

BENETTE L. ZIVLEY
SECURITIES COMMISSIONER

CARLA JAMES
DEPUTY SECURITIES COMMISSIONER

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Texas State Securities Board

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Austin, Texas 78701-2407
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IN THE MATTER OF THE APPLICATION §
FOR AGENT REGISTRATION OF §
BRIAN GRAYSON KIDDER §

Order No. REG11-SUS-01

TO: Brian Grayson Kidder (CRD No. 2255243)
ACAP Financial Inc.
57 West 200 South Ste. 202
Salt Lake City, UT 84101

DISCIPLINARY ORDER

Be it remembered that Brian Grayson Kidder ("Respondent") appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order") and the Findings of Fact and Conclusions of Law contained herein.

FINDINGS OF FACT

1. Respondent has waived (a) Respondent's right to notice and hearing in this matter; (b) Respondent's right to appear and present evidence in this matter; (c) Respondent's right to appeal this Order; and (d) all other procedural rights granted to the Respondent by The Securities Act, Tex. Rev. Civ. Stat. Ann. art. 581-1 et seq. (West 2010) ("Texas Securities Act"), and the Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.001 et seq. (West 2008 & Supp. 2010) ("Administrative Procedure Act").
2. On or about March 21, 2011, Respondent filed for registration with the Securities Commissioner as an agent of ACAP Financial Inc., which is currently pending.
3. From on or about March 24, 2008 to on or about August 11, 2008, Respondent was registered with the Securities Commissioner as an agent of Tejas Securities Group, Inc. ("Tejas Securities"), a securities dealer.

4. On or about January 7, 2009, Respondent filed for registration with the Securities Commissioner as an agent of Fifth Street Capital, LLC ("Fifth Street"), a securities dealer.
5. From on or about September 3, 2009 to on or about October 27, 2009, Respondent was registered with the Securities Commissioner as an agent of Fifth Street.
6. From on or about September 4, 2009 through September 18, 2009, the Respondent was suspended for ten (10) business days pursuant to an order issued by this Agency, Order No. IC09-SUS-18 ("Order").
7. On or about May 9, 2008, Respondent was charged with misdemeanor theft in Travis County, Texas. The misdemeanor theft charge was dismissed on April 15, 2011 in the Criminal County Court at Law No. 6 of Travis County, Texas.
8. Disclosure Question 14.B(1)(b) of the Form U-4 required Respondent to answer "Yes" or "No" as to whether he has "been *charged* with a *misdemeanor* specified in 14B(1)(a)?"
9. Disclosure Question 14.B(1)(a) of the Form U-4 includes a misdemeanor involving the "wrongful taking of property."
10. Disclosure Question 14.D(1)(a) of the Form U-4 required Respondent to answer "Yes" or "No" as to whether any state regulatory agency "*found* you to have made a false statement or omission or been dishonest, unfair or unethical?"
11. Disclosure Question 14.D(1)(b) of the Form U-4 required Respondent to answer "Yes" or "No" as to whether any state regulatory agency "*found* you to have been *involved* in a violation of *investment-related* regulation(s) or statute(s)?"
12. Disclosure Question 14.D(1)(d) of the Form U-4 required Respondent to answer "Yes" or "No" as to whether any state regulatory agency "*found* you to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked or restricted?"
13. Disclosure Question 14.D(1)(e) of the Form U-4 required Respondent to answer "Yes" or "No" as to whether any state regulatory agency "denied, suspended, or revoked your registration or license or otherwise, by *order*, prevented you from associating with an *investment-related* business or restricted your activities?"
14. Respondent did not amend his Form U-4 to disclose the misdemeanor theft charge while registered with Tejas Securities.
15. Respondent did not amend his Form U-4 to disclose the Order while registered, from on or about September 3, 2009 through October 27, 2009, with Fifth Street.

16. Respondent answered "No" to Item 14.B(1)(b) on his January 7, 2009 Form U-4 and on his March 21, 2011 Form U-4.
17. Respondent answered "No" to Items 14.D(1)(a), (b), (d) and (e) on his March 21, 2011 Form U-4.
18. The January 7, 2009 Form U-4 and March 21, 2011 Form U-4 filed by the Respondent also included a section titled, "Individuals/Applicant's Acknowledgement and Consent", which he executed and therein stated, in part:

"I swear or affirm that I have read and understand the items and instructions on this form and that my answers (including attachments) are true and complete to the best of my knowledge. I understand that I am subject to administrative, civil or criminal proceedings if I give false or misleading answers."

"I agree to update this form by causing an amendment to be filed on a timely basis whenever changes occur to answers previously reported. Further, I represent that, to the extent any information previously submitted is not amended, the information provided in this form is currently accurate and complete."

19. Pursuant to §101.2(c) and §133.33(a)(3) of the Rules and Regulations of the Texas State Securities Board ("Board Rules"), certain forms required to be filed with the Securities Commissioner, including the Form U-4, have been adopted as Board Rules.
20. Pursuant to §115.9(a)(1)(B) of the Board Rules, registered agents are required to disclose to the Securities Commissioner, within thirty (30) days after its entry, any administrative order issued by a state authority, which order was entered after notice and opportunity for a hearing, suspending the person's registration as an agent.
21. Pursuant to §115.9(a)(6) of the Board Rules, registered agents are required to disclose to the Securities Commissioner, within thirty (30) days after its entry, any change in any other information previously disclosed to the Securities Commissioner on any application form or filing.
22. Pursuant to Section 14.A(6) of the Texas Securities Act, the Securities Commissioner may reprimand and suspend a person registered under the Texas Securities Act if the person has violated any of the provisions of the Texas Securities Act or Board Rules.

23. Pursuant to Section 14.A(7) of the Texas Securities Act, the Securities Commissioner may reprimand and suspend a person registered under the Texas Securities Act if the person has made any material misrepresentation to the Securities Commissioner in connection with any information deemed necessary by the Securities Commissioner to determine an agent's business repute or qualifications.

UNDERTAKING

1. Respondent undertakes and agrees that all information concerning Respondent that has been and will be disclosed to the Securities Commissioner shall be true and complete to the best of Respondent's knowledge, and any change in information concerning the Respondent which was previously disclosed to the Securities Commissioner on any application form or filing, including but not limited to new and amended Form U-4 Disclosure Reporting Pages, shall be timely updated, amended and reported as required by §115.9(a)(6) of the Board Rules.

CONCLUSIONS OF LAW

1. Section 115.9(a)(1) of the Board Rules required Respondent to report to the Securities Commissioner within thirty (30) days after its occurrence any administrative order issued by a state authority which order was entered after notice and opportunity for a hearing, suspending the person's registration as an agent.
2. Section 115.9(a)(6) of the Board Rules required Respondent to report to the Securities Commissioner within thirty (30) days after its occurrence any change in information previously disclosed to the Securities Commissioner on any application form or filing.
3. Respondent's failure to update his "No" response to Disclosure Question 14.B(1)(b) while registered with Tejas Securities constitutes a violation of §115.9(a)(6) of the Board Rules and is a basis for the issuance of an order reprimanding and suspending an agent pursuant to Section 14.A(6) of the Texas Securities Act.
4. Respondent's failure to update his "No" response to Disclosure Questions 14.D(1)(a), (b), (d) and (e) while registered, from on or about September 3, 2009 through October 27, 2009, with Fifth Street also constitutes a violation of §115.9(a)(6) of the Board Rules and is a basis for the issuance of an order reprimanding and suspending an agent pursuant to Section 14.A(6) of the Texas Securities Act.

5. Respondent's "No" response to Disclosure Question 14.B(1)(b) on his January 7, 2009 Form U-4 and on his March 21, 2011 Form U-4 constitute material misrepresentations to the Securities Commissioner of information deemed necessary by the Securities Commissioner to determine the business repute or qualifications of an agent and is a basis for the issuance of an order reprimanding and suspending an agent pursuant to Section 14.A(7) of the Texas Securities Act.
6. Respondent's "No" response to Disclosure Questions 14.D(1)(a), (b), (d) and (e) on his March 21, 2011 Form U-4 constitutes a material misrepresentation to the Securities Commissioner of information deemed necessary by the Securities Commissioner to determine the business repute or qualifications of an agent and is a basis for the issuance of an order reprimanding and suspending an agent pursuant to Section 14.A(7) of the Texas Securities Act.

ORDER

1. It is therefore ORDERED that the registration of Brian Grayson Kidder as an agent of ACAP Financial Inc. is hereby GRANTED.
2. It is further ORDERED that Brian Grayson Kidder is hereby REPRIMANDED.
3. It is further ORDERED that Brian Grayson Kidder is hereby SUSPENDED for a period of thirty (30) business days from the date this Order is entered by the Securities Commissioner. In the event that the registration of Brian Grayson Kidder is terminated before the end of this period, the suspension period will be tolled from the date that the registration of Brian Grayson Kidder is terminated to the date that the registration of Brian Grayson Kidder is effective again.
4. It is further ORDERED that Brian Grayson Kidder COMPLY with the term of the Undertaking enclosed herein.

SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 12th
day of July, 2011.



BENETTE L. ZIVLEY
Securities Commissioner

Respondent:

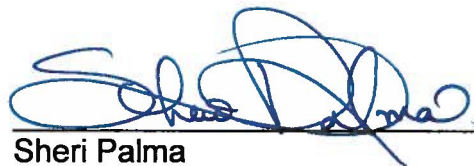


Brian Grayson Kidder

Approved as to Form:



Patricia A. Louterback
Director
Registration Division

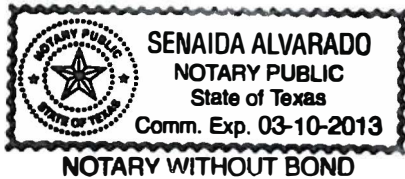


Sheri Palma
Attorney
Registration Division

ACKNOWLEDGMENT

On the 12 day of July, 2011, Brian Grayson Kidder ("Respondent") personally appeared before me, executed the foregoing Order and Undertaking, and acknowledged that:

1. Respondent has read the foregoing Order;
2. Respondent has been fully advised of his rights under the Texas Securities Act and the Administrative Procedure Act;
3. Respondent knowingly and voluntarily consents to the entry of the foregoing Order and Undertaking and the Findings of Fact and Conclusions of Law contained therein; and
4. Respondent, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived his rights as set forth therein.



[affix notary seal here]

Senaida Alvarado
Notary Public in and for
the State of Texas

My commission expires on: 3-10-13