

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:

**UNITED PRECIOUS METALS, LLC;
CLARK THOMAS JOLLEY; AND
PHILLIP GREGORY WAGERS**

Respondents.

**MOTION FOR ENTRY OF
DEFAULT JUDGMENT**

**Docket No. SD-02-0005
Docket No. SD-02-0007
Docket No. SD-02-0008**

The Utah Division of Securities (“Division”) hereby moves for a default judgment against United Precious Metals, LLC; Clark Thomas Jolley; and Phillip Gregory Wagers (collectively “Respondents”) based on the following statement of relevant facts:

STATEMENT OF RELEVANT FACTS

1. On January 11, 2002, the Division commenced a formal adjudicative proceeding by issuing an Emergency Order to Cease and Desist, Order to Show Cause (“Emergency Order”) and Notice of Agency Action (“Notice”) to Respondents. (See Exhibit A)
2. On February 12, 2002, the Division issued an Amended Notice of Agency Action to Respondents. (See Exhibit B).

3. A copy of the original Emergency Order and Notice was hand delivered to:
 - a. Phillip G. Wagers
2415 Cinnabar
Salt Lake City, UT 84121
4. Copies of the Emergency Order and Notice were mailed, by certified mail, to:
 - a. Clark Thomas Jolley
7957 S. Ponderosa Way
Sandy, UT 84094
 - b. United Precious Metals, LLC
3919 West 1820 South
Salt Lake City, UT 84104
5. Return receipts for the Emergency Orders sent by certified mail show that Clark Thomas Jolley received the Emergency Order on January 16, 2002 and that CK signed for the Emergency Order delivered to United Precious Metals. The United Precious Metals return receipt is not dated. (See Exhibit C).
6. The Amended Notice of Agency Action was sent to Respondents by certified mail on February 12, 2002.
7. The Amended Notice of Agency Action required a written response within thirty (30) days of the date of the Notice.
8. On July 29, 2002, Wagers pled guilty to securities fraud, a second-degree felony; sale of a security by an unlicensed agent, a third-degree felony; and sale of an unregistered security, a third-degree felony.

9. On September 20, 2002, Jolley pled guilty to securities fraud, a second-degree felony; sale of a security by an unlicensed agent, a third-degree felony; and sale of an unregistered security, a third-degree felony.
10. Subsequent to entering their guilty pleas, Respondents contacted the Division in an effort to resolve the pending administrative matter.
11. On January 30, 2003, the Division sent Respondents' attorney, Stephen T. Hard, a letter indicating that attempts to resolve the matter without a hearing had been unsuccessful. The January 30, 2003 letter provided Respondents 30 additional days to file an answer, and stated that if the answer was not filed by that time, the Division would move for a default judgment.
12. To date, neither the Division nor counsel for the Division have received an answer to the Emergency Order.

LAW AND ARGUMENT

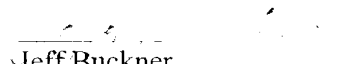
For all formal adjudicative proceedings, a respondent must file and serve a written response to a petition. Utah Code Ann. § 63-46b-6 (Supp. 1988). Default may be entered against a party who fails to file an answer. Utah Code Ann. § 63-46b-11(1)(c). Because Respondents failed to file an answer, default may be appropriately entered against them.

WHEREFORE, the Division requests that the Court find Respondents in default pursuant to Utah Code Ann. § 63-46b-11(1)(c) and requests the Court to enter a judgment for the Division as follows:

1. That Respondents be adjudged and decreed to have engaged in the acts alleged in the petition in violation of the Utah Uniform Securities Act;
2. That Respondents be Ordered to permanently cease and desist from any violations of the Act; and
3. Requiring Respondents to pay a fine of \$216,000. If full restitution in the criminal case is paid while Respondents are under the supervision of Adult Probation and Parole, the Division will give Respondents a dollar for dollar credit against the fine amount.

DATED this 5 day of March, 2003.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL


Jeff Buckner
Assistant Attorney General

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Utah Department of Commerce
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Respondents.

AFFIDAVIT OF NON-RESPONSE

**Docket No. SD-02-0005
Docket No. SD-02-0007
Docket No. SD-02-0008**

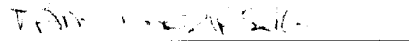
Pam Radzinski, first being duly sworn, deposes and states as follows:

1. I am the Executive Secretary for the Department of Commerce Division of Securities ("Division"). I have personal knowledge of all matters stated in my affidavit.
2. As executive secretary for the Division of Securities, I am responsible for supervising the mailing of the Division's Emergency Orders and for receiving any responses filed by licensees.
3. On January 11, 2002, the Division hand delivered a copy of the Emergency Order to Cease and Desist, Order to Show Cause and Notice of Agency Action to Phillip Wagers,

and mailed a copies, by certified mail to United Precious Metals, and Clark Thomas Jolley on January 14, 2002.

4. The Notice of Agency Action stated that if Respondents failed to file a written response to the Petition within thirty (30) days of the date of the Notice of Agency Action, a default would be entered.
5. On February 12, 2002, the Division sent an Amended Notice of Agency Action scheduling a hearing for March 20, 2002.
6. As of the date of this Affidavit, the Division has not received an answer from United Precious Metals, Wagers or Jolley.

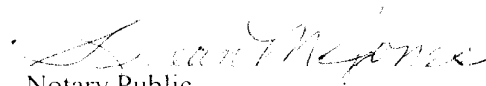
DATED this 5th day of March, 2003.



Pam Radzinski
Executive Secretary

SALT LAKE COUNTY)
) ss
STATE OF UTAH)

Signed and subscribed to before me this 5th day of March, 2003.


Notary Public

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PHILLIP GREGORY WAGERS**

Respondents.

**NOTICE OF ENTRY OF
DEFAULT AND ORDER**

**Docket No. SD-02-0005
Docket No. SD-02-0007
Docket No. SD-02-0008**

I. DEFAULT

A formal adjudicative proceeding was initiated by the Division's Emergency Order to Cease and Desist, Order to Show Cause and Notice of Agency Action ("Emergency Order") dated January 11, 2002 to United Precious Metals, LLC; Clark Thomas Jolley; and Phillip Gregory Wagers (collectively "Respondents"). The Division sent by certified mail or hand delivered a copy of the Emergency Order to each Respondent's last known address. On February 12, 2002, the Division issued an Amended Notice of Agency Action to Respondents.

The Notice of Agency Action required Respondents to file a written response within thirty (30) days from the date of the Amended Notice. Attorney Stephen T. Hard ("Hard") contacted the Division and stated that he would be representing all Respondents in the administrative action.

On January 30, 2002, the Division sent Hard a letter stating that it appeared that attempts to resolve the matter without a hearing had been unsuccessful, and that the Division intended to proceed with a hearing. The letter provided Respondents 30 additional days to file an answer. To date, Respondents have not filed an answer.

On March 5, 2003, the Division filed a Motion for Default Judgment against Respondents.

Utah Code Ann. § 63-46b-11(1)(c) provides that an order of default may enter if a Respondent fails to file a written response to a petition for a formal adjudicative proceeding. Respondents have not filed an answer to the Amended Emergency Order. Accordingly, Respondents are held in Default.

After the issuance of a default order, Utah Code Ann § 63-46b-11 (4)(a) provides that further proceedings may be conducted to complete the adjudicative proceeding without participation of the defaulting party. Accordingly, the Court makes the following findings of fact:

II. FINDINGS OF FACT

1. United Precious Metal (“UPM”) is a Utah LLC incorporated on January 12, 1999. The status of the company currently shows “Expired” for failure to renew. UPM maintains its principal place of business in Salt Lake City, Utah.
2. Manly Elwood (Ted) Logan (“Logan”) is an individual who acted as an agent of UPM in selling and attempting to sell the securities of UPM. The Action against Logan is still pending.
3. Clark Thomas Jolley (“Jolley”) is an individual who was a member and registered agent of UPM.
4. Phillip Gregory Wagers (“Wagers”) is an individual who was a member of UPM.
5. In late 1999 or early 2000, Logan contacted Marci (Lloyd) Jackman (“Jackman”) about an investment in UPM. In January, 2000, Jackman invested \$10,000 in UPM.
6. Jackman’s investment was received by UPM and deposited into the UPM checking account at Brighton Bank. On the same day as the deposit, checks in the amount of \$3,300 each were issued to Logan, Jolley and Wagers.
7. Since investing in UPM, Jackman has contacted Logan, Jolley and Wagers about her investment. To this date, Jackman has not received her principal back nor has she received any return on her investment.
8. In early 2000, Logan contacted two Utah investors, Garrett Kelsch (“Kelsch”) and Stan Thompson (“Thompson”) about an investment in UPM.

9. During the conversations with these investors, Logan represented:
 - a. UPM owned a quantity of iridium which it needed to assay and secure a letter of credit;
 - b. Once it had the letter of credit, the iridium was going to be used in a trading program;
 - c. UPM would guarantee that the principal plus 15 percent interest would be paid back in 28 days
10. During the conversation, Logan did not indicate if commission was to be paid from an investment and did not mention the backgrounds of the principals of the company.
11. Based upon Logan's representations, Kelsch invested \$10,000 in UPM on April 14, 2000. For his investment he received a Promissory Note signed by Jolley.
12. Based upon Logan's representations, Thompson invested \$10,000 in UPM on June 30, 2000. For his investment he received a Promissory Note signed by Jolley.
13. In conversations surrounding the issuance of the promissory notes to Kelsch and Thompson, Jolley made the same representations about the use of the funds as Logan made.
14. Each of these investments were received by UPM and deposited into the UPM checking account at Brighton Bank. On the same day as the deposits, checks in the amount of \$3,000 each were issued to Logan, Jolley and Wagers. Wagers is listed as a member of UPM but neither Kelsch nor Thompson has had any contact with him.

15. In the summer of 2000, Logan contacted a neighbor, Douglas Nelson ("Nelson"), about an investment in UPM.
16. During his conversations with Nelson, Logan represented:
 - a. That UPM had several barrels of iridium that it needed to insure and certify so that they could be used to buy CDs.
 - b. That Logan was going to invest \$30,000 to \$40,000 of his own money in UPM.
17. Nelson was leery about getting involved since he does not like taking risks. However, Jay Swint ("Swint") a friend of Nelson's said he had known Logan for 30 years and Logan could be trusted.
18. Based upon the representations of Logan and Swint, Nelson invested \$5,000 in UPM. For his investment, Nelson received what he characterized as a contract signed by Jolley.
19. In conversations surrounding the issuance of the contract to Nelson, Jolley stated that Nelson would receive his \$5,000 principal back in four weeks and then a payment for what would be equal to 15 percent per month interest for one year, or \$9,000, six weeks after payment of the principal.
20. Nelson's investment was received by UPM and deposited into UPM's account at Brighton bank. On the same day as the deposit, checks in the amount of \$1,600 each were issued to Logan, Jolley and Wagers.
21. In January, 2002, Nelson confronted Logan and Jolley about the payments made to them and to Wagers from Nelson's investment. Logan's response was that he had taken a

second mortgage on his home to help fund a previous venture with Jolley, and the payments to him were repayment for that investment. Jolley stated that they needed to do it that way because it helped smooth things out. Jolley further stated that they did not keep any money in this particular account.

22. At the time of the investment, UPM, Logan and Jolley did not disclose to potential investors that their investments would be used to repay Logan on a previous investment.
23. Since the notes have been in default, Nelson and Swint (who invested \$10,000 approximately one week before Nelson), have been attempting to get their money back. Nelson stated that he has been given many promises that his money would be returned on a particular date, but as those dates have come and gone, he has not received the money. The sum of \$2,000 was provided to be split between Nelson and Swint.
24. Although Jolley has stated that UPM does not have the money to pay, Nelson and Swint have been promised that the remainder of their money will be returned on January 15, 2002.
25. The promissory notes and contract are securities under §61-1-13(24)(a)(i).

III. CONCLUSIONS OF LAW

26. 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:
1) employ any device, scheme, or artifice to defraud;
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; or
3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

27. Respondents violated §61-1-1 of the Act by:
- a. Failing to disclose that 90 percent or more of the investments collected were used to pay the principals of UPM;
 - b. Failing to disclose that Logan was being repaid from investor funds for a previous venture he had with Jolley;
 - c. Failing to disclose the background of any of the officers and directors of UPM;
and
 - d. Guaranteeing that the principal would be returned in 28 days with a years interest (calculated at 15 percent monthly) paid 6 weeks later.

28. Section 61-1-3 (1) of the Act provides that:

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

Section 61-1-3(2)(a) of the Act further states that:

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

29. Agent in defined in §61-1-13(2)(a) of the Act to include:

Any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

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30. Logan, Jolley and Wagers are not licensed to sell securities in Utah. Therefore, Logan, Jolley and Wagers violated §61-1-3(1) of the Act by effecting and attempting to effect the sale of securities of UPM.
31. Since Logan, Jolley and Wagers are not licensed to sell securities in Utah, UPM violated §61-1-3(2)(a) by employing or engaging unlicensed agents to sell its securities.
32. Section 61-1-7 of the Act states:
- It is unlawful for any person to offer or sell any security in this state unless it is registered under this chapter or the securities or transaction is exempted under Section 61-1-14**
33. The securities that Respondents are attempting to sell, and to find others to sell, have not been registered with the Division and do not appear to qualify for any exemptions from registration found in §61-1-14 of the Act.
34. Respondents are therefore in violation of Utah Code Ann. § 61-1-7.
35. Based upon the fact that UPM has no source of income, and has promised to pay investors back their principal this week, the Division assumes that additional investor funds are currently being sought.


IV. ORDER

WHEREFORE, IT IS ORDERED that

1. Respondents are found to have engaged in the acts alleged in the Emergency Order to Cease and Desist and Order to Show Cause;
2. By engaging in those acts, Respondents violated the Utah Uniform Securities Act.

3. Respondents permanently cease and desist from violation of §§61-1-1, 61-1-3, 61-1-7 or any other section of the Act; and
4. Respondents pay to the Division a fine, jointly and severally, of \$216,000. If restitution in the criminal case is paid in full while Respondents are supervised by Adult Probation and Parole, and proof of payment is provided to the Division, the Division will give Respondents a dollar for dollar credit against the fine amount.

DATED this 13th day of March, 2003.



S. Anthony Taggart
Director
Division of Securities.

Pursuant to §63-46b-11(3), Respondent may seek to set aside the Default Order entered in this proceeding by filing such a request with the Division consistent with the procedures outlined in the Utah Rules of Civil Procedure.

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of March 2003, I mailed, by certified mail, a true and correct copy of the foregoing Motion For Entry of Default Judgment, Affidavit of Non-Response and Notice of Entry of Default and Order to:

Stephen T. Hard
7889 South Prospector Drive
Salt Lake City, UT 84121
CERTIFIED MAIL: 7000 1670 0002 3201 8049

United Precious Metals LLC
3919 West 1820 South
Salt Lake City, UT 84104
CERTIFIED MAIL: 7000 1670 0002 3201 8032

Clark Thomas Jolley
7957 South Ponderosa Way
Sandy, UT 84094
CERTIFIED MAIL: 7000 1670 0002 3201 8018

Phillip Gregory Wagers
2415 East Cinnabar
Salt Lake City, UT 84121
CERTIFIED MAIL: 7000 1670 0002 3200 4332



Pamala Radzinski
Executive Secretary