

IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: ERNEST HENRY BROSKOWSKY

STATEMENT OF ALLEGATIONS OF STAFF OF THE  
MANITOBA SECURITIES COMMISSION

**STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE, INTER ALIA,  
THAT:**

**A. REGISTRATION**

1. Ernest Henry Brosowsky ("Brosowsky") has been registered as a salesman under The Securities Act (the "Act") from February 9, 1996 to February 11, 2000 with Performa Financial Group Limited ("Performa").
2. At all material times, Performa was registered under the Act as a Broker-Dealer (Mutual Funds).

**B. DETAILS**

1. At all material times, the client referred to herein was a resident of the Province of Manitoba.
2. 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.

3. The client had not provided any instructions to Brosowsky for the redemptions.
4. The client contacted Brosowsky. Brosowsky advised her that he had received instructions to redeem from a Charles Morrison ("Morrison").

5. 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.
6. 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.
7. Brosowsky did not verify Morrison's authority to make the requests for the redemptions.
8. 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.
9. Brosowsky acted upon the redemption requests of Morrison.
10. Brosowsky alone determined from which specific fund the redemptions were to be made.
11. 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").
12. The first cheque was delivered to Morrison by Brosowsky and the funds were deposited by Morrison into bank accounts of the client.
13. 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.
14. 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.
15. 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.
16. 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").
17. 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%

18. 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%

19. Brosowsky did not inform the client of the changes.

### **C. ALLEGATIONS**

1. Staff of the Commission allege that:

- (a) Brosowsky conducted unauthorized trades in the account of his client, by redeeming funds without the client's knowledge, authorization, or consent;
- (b) Brosowsky conducted unauthorized trades in the account of his client in the purchase of mutual funds without the client's knowledge, authorization, or consent;
- (c) Brosowsky failed to act in the best interests of his client;

and that due to these allegations, it is in the public interest that the registration of Brosowsky as a salesman under the Act be suspended or cancelled.

2. Such further and other matters as counsel may advise and the Commission may permit.

**DATED** at Winnipeg, Manitoba this 23 day of March, 2000.

**Director, Legal and Enforcement**

**TO: ERNEST HENRY BROSOWSKY**