

THE SECURITIES ACT

)

Order No. 2896

)

Section 8(1)

)

May 5, 2000

ERNEST HENRY BROSOWSKY

WHEREAS:

(A) On March 23, 2000, The Manitoba Securities Commission (the "Commission") issued a Notice of Hearing (the "Notice") giving notice of its intention to hold a hearing (the "Hearing") to consider, inter alia, whether or not it was in the public interest to suspend or cancel the registration of Ernest Henry Brosowsky ("Brosowsky") as a salesman under The Securities Act (the "Act");

(B) Staff of the Commission and the respondent entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated May 1, 2000 (the "Settlement Agreement"), which proposed settlement of the proceedings initiated by the Notice, subject to the approval of the Commission;

(C) The respondent has consented to the issuance of this Order and has waived his right to a full hearing;

(D) The Commission has reviewed the Settlement Agreement and is of the opinion that it is in the public interest to make this Order.

IT IS ORDERED:

1. **THAT** the Settlement Agreement, Schedule "A", be and the same is hereby approved.
2. **THAT** pursuant to subsection 8(1) of the Act, Brosowsky's registration as a salesman under the Act be suspended for a period of 45 days, commencing May 8, 2000 through to June 21, 2000, both inclusive.
3. **THAT** after the expiry of the suspension of Brosowsky's registration, commencing on June 22, 2000 Brosowsky's conduct and practices as a salesman registered under the Act be closely supervised by an individual acceptable to the Director, Registrations of the Commission on such terms as are deemed appropriate by the Director for a period of 6 months, ending on December 22, 2000;
4. **THAT** Brosowsky pay the sum of \$500.00 to the Minister of Finance of the Province of Manitoba towards the Commission's costs incurred in this matter, said sum to be paid within 7 days of the date of this Order.

BY ORDER OF THE COMMISSION

Director, Legal and Enforcement

Settlement Agreement

Ernest Henry Brosowsky

and

The Staff of The Manitoba Securities Commission

The Manitoba Securities Commission
1130 - 405 Broadway
Winnipeg, Manitoba
R3C 3L6

SETTLEMENT AGREEMENT

A. Introduction

A1. On March 23, 2000, The Manitoba Securities Commission (the "Commission") issued a notice of hearing (the "Notice of Hearing") giving notice of its intention to hold a hearing under The Securities Act (the "Act") to consider:

1. whether or not it is in the public interest to order, pursuant to subsection 8(1) of The Securities Act (the "Act"), that the registration of Ernest Henry Brosowsky ("Brosowsky") as a salesman under the Act be suspended or cancelled;
2. whether or not it is in the public interest to order that Brosowsky pay the costs of the investigation and hearing;
3. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

A2. Discussions have been held between the respondent and staff of the Commission ("Staff") in an effort to settle the matters set out in the Notice of Hearing and Statement of Allegations (the "Proceedings"). The Respondent has been advised of his right to legal counsel and has waived that right. A settlement (the "Settlement") has been reached based on the terms and conditions set forth in the herein agreement (the "Settlement Agreement").

A3. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against the respondent be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondent consents to the Settlement and to the making of the consent order referred to in paragraph D. below, on the terms and conditions set forth in this Settlement Agreement.

B.Statement of Facts

B1. At all material times, Brosowsky was registered as a salesman under the Act with Performa Financial Group Limited ("Performa"). At all material times, Performa was registered under the Act as a Broker-Dealer (Mutual Funds).

B2. Brosowsky is currently registered as a salesman under the Act with another Broker-Dealer.

B3. At all material times, the client referred to herein was a resident of the Province of Manitoba.

B4. In May of 1999, the client received two confirmation slips each evidencing a redemption on her behalf in her mutual fund account at Performa as follows:

<u>Transaction Date</u>	<u>Settlement Date</u>	<u>Trimark Fund</u>	<u>Net Amount</u>
April 30/99	May 4/99	Advtge Bnd/D	\$4,501.23
May 6/99	May 10/99	Advtge Bnd/D	\$5,598.34

(the "redemptions").

The confirmation slips identified Brosowsky as the registered representative.

B5. The client had not provided any instructions to Brosowsky for the redemptions.

B6. The client contacted Brosowsky. Brosowsky advised her that he had received instructions to redeem from a Charles Morrison ("Morrison").

B7. Morrison had handled financial affairs for the client and for her family for a number of years and was the executor of the estate of her late husband. At all material times, Morrison was not registered to trade in securities under the Act.

B8. Morrison had forwarded written instructions to Brosowsky dated April 21, 1999 requesting special withdrawals of \$4,600 and \$5,800 for April and May, respectively. Morrison had also communicated verbal instructions to Brosowsky regarding the redemptions.

B9. Brosowsky did not verify Morrison's authority to make the requests for the redemptions.

B10. At no time did Brosowsky contact the client to receive or to confirm any redemption instructions from her. At no time did Brosowsky contact the client to confirm the accuracy of Morrison's requests or to verify Morrison's authority for making such requests.

B11. Brosowsky acted upon the redemption requests of Morrison.

B12. Brosowsky alone determined from which specific fund the redemptions were to be made.

B13. As a result of the redemptions, two payments were to have been made to the client, the first one on or about May 3, 1999 in the amount of \$4,138.31 (the "first cheque") and the second payment on or about May 12, 1999 in the amount of \$4,446.57 (the "second cheque").

B14. The first cheque was delivered to Morrison by Brosowsky and the funds were deposited by Morrison into bank accounts of the client.

B15. At the time that the client met with Brosowsky for information as to the confirmation slips and the redemptions, the second cheque had not been received by the client nor had it been cashed.

B16. A stop payment was placed on the second cheque and a replacement issued. The net funds of \$4,446.57 were ultimately received by the client.

B17. The investments, that became the subject of the redemptions, had been initially invested as part of a larger sum in or about February of 1997.

B18. Brosowsky completed and signed a Standard Life Mutual Funds Application dated February 3, 1997 to invest funds of the client's in Trimark mutual funds (the "Application").

B19. At the time the Application was completed, the Investment Instructions portion stated the following:

Trimark Income Growth	60%
Trimark Select Growth	10%
Trimark Select Balanced	30%

B20. Following the completion of the Application, Brosowsky made changes to its content including the following:

	<u>Changed to</u>
Trimark Income Growth @ 60%	Trimark Advantage Bond
Trimark Select Growth @ 10%	deleted entirely
Trimark Select Balanced @ 30%	increased to 40%

Brosowsky did not inform the client of the changes.

C. Acknowledgements

C1. Brosowsky acknowledges and agrees that he:

(a) conducted unauthorized trades in the account of his client, by redeeming funds without the client's knowledge, authorization, or consent;

(b) conducted unauthorized trades in the account of his client in the purchase of mutual funds without the client's knowledge, authorization, or consent, by making changes to the Application to invest as detailed in paragraphs B20. and B21. above;

(c) failed to act in the best interests of his client.

D. Terms of Settlement

D1. In order to effect a resolution of the issues raised by the Notice of Hearing, Staff and the respondent have entered into this Settlement Agreement. Upon this basis, Staff seek an order (the "Consent Order") from the Commission pursuant to subsection 8(1) of the Act that:

(a) the Settlement Agreement be approved;

(b) Brosowsky's registration as a salesman under the Act be suspended for a period of 45 days, commencing May 8, 2000 through to June 21, 2000, both inclusive;

(c) After the expiry of the suspension of Brosowsky's registration, commencing on June 22, 2000 Brosowsky's conduct and practices as a salesman registered under the Act be closely supervised by an individual acceptable to the Director, Registrations of the Commission on such terms as are deemed appropriate by the Director for a period of 6 months, ending on December 22, 2000;

(d) Brosowsky pay the sum of \$500.00 to the Minister of Finance of the Province of Manitoba towards the Commission's costs incurred in this matter, said sum to be paid within 7 days of the date of the Consent Order.

E. Procedure for Approval of Settlement

E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the Notice of Hearing.

E2. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in

connection with the Proceedings and the respondent hereby waives his right to a full hearing and appeal of this matter.

E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in paragraph D. above is not made by the Commission, Staff will be entitled to proceed with the hearing commenced by the Notice of Hearing unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in paragraph D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in the Proceedings or in any other proceeding.

E4. Staff and the respondent agree that if this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.

E5. The respondent agrees that he will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.

DATED at Winnipeg, Manitoba, this "1st" day of "May" , 2000.

Witness

Ernest Henry Brosowsky

DATED at Winnipeg, Manitoba, this "1st" day of "May" , 2000.

Staff of the Manitoba Securities Commission
per:
Director, Legal and Enforcement