

IN THE MATTER OF: THE SECURITIES ACT

and

IN THE MATTER OF: THOMAS KENNETH PROVAK

STATEMENT OF ALLEGATIONS OF STAFF OF THE
MANITOBA SECURITIES COMMISSION

REGISTRATION

1. Thomas Kenneth Provak ("Provak") is a resident of Winnipeg, Manitoba.
2. August 23, 1989 Provak became registered under The Securities Act ("the Act") as a salesman and he remained registered until March 9, 1995.
3. May 3, 1995, Provak was again registered under the Act.
4. From May 3, 1995 until March 5, 1999 Provak was registered as a Branch Manager with Fortune Financial Group Incorporated ("Fortune"). Fortune advised The Manitoba Securities Commission (the "Commission") of a change of name November 25, 1996 to Fortune Financial Mutual Funds Inc. ("Fortune"). The Commission received notice of another name change February 5, 1997 to Fortune Investment Corp. ("Fortune").
5. At Fortune, Provak's registration under the Act was restricted to mutual funds.
6. Provak resigned from Fortune March 5, 1999.
7. TWC Financial Corp. (TWC) requested the transfer of Provak to Branch Manager. The Commission received this request March 8, 1999.
8. March 17, 1999 the Commission received the first Uniform Termination Notice ("UTN") from Fortune terminating Provak as the Branch Manager of Fortune's Dublin Avenue branch office effective March 5, 1999.
9. March 31, 1999 the Commission received a second UTN from Fortune because the first was not signed by an officer with the authority to sign.
10. The Commission received notice from TWC on April 14, 1999 withdrawing "effective immediately" the TWC request to sponsor the registration of Provak.
11. Provak has not been registered under the Act in any capacity since March 5, 1999.

STATEMENT OF FACTS:

Re: FS and SS

12. FS and SS became Provak's clients February 4, 1998. They had very little investment experience and prior to Provak they had not used an investment adviser.
13. The new client forms that FS and SS signed February 18, 1998 were incomplete at the time they signed the forms. Provak told them he would complete the forms when he left the meeting and returned to his office.
14. Subsequent to the signing, Provak added inaccurate information to the forms. Provak wrote on the new client forms that SS's income was \$8,000./\$10,000. Her income was about \$1,300.
15. Provak wrote on the new client forms that FS and SS were 100% medium risk tolerance investors. FS and SS always told Provak they wanted the lowest possible risk. They told Provak they wanted their money to be as secure as possible.
16. FS and SS invested into three different mutual funds. SS invested into two funds and FS invested into one fund.
17. SS received investment advice from Provak and invested based on Provak's representations to her.
18. SS invested \$30,000. on February 20, 1998 into Dynamic Dividend DSC mutual fund units. Provak told SS that she would not have to pay fees. Provak told her no front load and no back load fees. Provak told SS that if she wanted to redeem the \$30,000. she would not pay any fees even if she wanted to redeem her investment as soon as one year hence.
19. Provak told SS that her \$30,000. investment would allow her to make monthly draws of \$225. for as long as she liked and the principal would remain intact at \$30,000. or the principal could even grow despite her monthly draws. Provak told SS that the return on investment would be between eight and ten percent.
20. Based on Provak's representations to her, SS made draws on the Dynamic fund until the fund was discontinued February 26, 1999.
21. The second SS investment was for \$5,445.48 made March 9, 1998 in Global Income Plus DSC mutual fund units. The fund was discontinued December 30, 1998.
22. SS did not receive a prospectus from Provak at the time she invested or at any time afterward.
23. FS also received investment advice from Provak and invested based on Provak's representations to him.
24. Provak told FS that S would not have to pay any fees if he invested with Provak. Provak told FS that any fees would be paid by Fortune.

25. Provak told FS that if he invested \$69,409.22 he could draw \$600. each month from the principal and he would still have the investment principal intact at \$69,409.22 plus there would be growth of the principal of one percent to two percent.
26. Provak told FS that he would invest FS's money in Trimark Select Balanced mutual fund. Provak told FS that the risk would be ten percent. FS thought ten percent was low risk.
27. Provak told FS that the rate of return on the Trimark Select balanced mutual fund was 12 to 14 percent.
28. Based on Provak's representations, FS purchased \$69,409.22 of Trimark Select Balanced mutual funds July 13, 1998.
29. By August 10, 1998 the balance in FS's Trimark Select Balanced mutual fund had decreased to \$66,092.47.
30. August 10, 1998 the remaining balance of \$66,092.47 was transferred to FS's Registered Retirement Income Fund ("R.R.I.F.") account. Provak did this transfer without the knowledge and consent of FS.
31. FS and SS questioned Provak about FS's Trimark Select Balanced mutual fund transfer in September of 1998. Provak told FS the transfer occurred because the cheques were not in order and that FS would be taxed if Provak did not transfer. Provak also told FS that if he went into a R.R.I.F. the draws from the account would be automatic.
32. FS did not receive a prospectus from Provak at the time of his investment or at any time afterward.
33. FS continued to make cash draws on his accounts as before. The principal was depleted according to the amount of the draws made. The rate of return did not offset the monthly draws as Provak had told FS and SS it would.
34. When FS and SS noticed the acronym DSC on their statements, they asked Provak what it meant. Provak told them that DSC was an office code.
35. Provak met with FS and SS on November 2, 1998 after they expressed concern to Provak about the decreasing principal in their accounts and the falling value of their investments. FS and SS wanted to know why their investment principal had decreased from a total of \$105,000. to \$94,000. in a matter of a few months when Provak had told them their principal would remain intact.
36. Provak wrongly told FS and SS that the stated values on their investment statements were not accurate. Provak told them the statements did not always reflect the true picture. Provak wrote some numbers on their statements.
37. FS and SS instructed Provak to transfer their accounts on February 9, 1999.

38. FS and SS asked Provak again whether there were fees associated with transfers and redemptions of their accounts. Provak told SS there was not a fee associated with transferring her accounts. Provak wrote FS a cheque for \$107. to cover the cost of transferring his account.

39. SS found out after that she would be charged a transfer fee on one of her mutual fund accounts in the amount of \$333. and a charge of about \$100. on the other mutual fund account.

Re: RW and SW

40. RW and SW met Provak in December 1997 at a Fortune investment seminar. RW and SW had minimal investment experience. They had not previously invested in mutual funds or stocks.

41. Before investing RW and SW discussed with Provak whether there would be fees charged to them for any investments they would make. Provak repeatedly told RW and SW that they would not have to pay any fees.

42. As a result of their discussions with Provak, RW invested \$77,561.48 in Trimark Select Balanced DSC mutual funds December 15, 1997.

43. December 23, 1997 SW invested \$14,063.29 into a Global Income Plus A DSC mutual fund with Provak. Provak told her she would not have to pay any fees.

44. Provak did not give RW or SW a prospectus for their investments at the time they invested or at any time afterward.

45. RW and SW asked Provak about the DSC acronym that appeared on the statements of RW and SW.

46. Provak explained to RW and SW that DSC was as an insignificant designation. Provak gave RW and SW no indication that DSC was a fee or charge. Provak told RW that DSC was not a fee.

47. Prior to August 1998 RW received an account statement for the period of March 31, 1998 to June 30, 1998. The statement showed a 1998 trustee fee of \$80.25 confirming that the fee would be debited to RW 's account at the Civic Credit Union on August 17, 1998.

48. RW called Provak. The W's asked Provak about the trustee fee, in light of Provak telling them they would not pay any fees. Provak told them to ignore the fee. Provak would take care of the fee.

49. August 17, 1998 the trustee fee was debited to RW 's Civic Credit Union account, charging him the \$80.25 trustee fee.

50. RW called Provak again to tell Provak the fee had been charged to his credit union account.

51. Provak told RW the fee charged was a mistake. Provak again told RW that Provak would take care of the fee. Provak told RW that he might give him a cheque to reimburse him.

52. Provak never reimbursed RW for the \$80.25 trustee fee.

53. SW was charged fees on her December 1997 investment.

54. Sales charges were charged to SW's account because of monthly withdrawals made by SW from her investment. The charges started in May of 1998 and continued every month through to December of 1998.

55. RW and SW asked Provak about the sales charges. Provak told them these charges were errors and that they would be reversed. Provak told RW and SW that the sales charges had to be reversed manually.

56. The charges were not reversed.

57. RW and SW gave instructions to Provak to cancel the monthly draws on SW's account.

58. The draws on SW's account stopped for only one month.

59. The draws on SW's account started up again contrary to RW and SW's instructions to Provak to cancel the monthly draws.

59. Provak did not reimburse RW and SW for the fees charged to their accounts.

Re: WB

60. WB was a securities client of Provak's prior to Provak becoming a salesman with Fortune.

61. In May 1999, after Provak was no longer registered to trade in securities under the Act, Provak and WB met to discuss WB's mutual fund investments. Provak told WB about insurance that would protect his investments in the event of the death of WB or his wife.

62. WB knew that Provak was not registered under the Act to deal in securities but that Provak was licensed to sell insurance.

63. After discussing it with Provak, WB decided to purchase what he thought was insurance on his investments. Provak did not discuss with WB redemptions of WB's existing mutual fund investments.

64. WB's redemption from his Dynamic Partners Fund DSC mutual fund investment occurred on May 20, 1999.

65. May 29, 1999 WB signed a form, given to him by Provak, entitled Transfer Authorization for Registered Investments to transfer his mutual fund investments to Maritime Life. The form was incomplete when WB signed it.

66. Provak completed the form after WB had signed it. The information completed by Provak authorized the transfer of WB's securities, all in cash, and to invest the proceeds into a segregated fund with Maritime Life.

67. Provak had not fully explained the application form to WB.

68. Provak told WB that the form he signed was for insurance on his existing investments.

69. WB did not know that the application form he signed was to redeem his mutual fund securities.

70. WB called Provak when he got a statement showing two redemptions from WB's mutual fund investments of approximately \$58,000. and \$800. WB asked Provak about the redemptions. WB told Provak he did not remember signing any forms authorizing redemptions.

71. Provak told WB that the redemptions were part of the transfer to Maritime Life.

72. WB did not know that the redemption transaction would involve him having to pay fees. He did not ask Provak about the fees. Provak did not explain to WB that fees would be charged to his account.

73. WB incurred \$2,560.62 in fees as a result of the redemption of his mutual fund securities.

Re: JF

74. JF became Provak's client in the spring of 1997. She had very limited investment experience.

75. JF was to receive a lump sum settlement payment September 5, 1997. JF told Provak she wanted the money invested in very low risk funds. She told Provak that she would be making monthly draws to pay her retirement living expenses. JF told Provak about her circumstances and her expectations surrounding the investments. She stressed to Provak her need to have low risk investments.

76. JF wanted to invest her money in a money market fund but Provak discouraged her from doing that. Based on Provak's advice JF did not invest in a money market fund.

77. September 8, 1997, Provak invested the lump sum settlement payment of \$187,249.20 into Dynamic Partners Fund. Dynamic Partners Fund is a mutual fund.

78. Provak did not provide JF with a prospectus at the time of her investment in Dynamic Partners Fund or at any time afterward.

79. JF called Provak to ask whether her mutual funds had been affected by the stock market corrections during the months of October and November 1997.

80. Provak told JF that her mutual funds had not been affected by the stock market fluctuations.

81. JF called the Dynamic head office in Toronto. Dynamic head office personnel advised JF that her mutual funds had decreased in value.

82. JF called Provak again and told him what Dynamic said about the decrease in value of her mutual funds.

83. Provak again told JF her mutual funds had not been affected. Provak told JF that her mutual funds were guaranteed at the price at which she had bought them.

84. JF instructed Provak to transfer her mutual funds to money market funds but Provak told JF not to do so because she would not get any growth in her investments.

85. JF finally got Provak to transfer half of her Dynamic Partners Fund to Dynamic Income Fund, another mutual fund.

86. Approximately \$90,000. was transferred from Dynamic Partners Fund to Dynamic Income Fund.

87. On several occasions Provak told JF that she would not have to pay any charges or any fees. At no time did Provak tell JF that a deferred sales charge was applicable to transactions in Dynamic Partners Fund.

88. Provak also told JF's son, CF, that his mother would not be charged any fees or loads.

Re: RC and CC

89. RC and CC became Provak's clients in January 1997. They had three investment accounts, one for RC and two for CC.

90. Provak told RC that he would waive the July 1997 trustee fees on their accounts. Provak told RC the first trustee fees R and CC would have to pay would be in July 1998.

91. July 23, 1997 RC received trustee fee invoices for all three accounts advising that the Cs would be charged fees. RC asked Provak about the trustee fees. Provak told RC to ignore the trustee fees.

92. Trustee fees were deducted from all three accounts on September 10, 1997. Provak told RC he would arrange to have these trustee fees reversed. Whenever RC and Provak met or spoke, RC would mention the trustee fees. The trustee fee charges were not reversed.

93. Provak showed RC the January 8, 1998 statements for R and CC's accounts for the year ending December 1997. Provak highlighted what Provak said were the refunds for the 1997 trustee fees. Provak falsely told RC that a portion of the dividends shown on the statements were the trustee fee reimbursements.

94. Provak met with RC in May or June of 1998. Provak falsely told RC that the 1997 trustee fees were included in the dividends on C's May 25, 1998 statement.

95. RC checked the January 1998 and May 1998 statements. RC learned the dividends were only those to which he was ordinarily entitled and were not refunds for the 1997 trustee fees. RC told Provak this. Provak told RC he would contact Fortune head office to arrange for a reimbursement of the 1997 trustee fees for R and CC.

96. In November 1998, Provak gave RC a personal cheque for the amount of the trustee fees paid by R and CC for the 1997 trustee fees.

97. January 16, 1998 RC gave Provak instructions to sell Investors Canadian Equity ("ICE") and purchase Fidelity Canadian Growth ("FCG"). Provak failed to follow his client's instructions. Provak did not sell and purchase as instructed.

98. October 15, 1998, Provak purchased \$1,000. of Fidelity Focus Consumer Industries on RC's behalf. Provak did not act on his client's instructions. RC had instructed Provak to purchase \$1,000. of Fidelity Focus Technology.

99. Provak never provided R and CC with a prospectus at the time of their investments or at any time afterward.

Re: GB

100. GB became Provak's client in July 1997. GB met Provak when he attended one of Provak's seminars.

101. Provak promised to pay a referral fee to GB for clients referred to Provak if GB transferred his investments to Provak.

102. A referral agreement entitled "Gentlemen's Agreement" dated December 9, 1997 was signed by Provak and GB. GB agrees to refer clients to Provak and Provak agrees to pay GB for the referrals. GB referred 19 clients to Provak. Provak never paid GB any referral fees.

103. Provak promised GB he would not be charged to transfer his investment account to Provak at Fortune. Provak told GB that the fees would be covered by Fortune.

104. Provak told GB he would not have to pay any charges or fees when he redeemed any of his investments.

105. Based on Provak's representations to him, GB agreed to transfer his investments to Provak.

106. When Provak moved GB's account to Fortune in November 1997 only one mutual fund was transferred. Provak redeemed the rest of GB's investments without GB's knowledge and consent. GB thought his investments would be transferred not redeemed. Provak had never discussed the redemption of GB's existing investments with GB.

107. GB asked Provak why Provak redeemed his mutual funds. Provak told him he had to because the portfolio GB had was too risky.

108. GB asked Provak about the redemption fees charged to his account. Provak told GB the fees would be reimbursed to him in the form of dividends at the end of the year.

109. In January 1998, GB received a dividend. Provak wrongly told GB the reimbursement for the redemption fees were included in that dividend payment.

110. GB contacted Trimark, the company that distributed the dividend. Trimark confirmed that the dividend amount did not include any reimbursement for fees paid. When GB confronted Provak about this issue, Provak told him that it must have been an error and that Fortune would fix the error.

111. After extended correspondence and discussion between GB and Provak on the issue of the reimbursement, Provak signed a hand written note dated April 20, 1999. In the note Provak promised to reimburse GB for the amount of the fees charged.

112. Provak did not reimburse GB for the fees.

Re: GA

113. GA first invested with Provak in February 1997. Provak told him that there would be no fees charged to his accounts. Provak told GA the commission Provak earned on the purchase of funds would be used to cover all fees incurred in transferring GA' accounts. GA also invested with Provak because he represented himself as being a full service financial planner with easy access to lawyers and accountants.

114. In 1997, GA saw on his statements that he had been charged fees. He brought these charges to Provak's attention. Provak assured GA that the fees were errors at Fortune's head office and the errors would be rectified.

115. In 1997, Provak issued GA a personal cheque for the 1997 fees charged to GA'.

116. In or around January 1998, GA instructed Provak to transfer some units from his wife's non-R.R.S.P. account and transfer the units into a R.R.S.P. account for his wife.

117. GA contacted Provak many times to try to get a confirmation slip for this transfer. Despite numerous assurances from Provak that the transfer had been completed, it was never done.

118. In 1999, GA noted that fees were again being charged to the accounts.

119. In April 1999, GA requested reimbursement from Provak of \$478. for the fees being charged. Provak responded by email, indicating that he would "cover [GA] as outlined".

120. Provak never paid GA the \$478. to reimburse GA for the fees.

121. Prior to Provak leaving Fortune, in 1999, GA instructed Provak to sell all of his Trimark mutual funds and put them into money market funds.

122. Provak told GA the transactions had been done as instructed.

123. The Trimark funds were not transferred into money market funds.

124. GA was aware that Provak had left Fortune in March 1999. At first Provak told GA that he was not registered under the Act to trade in securities. But two or three days later Provak told GA he could trade again through TWC because he was now registered to trade.

125. Shortly after leaving Fortune Provak told GA his account had been transferred to TWC.

126. GA called Fortune in March or April 1999 and he was told his accounts were still at Fortune.

127. GA called Provak and told Provak that his accounts were still at Fortune.

128. Provak told GA that was not correct.

129. By email, on March 31, 1999 and again on April 5, 1999, GA gave Provak instructions to sell specific funds.

130. March 31, 1999 GA instructed Provak to sell all units from his wife, Edith's, account and to deposit the proceeds with Royal Bank.

131. April 5, 1999 GA instructed Provak to sell, on April 5, 1999, all units from his account and deposit the proceeds with Royal Bank.

132. GA told Provak to provide him with confirmation of these trades.

133. April 12, 1999 Provak told GA the two trades had been completed. Provak told GA that if the money, about \$80,000. had not been deposited into the Royal Bank account he would arrange to get GA a cheque from TWC for the proceeds.

134. GA contacted TWC on or about April 13, 1999. GA was told that he did not have accounts set up with TWC.

Re: VB

135. VB invested with Provak at Fortune when he retired in 1997.

136. VB had invested with Provak prior to 1997 as well and VB had not paid fees with Provak.

137. VB was under the impression that he would not have to pay fees with Provak at Fortune. Provak did not discuss fees with VB.

138. VB received a trustee fee schedule in June 1998 along with trustee fee invoices for VB's account and his wife's account.

139. VB asked Provak about the charges. Provak told VB that he had been creating an income tax loss for VB. Provak led VB to believe that it was a capital loss that he could claim as a tax deduction and get his money back. VB told Provak he did not want a capital loss.

140. VB told Provak he wanted a refund of the fees. Provak told him that Fortune would provide the refund.

141. VB received a \$6,000 cheque from Fortune. VB assumed that it was a reimbursement of the fees. The money was actually a redemption from VB's Infinity Income Fund which was done without VB's knowledge or consent.

142. When VB asked Provak about the redemption, Provak admitted to VB that Provak had redeemed the \$6,000.

143. Provak did not provide a prospectus to VB for any of his investments.

Re: SB

144. SB became Provak's client in mid-1998. SB had previously invested in mutual funds and guaranteed investment certificates ("GIC's"). SB was familiar with the acronym DSC.

145. At their first meeting Provak told her that if she transferred to Fortune, Fortune would cover all of the charges she would incur on the redemption of funds she currently held elsewhere. Provak told her that Fortune would cover all of the transaction fees on any new funds and she could move her funds around as often as she liked and Fortune would cover all of the charges.

146. Based on Provak's representations to her, SB transferred her funds to Fortune in mid-1998. Her portfolio consisted of mostly GIC's and mutual funds.

147. Provak sold all but three of her existing mutual funds, telling her that she was too diversified. Provak redeemed funds that had been performing well.

148. Provak did not redeem her Ivy Canadian fund, her Tempelton Stock Fund or her Trimark Government Income Fund.

149. On the initial transfer, after selling most of her mutual fund holdings, Provak made purchases for SB's account. Provak did not, prior to the purchases, discuss the funds that he would purchase for her. SB expressed concern to Provak about some of the funds Provak had

purchased, especially the Infinity Canadian, Infinity International, Trimark Select Balance and in the Fidelity Focus Consumer Industries Fund.

150. SB was unhappy with the purchases Provak had made.

151. SB wanted to transfer out of many of her funds. In 1998, SB gave Provak instructions to sell her Trimark and Infinity Canadian funds.

152. Provak did not redeem SB's investments as his client instructed.

153. In or around January 1999 SB received two statements from Fortune.

154. The statements showed that on January 11, 1999 Provak redeemed only a portion of her units in Infinity Canadian. Provak also redeemed a portion of SB's units in Infinity International.

155. On January 18, 1999 Provak purchased units of Fidelity Focus.

156. Provak finally sold the Infinity Canadian units at a lower price than SB had instructed Provak to sell at. SB's instructions to Provak were to sell at \$8.63 per unit and he sold at \$8.15 per unit.

157. When SB asked Provak what had happened with respect to the selling price, Provak blamed the head office. Provak told SB he would negotiate with the head office to change the date of the sale that Provak had requested.

158. SB had not instructed Provak to sell her Infinity International units.

159. SB had not instructed Provak to purchase any Fidelity Focus units. Provak purchased units of Fidelity Focus for SB without SB's knowledge or consent.

160. In early April 1999 SB instructed Provak to redeem several funds.

161. On or around April 8, 9 or 10, 1999, when Provak was no longer registered under the Act to trade in securities, SB called Provak and asked him to sell her Trimark funds and several other funds.

162. Provak suggested to SB to redeem her Templeton funds and her Mackenzie funds. SB agreed to have Provak redeem these two funds as well.

163. SB wanted all of the proceeds from the redemption of all of these funds to be placed in a money market fund.

164. Provak told SB he had sold her Trimark fund on April 12, 1999.

165. Provak told SB that he had sold her Templeton fund on April 12 or 13, 1999 at \$16.07 per share.

166. In April 1999 Provak told SB that he had sold her Mackenzie fund.

167. SB did not receive confirmation slips of the sales that Provak had told her had been made. SB contacted the fund companies directly. SB received confirmation from the fund companies that Provak had not sold her Trimark Select Balanced and Templeton International funds.

168. Provak told SB that the companies had not yet received the paperwork.

169. Provak did not sell SB's Trimark, Templeton and MacKenzie funds.

170. SB and Provak scheduled a number of April 1999 meetings. They finally met on April 20, 1999. Provak was to have all of the information SB had requested respecting the sale of her funds and her reimbursement for redemption fees ready for the meeting. Provak had nothing ready to explain to SB. Provak told SB the computer was down.

171. SB and Provak scheduled several additional appointments but they never met again.

172. Fees were charged to SB's account on her initial transfer of her investments to Fortune. Provak told SB she would be reimbursed for the fees charged to her accounts and the reimbursements would be reinvested in her accounts. SB saw from her statements the DSC charges were not being reimbursed.

173. In February 1999, Provak told SB that the reimbursements had been made in the form of dividends to her accounts.

174. SB instructed Provak to get all of the fees she was to be reimbursed placed into her account at TD Bank. SB told Provak she wanted a separate account to keep track of the amounts of the fees she was going to be repaid.

175. Provak told SB that head office would not like SB to have a separate account set up at a bank. Provak did not give SB a reason why head office would not like the separate account.

176. On February 17, 1999 SB instructed Provak to put the fees she would be reimbursed into a money market fund.

177. Provak told SB that he had opened a MacKenzie Money Market fund for her. Provak told SB all of the reimbursed fees were going to go into that fund very soon.

178. Provak never reimbursed SB for the charges of redemption fees for the initial transfer and redemption of her accounts.

Re: HP

179. HP became Provak's client prior to Provak becoming employed with Fortune. When Provak transferred to Fortune, HP transferred his accounts to Fortune.

180. In April of 1999, after Provak had left Fortune and when he was no longer registered under the Act to trade in securities, HP contacted Provak to arrange for a redemption. Provak told HP he was no longer with Fortune, but with TWC. Provak told HP he would arrange to work out the redemption for HP and his wife.

181. April 19, 1999, Provak met with HP and HP's wife. Provak told HP and his wife he didn't have any paperwork or official forms for them to sign, but if they wrote their redemption request on a piece of paper and then sign it, they could redeem the money. HP and his wife wrote down their request on a piece of paper, which Provak took away with him.

182. Provak had indicated to HP that the redemption cheque would be available for him to pick up at Provak's new office on April 21, 1999. HP met with Provak on that date, but Provak told him the cheque was not ready and he would arrange to courier it to HP.

183. HP received the redemption cheque directly from Fortune.

Re: JD

184. JD became client of Provak's prior to Provak becoming employed with Fortune. When Provak moved to Fortune, JD transferred his accounts to Fortune.

185. When JD transferred his accounts to Fortune, Provak told him he would never have to pay any annual fees such as trustee fees. In the past when fees had been charged, Provak told JD the fees had been reimbursed to him in the form of end of year dividends.

186. JD and Provak met May 12, 1999 to discuss JD's investments. Provak was no longer registered to trade in securities under the Act. JD knew Provak had left Fortune to go to TWC.

187. Provak told JD that a portion of the money he had with Fortune might be better invested in different types of investments. Provak wanted to transfer JD's securities from Dynamic to Maritime Life. Provak gave JD some promotional material about a life insurance policy at Maritime Life. Provak told JD the policy was a segregated fund. Provak told JD that the Maritime Life segregated fund would not be locked in. JD told Provak he did not mind his investments being locked in at Dynamic.

188. Provak did not discuss any fees that might apply to the transfer from Fortune to Maritime Life. JD never asked Provak about any fees because Provak had always told JD that he was being reimbursed for fees in with his dividends.

189. Based on Provak's representations to him, JD agreed to transfer to Maritime Life.

190. To effect the transfer, JD signed a Maritime Life Investment Portfolio document. The document was incomplete when JD signed it. JD also signed an incomplete Transfer Authorization for Registered Investments document. JD was never given copies of the incomplete documents he had signed.

191. After this meeting on May 12, 1999, JD found out that Provak was not registered to trade in securities.

192. May 14, 1999 JD confronted Provak about not being registered to trade in securities. JD asked Provak for the Maritime Life transfer document he had signed to be returned. JD wanted the Maritime Life transfer cancelled. JD wanted any other transactions Provak had made on his behalf cancelled as well. Provak returned the document to JD May 17, 1999.

193. Provak told JD that the Maritime Life transfer had not yet been put into effect.

194. May 15, 1999 JD sent a facsimile to Laird Elliott at the Fortune head office in Toronto instructing the transfer from Fortune to Maritime Life be cancelled along with any other transactions that may have been made on his behalf.

195. June 28, 1999 JD received confirmation slips showing that his accounts at Fortune had been redeemed June 18, 1999.

196. As a result of the redemption of the Fortune account, JD was charged fees.

Re: AM

197. AM became Provak's client in the spring of 1997.

198. Provak told AM any fees charged to AM in the transfer to Fortune would be reimbursed to him. Provak told AM he would not have to pay any fees.

199. Based on Provak's representations to him, AM agreed to transfer his accounts to Fortune.

200. Provak told AM that no administrative fees would be charged on his accounts.

201. About six weeks later, AM received confirmation slips for the redemptions made by Provak that showed AM had been charged almost \$600. in redemption fees. AM was also charged administrative fees of about \$200.

202. AM spoke to Provak. AM told Provak he did not wish to deal with him any more. Provak told AM that he would attempt to get the fees reimbursed by Fortune's head office. At the time AM accepted Provak's explanation and agreed to stay with Provak.

203. AM kept after Provak for the refund of the \$800. in fees. Provak told AM he could not give him a cash refund. The reimbursement would have to be in the form of a reinvested dividend.

204. After about one year, Provak told AM that \$400. of the fees had been refunded to him in the form of reinvested dividends.

205. In April or May of 1999, AM called Provak and instructed him to get him more foreign content (up to 20 per cent from 15 per cent) by shuffling around his holdings. Provak said he would do it.

206. No transactions to increase AM's foreign content occurred.

207. AM called Provak again and instructed him to purchase more foreign content. Provak told AM he would do so.

208. No transactions to increase AM's foreign content occurred.

209. AM was, on several occasions, charged trustee fees. AM received invoices for the charges. AM did not send in payment of the fees noted on his invoices as Provak had told him that he would not be required to pay any fees.

210. The fees were eventually debited from AM's account.

211. AM was not reimbursed for the fees charged to his accounts.

Re: LG and PG

212. LG and PG became Provak's clients sometime in the-mid 1990's prior to Provak's employment with Fortune. They had not been paying fees with Provak at his prior place of employment.

213. When Provak started working at Fortune, Provak told LG and PG that if they transferred their accounts to Fortune they would not have to pay administration fees or redemption fees.

214. Based on Provak's representations to them LG and PG agreed to transfer their accounts to Fortune.

215. LG started noticing fees being charged sometime in 1998. Fees were charged to LG and PG's accounts.

216. In April 1999 LG asked Provak about the fees. Provak told him that he did not know why the fees had been charged. Provak blamed Fortune. Provak told LG he would straighten it out.

217. Provak did not refund any fees to LG and PG.

Re: RW

218. RW became Provak's client in or about 1997.

219. Provak told RW there would not be fees or charges associated with the transfer of his account from his former investment company to Fortune.

220. RW's accounts were transferred to Fortune.

221. Fees were charged to RW's accounts. RW was also charged trustee fees during the year. RW brought these fees to Provak's attention every week or so. Provak told RW the charges would be covered by Fortune. Provak told RW not to worry about the charges.

222. In September 1997 Provak told RW the reimbursement would occur as a portion of the dividends at the end of the year.

223. In early 1998 RW received a year end investment statements.

224. In early 1998 RW went to Provak's office. RW told Provak he had not been reimbursed \$800. He only received \$300.-\$400.

225. Provak wrote RW a personal cheque for \$600.-\$700. to reimburse RW for the fees charged to his account.

Re: JS

226. JS first became Provak's client in about 1996 or 1997.

227. JS and his wife had shares in Can-West Global and Bombardier.

228. Provak told JS to redeem their shares. Provak told JS that once the shares were sold JS could repurchase Can-West Global shares at a guaranteed repurchase price of \$11. per share.

229. Based on Provak's representations to him, JS agreed to sell his Can-West Global and Bombardier shares.

230. When JS asked Provak to repurchase the Can-West shares, Provak told JS that he could not purchase them until Fortune was able to deal in shares of stock. Provak told JS he would be able to repurchase the Can-West Global shares once Fortune's new Stock/Shares Division was operational.

231. JS asked Provak repeatedly to repurchase the shares. Provak told JS that the repurchase was pending. Provak was just waiting for the new Stock/Shares division of Fortune to become operational.

232. Provak never repurchased the Can-West Global shares.

233. JS invested with Provak for about three years. In that time JS had invested in many different mutual funds including Trimark, Dynamic, Skudder and Fidelity. Provak did not provide JS with a prospectus at the time of his investments or at any time afterward.

Re: BnS and ByS

234. BnS and ByS became Provak's clients in January 1998.

235. When they became clients, Provak assured them that there would be no fees of any kind associated with the transfer of their accounts to Fortune or for any redemptions from their accounts.

236. In October 1998 BnS and ByS noticed they were being charged fees and that DSC was appearing on their statements, ByS called Dynamic directly. BnS and ByS were informed by Dynamic that DSC meant that there were fees involved with their investment.

237. BnS and ByS told Provak about the fees. Provak said he would arrange for a reimbursement of the fees charged to BnS and ByS of about \$995. in 1998.

238. BnS and ByS would not have transferred their investments had they known they would be charged fees.

239. Provak did not tell BnS and ByS they would have to keep their investments for seven years before they could cash out without incurring fees.

240. Provak never reimbursed BnS and ByS for the fees charged to their accounts.

Re: DG

241. DG became Provak's client in or about 1994, prior to Provak's employment with Fortune. DG had a portfolio with Provak, as did his wife, Irene, his mother, EG of Saskatchewan and his daughter, Catherine.

242. At the end of March 1999, after Provak was no longer registered under the Act to trade in securities, DG called Provak to find out what was going on with his accounts.

243. Provak told DG that existing mutual funds could be transferred from Fortune to TWC without redemption fees. It was going to be the same mutual funds but they would be handled by TWC instead of by Fortune.

244. Based on Provak's representations, DG agreed to the transfer.

245. Provak told DG that until he got the matter of his registration under the Act resolved, he would be working under Robert Craig who was with TWC.

246. In late April 1999, after Provak was no longer registered under the Act to trade in securities, Provak contacted DG to arrange for a general review of the DG's mutual fund portfolio.

247. Provak met with DG and his wife in mid-May 1999. Provak told DG that he would be looking after their accounts under Robert Craig's direction.

248. DG received a \$5,000. cheque from his mother. She wanted the \$5,000. put into a mutual fund. DG made out a cheque payable to TWC to deposit it into his mother's securities account to purchase mutual funds. About a week later, DG put a hold on the cheque at the bank and asked Provak to return the cheque.

249. At the same mid-May 1999 meeting, Provak left investment application forms for signatures by DG and his family members in order to transfer five accounts to TWC. Two of the accounts were for DG's wife, one for his daughter, one for his mother and one for himself. The Gs' were to sign incomplete applications and return them to Provak to be completed.

250. On or around May 27, 1999 DG received news that Provak was having problems with his registration to trade in securities under the Act and DG called Provak to get the cheque payable to TWC returned to him.

251. Provak dropped off the cheque to DG.

Re: WG and CG

252. WG and CG became Provak's clients in or around 1991 prior to Provak's employment with Fortune. WG and CG had been purchasing mutual funds.

253. When Provak moved to Fortune, WG and CG transferred their accounts to Fortune. At that time, Provak told them that they would not have to pay any fees. Provak told them there would not be any costs associated with the transfer of their accounts to Fortune.

254. WG and CG were charged trustee fees on their accounts with Fortune.

255. In January 1999, WG asked Provak to draw up a portfolio summary that would show what money WG would be able to access for his upcoming retirement.

256. Also in late April 1999, Provak led WG to believe that his registration issue with the Commission had been resolved. Provak told WG he had rented office space and was working with TWC. WG and CG were led to believe that Provak was registered to trade in securities under the Act and now he could advise them.

257. In late April 1999, Provak gave WG the summary. WG was concerned about the performance of some of his investments. He was considering transferring some of his poorly performing mutual funds. WG expressed his ongoing concern to Provak about the value of some of his investments. Provak wrote in values higher than the values on WG and CG statements. Provak said the new numbers more accurately portrayed the value of the accounts. These do not represent the true value of the investments.

258. May 10, 1999, while not registered under the Act to trade in securities, Provak met with WG and CG. WG and CG arranged with Provak to transfer their accounts from Fortune to TWC. At that time, Provak also had G sign forms that would transfer some of WG's RRSPs from Fortune to Maritime Life.

Re: EM

259. EM became Provak's client in the spring or summer of 1996. Prior to that time EM had invested in instruments which had a guaranteed rate of return. He told Provak that he was a conservative investor.

260. EM asked Provak about fees before he became Provak's client. Provak told him that there were no front end, back end or redemption fees of any kind. Provak told EM that he, Provak, gets paid via trailer fees from the fund companies.

261. EM learned that he was charged fees. EM questioned Provak about the fees. Provak told him that he would look into it. Provak told EM that he would be reimbursed for the fees.

262. Provak did not reimburse EM for fees charged to his account.

263. Provak did not provide EM with a prospectus for the funds in which he was investing at the time of the investment or at any time afterward.

Re: MC

264. MC became Provak's client in the summer of 1996. She had no previous mutual fund experience. Provak had told her that there would be no front end, back end or redemption fees of any kind.

265. In July 1996, Provak redeemed a R.R.S.P. account prior to the maturity date and a charge was assessed.

266. When MC questioned Provak about the charge incurred by the early redemption of her investments, Provak assured her that Fortune would reimburse her.

267. Provak never reimbursed MC for the fees charged to her account.

268. In 1998, MC contacted Provak regarding fees that she had been charged. Provak told her that the fees were in error and she would be reimbursed.

269. April 9, 1999 Provak told MC that part of the fees would not be reimbursed to her because the fees could be used as an income tax deduction.

270. Also on April 9, 1999, Provak gave her a list of fees that were still outstanding and told MC that the money would be put back into her account.

271. April 15, 1999 Provak told MC the cheque for reimbursement was all ready to do but was not done.

272. When MC asked Provak about the DSC that she saw on her statements, Provak told her that it was an office code and that she should not be concerned with it.

273. When MC met with Provak in April 1999, she indicated to him that she was not satisfied with the performance of her funds. Provak wrote some higher numbers that he falsely said better represented the true value of the funds.

274. Provak did not give MC a prospectus for her investments at the time of her investment or at any time afterward.

ALLEGATIONS

Staff of the Commission allege that Provak:

Re: FS and SS

1. failed to provide his clients with a prospectus at the time of their investments or at any time afterward;
2. acted contrary to the clients' interest by having his clients sign incomplete documents and then by completing the documents with inaccurate client information;
3. failed to provide adequate disclosure and provided inaccurate disclosure to his clients with respect to: fees; draws of funds from accounts and the effect of the draws on the account balances; the meaning of risk; the meaning of rate of return on investments; and the meaning of deferred sales charges;
4. acted in contravention of subsection 69(2) of the Act by guaranteeing his clients a rate of return as an inducement to invest;
5. provided his clients with false information respecting the value of their investments;
6. purchased securities for his clients without their knowledge and consent;
7. acted contrary to his clients' interest by recommending investments and giving investment advice to his clients that, in all of the circumstances, including the knowledge, experience, risk tolerance, investment objectives, age and financial position were unsuitable;
8. failed to adequately advise his clients of the purchase of securities made on their behalf;

Re: RW and SW

1. failed to provide adequate disclosure and provided inaccurate disclosure to his clients with respect to fees and the meaning of deferred sales charges;
2. misrepresented to his clients that fees charged would be reimbursed;
3. failed to follow his clients instructions by not having the monthly draws on SW's account cancelled;

4. failed to provide his clients with a prospectus at the time of their investments or at any time afterward;

Re: WB

1. acted in contravention of section 6 of the Act by trading in securities without being registered;

2. failed to adequately advise his client of the purchases of securities made on his behalf;

3. redeemed his clients securities without his clients knowledge and consent in order to purchase a Maritime Life segregated fund for his client;

4. failed to follow his clients instructions;

5. failed to provide adequate disclosure to his client with respect to fees;

6. acted contrary to the client's interest by having his client sign incomplete documents and by completing the documents afterward;

Re: JF

1. failed to provide his client with a prospectus at the time of the investments or at any time afterward;

2. failed to provide adequate disclosure and provided inaccurate disclosure to his client with respect to fees;

3. provided his client with false information respecting the value of her investments;

4. recommended investments and gave investment advice to his client that, in all of the circumstances, including investment knowledge, experience, risk tolerance, circumstances, investment objectives, age and financial position were unsuitable;

Re: RC and CC

1. failed to provide his clients with a prospectus at the time of their investments or at any time afterward;

2. failed to provide adequate disclosure and provided inaccurate disclosure to his clients with respect to fees;

3. misrepresented to his clients that the fees charged had been reimbursed in the form of dividends;

4. failed to follow his clients instructions;

Re: GB

1. failed to provide adequate disclosure and provided inaccurate disclosure to his client with respect to fees;
2. misrepresented to his client that the fees charged had been reimbursed in the form of dividends;
3. misrepresented to his client that he would be reimbursed for fees charged;
4. failed to adequately advise his client of the purchase of securities made on his behalf;
5. redeemed securities without the knowledge and consent of his client;
6. agreed to pay commissions for client referrals to GB who was not registered to trade in securities;
7. failed to adequately advise his client about redemptions of securities made on his clients behalf;

Re: GA

1. acted in contravention of section 6 of the Act by trading in securities without being registered to do so;
2. provided false information to his client respecting his registration status under the Act;
3. failed to provide adequate disclosure and provided inaccurate disclosure to his client with respect to fees;
4. misrepresented to his client that the fees charged would be reimbursed;
5. misrepresented to his client that trades in securities that he had been instructed to do had been done;
6. failed to follow his client's instructions respecting the purchase and sale of his client's investments;

Re: VB

1. failed to provide his client with a prospectus at the time of the investment or at any time afterward;
2. failed to provide adequate disclosure and provided inaccurate disclosure to his client with respect to fees;

3. misrepresented to his client that he would be reimbursed for fees charged;
4. redeemed \$6,000. of his clients securities without his clients knowledge and consent;
5. misled his client as to the source of the monies repaid to him, leading his client to believe that he had been reimbursed for fees charged when instead the \$6,000. was proceeds from a non-authorized redemption;
6. failed to adequately advise his client of the redemption of securities made on his clients behalf;

Re: SB

1. acted in contravention of section 6 of the Act by trading in securities without being registered;
2. provided inadequate disclosure and provided inaccurate disclosure to his client respect to fees;
3. misrepresented to his client that she would be reimbursed for fees charged;
4. failed to follow his clients instructions;
5. failed to adequately advise his client of the purchases of securities he made on her behalf;
6. failed to adequately advise his client of the redemptions of securities made on her behalf;
7. purchased securities for his client without his clients knowledge and consent;
8. redeemed securities for his client without his clients knowledge and consent;

Re: HP

1. acted in contravention section 6 of the Act by trading in securities without being registered;

Re: JD

1. acted in contravention section 6 of the Act by trading in securities without being registered;
2. failed to provide adequate disclosure to his client with respect to fees;
3. acted contrary to the clients interest by having his client sign incomplete documents and then by completing the documents afterward;

Re: AM

1. failed to provide adequate disclosure and provided inaccurate disclosure to his client with respect to fees;

2. misrepresented to his client that fees charged would be reimbursed;
3. misrepresented to his client that fees charged had been reimbursed;
4. failed to follow his clients instructions by not purchasing foreign investments for his client as instructed;

Re: LG and PG

1. failed to provide adequate disclosure and provided inaccurate disclosure to his clients with respect to fees;
2. misrepresented to his clients that fees charged would be reimbursed;

Re: RW

1. failed to provide adequate disclosure and provided inaccurate disclosure to his client with respect to fees;
2. misrepresented to his client that fees charged would be reimbursed in the form of a dividend payment;

Re: JS

1. failed to provide his client with a prospectus at the time of the investment or at any time afterward;
2. acted in contravention of subsection 69(2) of the Act by guaranteeing his client a rate of return as an inducement to invest;
3. misled his client by promising his client to repurchase an investment and by not doing so;

Re: BnS and ByS

1. failed to provide adequate disclosure and provided inaccurate disclosure to his clients with respect to fees;
2. misrepresented to his clients that the fees charged would be reimbursed;

Re: DG

1. acted in contravention of section 6 of the Act by trading in securities without being registered;
2. provided false information to his clients leading them to believe he could trade in securities under the supervision of someone who was registered to trade in securities under section 6 of the Act;

3. acted contrary to the client's interest by having his client sign incomplete documents;

Re: WG and CG

1. acted in contravention of section 6 of the Act by trading in securities without being registered;

2. provided false information to his client with respect to his registration status under the Act;

3. provided inadequate disclosure and provided inaccurate disclosure to his clients with respect to fees;

4. provided his clients with false information respecting the value of their investments;

Re: EM

1. failed to provide adequate disclosure and provided inaccurate disclosure with respect to fees;

2. misrepresented to his clients that fees charged would be reimbursed;

3. failed to provide his client with a prospectus at the time of the investment or at any time afterward;

Re: MC

1. failed to provide his client with a prospectus at the time of the investment or at any time afterward;

2. failed to provide adequate disclosure and provided inaccurate disclosure with respect to fees and the meaning of deferred sales charges;

3. misrepresented to his client that fees charged would be reimbursed;

4. provided his client with false information respecting the value of her investments;

5. redeemed his clients securities without her knowledge and consent;

and that due to these allegations, Provak should not be entitled to use any of the exemptions set out in the Act and participate in the exempt markets in Manitoba in the future.

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

DATED at Winnipeg, Manitoba this 23 day of February 2000.

Director, Legal and Enforcement

TO: THOMAS KENNETH PROVAK

