Laura Polacheck made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Michael Scott Jolley: Dave Hermansen reported that the Respondent Michael Scott Jolley has never been licensed in the securities industry in any capacity. Between February and July 2008, Jolley offered and sold securities to an investor and collected a total of at least \$35,000.00. The Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investor. The Respondent received the above mentioned funds from an investor and used those funds to pay for various personal expenses based on back records. The Respondent directly and indirectly failed to disclose material information.

The Respondent consents to the sanctions placed by the Division; he agrees to the imposition of a cease and desists order, prohibiting him from any conduct that violates the Act. The Respondent acknowledges that violation of this Stipulation and Consent order is a third degree felony. The Respondent will not seek to be licensed in the securities industry in the state of Utah. He will cooperate with the Division and the Federal Government in any future investigations. The Division imposes a fine of \$35,000.00 offset by restitution payments to the investor.

Action: Brent Baker made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Dennis John Rowley: Dave Hermansen reported that Mr. Rowley is/was a resident of Utah and has never been licensed in the securities industry in any capacity. The Respondent needed \$70,000.00 to renovate a home in Draper, UT. The investor was told that he/she would receive interest of 100% from the Respondent within 60 days of his/her investment. The Respondent claimed he would renovate the home and have the property re-appraised, take out a loan on the higher value, and pay back the investor. \$70,000.00 was withdrawn from the investor's bank account and given over to the Respondent. The Respondent directly or indirectly made false statements in connection with the offer and sale of a security. The Respondent failed to disclose material information which was necessary to make representations not misleading.

The Respondent will cease and desist from violating the Utah Uniform Securities Act. The Respondent is barred from the securities industry. The Respondent will cooperate with the Division, the State of Utah and the Federal Government in any future investigations and/or prosecutions relevant to the matter. The Respondent will pay restitution as requires in the criminal case.

Action: Brent Baker made a motion to approve the Stipulation and Consent Order. The motion was seconded and carried.

Craig Eldon Taylor dba The Mall Hop and Smoothie Beach: Mr. Taylor was present, and spoke against the entry of a default order in his case. The Division discussed the deadlines that had been missed by the Respondent and the reasons that default was appropriate.

Action: The Commission will not consider the Final Order by Default at this time but Mr. Taylor must fully comply with and be ready to present at the March 28, 2013 Commission Meeting. If he is not in compliance, an order will be taken against him at the next commission meeting.

Next Meeting: May 23, 2013

Tim Bangerter made a motion to adjourn the meeting. The motion was seconded and carried.

Approved: _____



Erik Christiansen, Chairman

Date: 3/28/13