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Texas State Securities Board

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IN THE MATTER OF
THE AGENT REGISTRATIONS OF
DOUGLAS RAY BOUSAID AND
KYLE TIMOTHY HOLLAND,
THE DEALER REGISTRATION OF
FIFTH STREET CAPITAL, LLC, AND
THE APPLICATION FOR AGENT REGISTRATION
OF BRIAN GRAYSON KIDDER

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Order No. IC09-SUS-18

TO: Douglas Ray Bousaid (CRD No. 4401727)
Fifth Street Capital, LLC
7000 Bee Caves Rd., Ste. 300
Austin, TX 78746

Kyle Timothy Holland (CRD No. 2308543)
Fifth Street Capital, LLC
7000 Bee Caves Rd., Ste. 300
Austin, TX 78746

Brian Grayson Kidder (CRD No. 2255243)
Fifth Street Capital, LLC
7000 Bee Caves Rd., Ste. 300
Austin, TX 78746

Kyle Holland, Managing Director
Fifth Street Capital, LLC (CRD No. 103701)
7000 Bee Caves Rd., Ste. 300
Austin, TX 78746

DISCIPLINARY ORDER

Be it remembered that Douglas Ray Bousaid ("Respondent Bousaid"), individually, Kyle Timothy Holland ("Respondent Holland"), individually, Brian Grayson Kidder ("Respondent Kidder"), individually, and Fifth Street Capital, LLC ("Respondent Fifth Street") by and through Kyle Holland, its Managing Director, (collectively "Respondents"), appeared before the Securities Commissioner of the State of Texas ("Securities Commissioner") and consented to the entry of this order ("Order"), the Undertakings incorporated by reference herein, and the Findings of Fact and the Conclusions of Law contained herein.

FINDINGS OF FACT

1. Respondents have waived (a) Respondents' right to notice and hearing in this matter; (b) Respondents' right to appear and present evidence in this matter; (c) Respondents' right to appeal this Order; and (d) all other procedural rights granted to Respondents by The Securities Act, TEX. REV. CIV. STAT. ANN. art. 581-1 et seq. (Vernon 1964 & Supp. 2008) ("Texas Securities Act") and the Administrative Procedure Act, TEX. GOV'T CODE ANN. § 2001.001 et seq. (Vernon 2008) ("Administrative Procedure Act").

Registration

2. On or about February 25, 2000, Respondent Fifth Street registered with the Securities Commissioner as a dealer, which was terminated on or about December 31, 2007 when Respondent Fifth Street failed to renew its registration, then Respondent Fifth Street renewed its registration on or about March 7, 2008, which is currently effective.
3. On or about March 22, 2004, Respondent Holland registered with the Securities Commissioner as an agent for Respondent Fifth Street, which was terminated on or about December 31, 2007 when Respondent Fifth Street failed to renew his registration, then Respondent Fifth Street renewed his registration on or about March 7, 2008, which is currently effective.
4. On or about May 13, 2004, Respondent Kidder registered with the Securities Commissioner as an agent for Respondent Fifth Street, which was terminated on or about December 31, 2007 when Respondent Fifth Street failed to renew his registration. On or about January 7, 2009, Respondent Kidder re-applied for registration with the Securities Commissioner as an agent of Respondent Fifth Street, which is currently pending. Respondent Kidder is reported to be the Chief Compliance Officer for Respondent Fifth Street.
5. On or about January 4, 2005, Respondent Bousaid registered with the Securities Commissioner as an agent for Respondent Fifth Street, which was terminated on or about December 31, 2007 when Respondent Fifth Street failed to renew his registration, then Respondent Fifth Street renewed his registration on or about March 7, 2008, which is currently effective. Respondent Bousaid is reported to be an owner of and a control person for Respondent Fifth Street.

Failure to Maintain and Produce Records

6. The Staff of the Texas State Securities Board ("Staff") performed an inspection of Respondent Fifth Street on or about April 3, 2008 ("Inspection").

7. During the course of the Inspection, Staff discovered that Respondent Fifth Street failed to maintain certain required information on Respondent Fifth Street's trade blotter, including, but not limited to, the time orders were received, the time orders were executed, and whether orders were an exercise of discretionary authority; and Respondent Fifth Street failed to have a supervisor approve multiple transactions on such trade blotter.
8. During the course of the Inspection, Staff also discovered that Respondent Fifth Street did not furnish an account record to each client for verification purposes.
9. During the course of the Inspection, Staff also discovered that Respondent Fifth Street failed to maintain and preserve a copy of Respondent Fifth Street's written supervisory procedures in effect prior to May 26, 2006.
10. On or about June 2, 2008, Respondent Fifth Street failed to produce records requested by Staff within 48 hours of the request made on May 30, 2008.

Failure to Establish, Maintain, and Enforce Written Supervisory Procedures

11. During the course of the Inspection, Staff also discovered that the following provisions of Respondent Fifth Street's written supervisory procedures were inaccurate:

"2.1. Within the office, the following people are hereby designated in writing as supervisors with their respective areas of responsibility designated...: Dianne Goodin...FINOP...Effective 6/1/2004."

At the time of the Inspection, Dianne Goodin was no longer an employee of Respondent Fifth Street.

Multiple provisions of the written supervisory procedures referred to Respondent Fifth Street's clearing firm as Legent Clearing.

At the time of the Inspection, Respondent Fifth Street used North American Clearing to conduct Respondent Fifth Street's clearing activities.

12. During the course of the Inspection, Staff also discovered that Respondent Fifth Street failed to prepare or maintain order tickets, which violated Respondent Fifth Street's written procedures, as follows:

"3.3.4. In order to ensure accurate order transmission and compliance with SEC regulations and certain rules of the various self-regulatory organizations, the Company shall take great care in preparing order tickets. Order tickets must be completely filled out as to all details of the order...prior to the entry of the order."

13. During the course of the Inspection, Staff also discovered that Respondent Fifth Street failed to maintain certain suitability information, including, but not limited to, age, occupation, employer, annual income, and investment objectives, which violated Respondent Fifth Street's written procedures, as follows:

"3.4. All associated persons will continually determine each customer's investment objectives and desires. These efforts will be documented as described...Investments will not be allowed nor recommended which are not compatible with the objectives and desires of each customer.

Factors to be utilized in determining such objectives and desires will be: (a) customer's relative financial position; (b) income and type of employment..."

14. During the course of the Inspection, Staff also discovered that Respondent Fifth Street failed to approve written correspondence after February 2, 2005, and failed to approve any e-mail correspondence, which violated Respondent Fifth Street's written procedures, as follows:

"5.10. The Company requires that all written correspondence be approved by a principal...prior to distribution. Reviews and approvals shall be evidenced by the reviewer's initials or signature on the Company's file copy of the document."

"5.11.4. In lieu of written correspondence, registered persons also may use E-mail to send personalized letters to individual clients..."

All E-mails qualifying as correspondence sent and received by registered representatives is captured in a central compliance archived folder. The principal designated for each person's correspondence review will then initiate a key word search of the representative's e-mail...Each designated principal will ensure a minimum of 10% of the representatives e-mail will be reviewed per day. Records of such actions and all approved e-mail correspondence will be retained for three (3) years."

15. During the course of the Inspection, Staff also discovered that Respondent Fifth Street failed to submit its privacy policy to its clients annually, and Respondent Holland failed to document Respondent Fifth Street's compliance with Regulation S-P, which violated Respondent Fifth Street's written procedures, as follows:

"7.3.5...Notices shall also be delivered annually for each active customer account.

Kyle Holland shall document the company's compliance with Regulation S-P by keeping a copy of the notices that were sent, and a log of the dates that the annual notifications were sent."

16. During the course of the Inspection, Staff also discovered that Respondent Fifth Street and Respondent Holland failed to maintain books and records in a secure or locked location and failed to maintain an inventory of which books and records the firm maintained or where such books and records were maintained, which violated Respondent Fifth Street's written procedures, as follows:

"7.3.8...Access to areas that house customer records shall be restricted only to employees who need access to such..."

To the extent practicable, the Company will limit access to its offices where confidential information could be observed or overheard...

Client records, and any other records that may contain non-public financial information, shall be kept in locked drawers and file cabinets. They shall only be removed when needed to service the client's account, and shall be in a locked drawer or file cabinet each evening. The keys shall be maintained by Kyle Holland..."

Unregistered Activity & Misrepresentation

17. During the course of the Inspection, Staff also discovered that Respondent Kidder sold securities on behalf of Respondent Fifth Street from on or about January 2008 to on or about February 2008, without first being registered as an agent of Respondent Fifth Street with the Securities Commissioner, and Respondent Fifth Street and Respondent Holland failed to ensure Respondent Kidder was properly registered, which violated Respondent's Fifth Street's written supervisory procedures, as follows:

"4.1.2.4. Kyle Holland will review the registration of each associated person by printing out his WEBCRD evidencing his qualifications and ensuring the associated person is properly registered for the products the firm is approved to sell."

18. Respondent Kidder and Respondent Fifth Street, through Respondent Holland, represented to Staff that Respondent Kidder had not engaged in activities involving sale of securities on behalf of Respondent Fifth Street after December 31, 2007.

Failure to Update Form U-4 and Form BD

19. On or about November 15, 2006, Respondent Bousaid was indicted and charged with felony driving while intoxicated (the "Felony"). On or about March 6, 2007, Respondent Bousaid pled guilty to the Felony charge and was sentenced to a fine of \$1,000 and six years confinement in the TDCJ Institutional Division. The sentence was suspended while Respondent Bousaid, with good behavior, is under supervision by the Community Supervision Officer of Travis County for a term of six years beginning May 22, 2007.
20. Respondent Bousaid timely informed Respondent Fifth Street of the Felony charge and conviction, however Staff was unable to determine when Respondent Bousaid informed Respondent Fifth Street of the Felony guilty plea.
21. On or about January 4, 2005, pursuant to Section 115.2 of the Board Rules, Respondent Bousaid filed a Form U-4 with the Securities Commissioner in connection with Respondent's application for registration with the Securities Commissioner as an agent of Respondent Fifth Street.
22. The Form U-4 requires the disclosure of any felony charge, conviction, or guilty plea.

23. Respondent Bousaid and Respondent Fifth Street did not disclose the guilty plea or Felony conviction on Respondent Bousaid's Form U-4 until July 19, 2007 and did not disclose the Felony charge until August 6, 2008.
24. On or about February 25, 2000, pursuant to Section 115.2 of the Board Rules, Respondent Fifth Street filed a Form BD with the Securities Commissioner in connection with Respondent's application for registration with the Securities Commissioner as a dealer.
25. The Form BD requires the disclosure of any control person's felony charge, conviction, or guilty plea, and the firm's current address.
26. Respondent Fifth Street changed addresses on or about January 2008, but did not timely disclose such change on Respondent Fifth Street's Form BD, which prevented Staff from performing the Inspection as originally scheduled.
27. Respondent Fifth Street and Respondent Holland did not disclose on Respondent Fifth Street's Form BD Respondent Bousaid's guilty plea or Felony conviction until June 11, 2008, Respondent Bousaid's felony charge until August 13, 2008, and Respondent Fifth Street's change of address until May 7, 2008, which violated the firm's procedures, as follows:

"4.1.3. The company will keep its membership application current by preparing amendments to its Form BD not later than thirty (30) days after learning of the facts of circumstances leading to the amendment. Kyle Holland will evidence his approval of the change by signing and dating the amendment."
28. Pursuant to Section 12.A of the Texas Securities Act, no agent shall, on behalf of any dealer, sell or offer for sale any securities within the state unless registered as an agent for that particular registered dealer under the provisions of this Act.
29. Pursuant to Section 14.A(3) of the Texas Securities Act, the Securities Commissioner may reprimand or suspend a person registered under the Texas Securities Act if the person has engaged in any inequitable practice in the sale of securities.
30. Pursuant to Section 14.A(5) of the Texas Securities Act, the Securities Commissioner may reprimand or suspend a dealer registered under the Texas Securities Act if such dealer sold securities in this state through an agent other than a registered agent.
31. Pursuant to Section 14.A(6) of the Texas Securities Act, the Securities Commissioner may reprimand or suspend a person registered under the Texas Securities Act if the person has violated any of the provisions of the Rules and Regulations of the State Securities Board ("Board Rules").

32. Pursuant to Section 14.A(7) of the Texas Securities Act, the Securities Commissioner may reprimand or suspend a person registered under the Texas Securities Act if the person has made any material misrepresentation to the Commissioner in connection with any information deemed necessary by the Commissioner to determine a dealer or agent's business repute or qualifications.
33. Pursuant to §101.2(c) and §133.33(a)(3)&(6) of the Board Rules, certain forms required to be filed with the Securities Commissioner, including the Forms U-4 and BD, have been adopted as Board Rules and have the same force and effect.
34. Pursuant to §115.5(b)(6) of the Board Rules, each registered securities dealer shall make and keep order memorandum showing the terms and conditions of orders, including, but not limited to, the time the order was received, the time the order was entered, and whether each order was discretionary.
35. Pursuant to §115.5(b)(13)(A) of the Board Rules, a registered dealer must make and keep an account record including the customer's name, employment status (including occupation), annual income, and the account's investment objectives.
36. Pursuant to §115.5(b)(13)(B) of the Board Rules, a registered dealer must make and keep a record indicating that the dealer has furnished to each customer within 30 days of opening an account and at least every 36 months, a copy of the account record requesting the customer mark any necessary corrections and return such record to the dealer.
37. Pursuant to §115.5(e)(1)(B) of the Board Rules, all records required to be made pursuant to §115.5(b), paragraph 6, must be preserved for a period of three years.
38. Pursuant to §115.5(e)(2)(D) of the Board Rules, each compliance, supervisory, and procedures manual must be maintained and preserved for a period of three years after the termination of the manual.
39. Pursuant to §115.7(e) of the Board Rules, the Securities Commissioner may require all records required to be maintained or maintained in the normal course of business of a dealer be made available to the Securities Commissioner within 48 hours of a request.
40. Pursuant to §115.9(a)(6) of the Board Rules, each registered securities dealer and registered agent shall report to the Securities Commissioner, within thirty (30) days, any change in any information previously disclosed to the Securities Commissioner on any application form or filing, which includes the Forms U-4 and BD.
41. Pursuant to §115.10(b)(1) of the Board Rules, each dealer shall establish, maintain, and enforce written procedures to supervise the activities of its agents that are reasonably designed to achieve compliance with the Texas Securities Act and Board Rules.

42. Pursuant to §115.10(d) of the Board Rules, each dealer must establish and implement procedures for the review and endorsement by a designated supervisor, in writing on an internal record, all transactions as well as incoming and outgoing written and electronic correspondence.

CONCLUSIONS OF LAW

1. Respondent Fifth Street's failure to update and enforce its written supervisory procedures is a violation of §115.10(b)(1) of the Board Rules.
2. Respondent Fifth Street's failure to maintain certain required information on its trade blotter and failure to have a supervisor approve all transactions on its trade blotter is a violation of §115.5(b)(6), §115.5(e)(1)(B), and §115.10(d) of the Board Rules.
3. Respondent Fifth Street's failure to furnish clients with an account record for verification purposes is a violation of §115.5(b)(13)(B) of the Board Rules.
4. Respondent Fifth Street's failure to produce records requested by Staff within 48 hours of the request is a violation of §115.7(e) of the Board Rules.
5. Respondent Fifth Street's failure to maintain certain suitability information is a violation of §115.5(b)(13)(A) of the Board Rules.
6. Respondent Fifth Street's failure to preserve and maintain a copy of Respondent Fifth Street's prior written supervisory procedures is a violation of §115.5(e)(2)(D) of the Board Rules.
7. Respondent Fifth Street's failure to review and approve written and e-mail correspondence is a violation of §115.10(d) of the Board Rules.
8. Respondent Kidder's sale of securities on behalf of Respondent Fifth Street without first being registered as an agent of Respondent Fifth Street is a violation of Section 12.A of the Texas Securities Act.
9. Respondent Fifth Street's sale of securities through an agent other than a registered agent constitutes a basis for the issuance of an order reprimanding or suspending a dealer pursuant to Section 14.A(5) of the Texas Securities Act.
10. Respondent Kidder, Respondent Fifth Street, and Respondent Holland's misrepresentation to Staff regarding Respondent Kidder's sale of securities on behalf of Respondent Fifth Street while not registered as an agent with the Securities Commissioner constitutes a basis for the issuance of an order reprimanding or suspending a dealer or agent pursuant to Section 14.A(7) of the Texas Securities Act.
11. Respondent Bousaid and Respondent Fifth Street's failure to disclose Respondent Bousaid's Felony charge, conviction, or guilty plea on Respondent Bousaid's Form U-4 within thirty days is a violation of §115.9(a)(6) of the Board Rules.

12. Respondent Fifth Street's failure to disclose Respondent Bousaid's Felony charge, conviction, or guilty plea and Respondent Fifth Street's change of address on Respondent Fifth Street's Form BD within thirty days is a violation of §115.9(a)(6) the Board Rules.
13. Respondent Holland's failure to perform those actions delegated to Respondent Holland in Respondent Fifth Street's written supervisory procedures constitutes an inequitable practice in the sale of securities, which is a basis for the issuance of an order reprimanding and suspending an agent pursuant to Section 14.A(3) of the Texas Securities Act.
14. Pursuant to Section 14.A(6) of the Texas Securities Act, the foregoing violations constitute bases for the issuance of an order reprimanding and suspending an agent and dealer.

ORDER

1. It is therefore ORDERED that the registration of Brian Grayson Kidder as an agent of Fifth Street Capital, LLC is hereby GRANTED.
2. It is further ORDERED that Douglas Ray Bousaid, Kyle Timothy Holland, Brian Grayson Kidder, and Fifth Street Capital, LLC are hereby REPRIMANDED.
3. It is further ORDERED that the registration of Brian Grayson Kidder is hereby SUSPENDED for a period of ten (10) 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 the registration of Douglas Ray Bousaid is hereby SUSPENDED for a period of five (5) business days from the date this Order is entered by the Securities Commissioner. In the event that the registration of Douglas Ray Bousaid is terminated before the end of this period, the suspension period will be tolled from the date that the registration of Douglas Ray Bousaid is terminated to the date that the registration of Douglas Ray Bousaid is effective again.
5. It is further ORDERED that the registration of Kyle Timothy Holland is hereby SUSPENDED for a period of ten (10) business days from the date this Order is entered by the Securities Commissioner. In the event that the registration of Kyle Timothy Holland is terminated before the end of this period, the suspension period will be tolled from the date that the registration of Kyle Timothy Holland is terminated to the date that the registration of Kyle Timothy Holland is effective again.

6. It is further ORDERED that the registration of Fifth Street Capital, LLC is hereby SUSPENDED for a period of one hundred and twenty (120) days from the date this Order is entered by the Securities Commissioner, except as necessary to effect requested liquidation transactions in the accounts of current customers. In the event that the registration of Fifth Street Capital, LLC is terminated before the end of this period, the suspension period will be tolled from the date that the registration of Fifth Street Capital, LLC is terminated to the date that the registration of Fifth Street Capital, LLC is effective again.
7. It is further ORDERED that Douglas Ray Bousaid, Kyle Timothy Holland, and Fifth Street Capital, LLC COMPLY with the terms of the Undertakings, incorporated by reference herein.

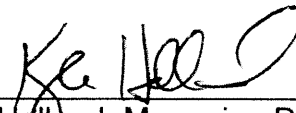
SIGNED AND ENTERED BY THE SECURITIES COMMISSIONER this 3rd
day of September, 2009.



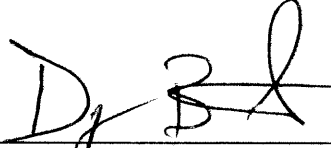
DENISE VOIGT CRAWFORD
Securities Commissioner

Respondents:

Fifth Street Capital, LLC



Kyle Holland, Managing Director



Douglas Ray Bousaid, Individually

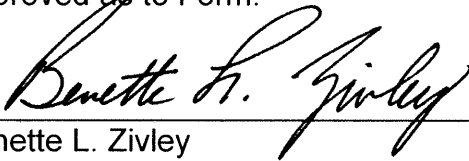


Kyle Timothy Holland, Individually



Brian Grayson Kidder, Individually

Approved as to Form:

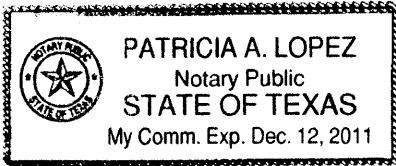


Benette L. Zivley
Director
Inspections and Compliance Division


ACKNOWLEDGMENT

On the 19 day of August, 2009, Fifth Street Capital, LLC ("Respondent Fifth Street"), by and through Kyle Holland, its Managing Director, appeared before me, executed the foregoing Order, and acknowledged that:

1. Kyle Holland is duly authorized to enter into the foregoing Order on behalf of Respondent Fifth Street;
2. Kyle Holland has read the foregoing Order;
3. Respondent Fifth Street has been fully advised of its rights under the Texas Securities Act and the Administrative Procedure Act;
4. Respondent Fifth Street knowingly and voluntarily consents to the entry of the foregoing Order and the Findings of Fact and Conclusions of Law contained herein; and
5. Respondent Fifth Street, by consenting to the entry of the foregoing Order, has knowingly and voluntarily waived its rights as set forth therein.



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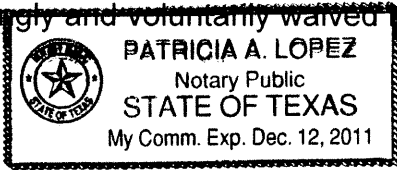
Notary Public in and for
The State of Texas

My commission expires on: 12/12/2011


ACKNOWLEDGMENT

On the 19 day of August, 2009, Douglas Ray Bousaid ("Respondent Bousaid") personally appeared before me, executed the foregoing Order, and acknowledged that:

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



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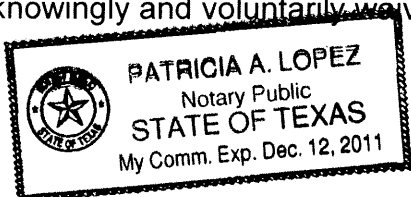
Notary Public in and for
The State of Texas

My commission expires on: 12-12-2011


ACKNOWLEDGMENT

On the 19 day of August, 2009, Kyle Timothy Holland ("Respondent Holland") personally appeared before me, executed the foregoing Order, and acknowledged that:

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



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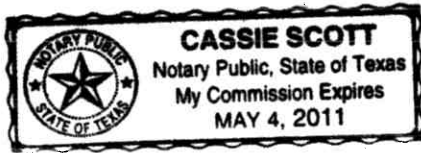
Notary Public in and for
The State of Texas

My commission expires on: 12-12-2011

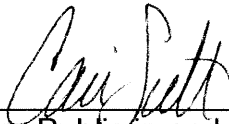
ACKNOWLEDGMENT

On the 26 day of August, 2009, Brian Grayson Kidder ("Respondent Kidder") personally appeared before me, executed the foregoing Order, and acknowledged that:

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



[affix notary seal here]



Notary Public in and for
The State of Texas

My commission expires on: May 4, 2011