

IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: FRANKLIN MARK CAMERON SAGERT

STATEMENT OF ALLEGATIONS OF STAFF OF
THE MANITOBA SECURITIES COMMISSION

STAFF OF THE MANITOBA SECURITIES COMMISSION ALLEGE, AMONG OTHER THINGS, THAT:

A. REGISTRATION

1. Franklin Mark Cameron Sagert ("Sagert") was first registered as a salesman under The Securities Act ("Act") on February 20, 1990.
2. From February 20, 1990 to present, Sagert has been registered as a salesman as follows:
 - (a) from February 20, 1990 to March 23, 1990;
 - (b) from December 13, 1991 to May 28, 1992;
 - (c) from June 5, 1992 to present.
3. The registration of Sagert under his current Certificate will expire on December 31, 2002, unless renewed.
4. At all material times, Sagert's employer was CIBC Wood Gundy Securities Inc.

B. DETAILS

1. Mr. Z had been a client of Sagert's since 1994.
2. Mr. Z had a grade 12 GED and an electrical apprenticeship and worked for Hudson Bay Mining & Smelting Co. Limited (Hudson's) since about 1963.
3. At the time that Mr. Z first became a client of Sagert's, he was an electrician employed with Hudson's, with an approximate gross annual income of \$46,000.00. Mr. Z resided in Flin Flon, Manitoba.
4. In or about February of 1994, Mr. Z opened two accounts with Sagert: a Cash Account and an RRSP Account ("1994 Accounts").
5. For both of the 1994 Accounts, the risk factors were stated to be 50% Low Risk and 50% Medium Risk.
6. Mr. Z's past investing experience had been in bonds and mutual funds.

7. In late 1996, Mr. Z was being offered a retirement package. Mr. Z decided to take a pension for approximately 2 years and a lump sum locked-in RRSP.

8. Mr. Z discussed with Sagert the lump sum locked-in RRSP funds ("retirement funds") he would be receiving.

9. In discussing the matter, Mr. Z had informed Sagert that it was his intention to invest the retirement funds for 1 ½ to 2 years, at which time he would be drawing down on the retirement funds.

10. As to risk, Mr. Z understood from discussing the investing of his retirement funds with Sagert, that Sagert would invest the retirement funds with very little risk. This was in keeping with Mr. Z's investment objectives. Mr. Z intended the retirement funds to be the source of his income for the rest of his life.

11. The exact investments into which the retirement funds would be invested were to be chosen by Sagert.

12. In or about January or February of 1997, Mr. Z received in the mail from Sagert a New Account Application form ("Jan 97 New Account Application"), which he signed and returned to Sagert as requested.

13. The Jan 97 New Account Application specified the following objectives and risk factors:

Objectives		Risk Factors	
Income	20%	Low Risk	50%
Gain (Short Term)	--	Medium Risk	50%
Gain (Inter. Term)	40%	High Risk	--
Gain (Long Term)	40%		

14. The Risk Factors as specified in the Jan 97 New Account Application were the same as they had been for Mr. Z's two previous New Account Application forms, for the 1994 Accounts, and as they had remained since – 50% low and 50% medium.

15. The Jan 97 New Account Application resulted in the opening of a new account for Mr. Z ("LIRA Account").

16. Mr. Z was now retired, approximately 55 years of age, and no longer in receipt of an annual income of \$46,000.00. Mr. Z did not own a house but did own a trailer worth about \$20,000.00. His total net worth, including the lump sum retirement funds of approximately \$130,000.00 and the trailer worth \$20,000.00, was approximately \$350,000.00.

17. In March and April of 1997, the retirement funds were transferred into the LIRA Account by way of two lump sum amounts as follows:

Date of Transfer	Amount of Lump Sum Pension Transfer
March 3, 1997	\$118,699.85
April 21, 1997	\$ 8,505.88
Total =	\$127,205.73

18. The retirement funds, in the total amount of \$127,205.73, were invested by Sagert as follows:

Date of transaction	Lump sum transfer (\$)	Interest earned	Bought /sold	Security	Amount (\$)
March 3	118,699.85				
March 11			Bought	Cambridge Precious Metals	20,000.00
March 11			Bought	Cambridge Growth Fund	20,000.00
March 11			Bought	C.I. Emerging Markets Fund	8,700.00
March 11			Bought	Fidelity Japanese Growth	5,000.00
March 11			Bought	AGF 20/20 India Fund	10,000.00
March 17		8.39			
March 19			Bought	*Applied Magnetics Corp	16,414.38
April 15			Bought	*Northland Power Income Fd Trust Units (quantity = 2,500)	15,000.00
April 16		8.43			
April 21	8,505.88				
					Total = 95,114.38

				* = equities	
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19. Sagert chose the specific investments made within the LIRA Account. Mr. Z relied upon the knowledge and expertise of Sagert to do so.

20. By April 30, 1997, the market value of the LIRA Account was already down to \$113,284.04, including cash of \$32,108.17 and equities and mutual funds of \$81,175.87.

21. Between April 15 and August 7, the following changes to the assets held in the LIRA Account occurred:

Date of transaction	Bought /sold	Security	Amount Units	Amount (\$)
May 20	Sold	*Northland Power Income Fund Trust Units	2,500	
June	Bought	*ARC Energy Trust	1,400	
July 31	Sold	*ARC Energy Trust	1,400	
June 17	Bought	*Pegasus Gold Inc.	1,000	
July 8	Bought	Fidelity Capital Builder		6,176.47
July 8	Sold	Fidelity Japanese Growth		6,176.47
July 10	Bought	CI Canadian Growth Fund		8,200.00
July 10	Sold	CI Emerging Markets Fund		8,200.00
July	Bought /sold	CI Canadian Growth /CI Emerging Markets	.473 /.413	
August 7	Bought	*Envest Diversified Income Trust Units	3,980	39,800.00
		* = equities		

22. By August 7, the portfolio of assets held in the LIRA Account was established as shown below and remained as such through to the end of the 1997 year:

Equities
*Applied Magnetics Corp

*Pegasus Gold Inc.
*Enervest Diversified Income Trust Units
Mutual Funds
Cambridge Precious Metals Fund
Cambridge Growth Fund
C.I. Canadian Growth Fund
C.I. Emerging Markets Fund
Fidelity Capital Builder
AGF 20/20 India Fund

23. In or about November of 1997, Sagert prepared a second KYC Form, in respect of the LIRA Account, dated November 18, 1997 ("Nov 97 KYC").

24. The Nov 97 KYC now showed the risk factors as having increased to 50% Medium Risk and 50% High Risk.

25. Mr. Z received the Nov 97 KYC in the mail, tagged as to where to sign. Mr. Z signed and returned the Nov 97 KYC as instructed. In so doing, Mr. Z did not notice the change in risk factors, nor had Mr. Z's actual investment objectives changed from Low and Medium Risk to Medium and High Risk.

26. At no time was it Mr. Z's intention to have his retirement funds in high risk investments.

27. By November 28, 1997, the market value of the LIRA Account was down to \$85,997.49.

28. In early 1998, Mr. Z contacted Sagert to make arrangements in order to commence drawing out monthly amounts from the retirement funds. Sagert referred him to his assistant.

29. In the spring of 1998, a LIF Account was opened for Mr. Z in order for him to receive the monthly payments ("LIF Account").

30. In June of 1998, except for approximately \$300.00 in cash, all of the assets from the LIRA Account were transferred to the LIF Account.

31. In June of 1998, the market value of the LIF Account was \$74,661.78, comprised of 57% mutual funds and 40% equities.

32. Thereafter, Mr. Z began receiving monthly payments of approximately \$371.00.
33. Based upon retirement funds of about \$130,000.00, the monthly payments were lower than what Mr. Z had expected.
34. In or about the fall of 1998, Mr. Z contacted Sagert's office as to why the monthly payments were so low.
35. With the assistance of Sagert's assistant, Mr. Z learned the difference between book value and market value and that his investments were now only worth approximately \$63,000.00, or less than half of the amount of the retirement funds initially invested with Sagert in the spring of 1997.
36. In the spring of 1999, Mr. Z transferred to another broker.
37. In general, the investments which had been recommended by Sagert were riskier than the risk tolerance of Mr. Z.
38. At all material times, Mr. Z had relied upon Sagert's expertise, advice and recommendations.

C. ALLEGATIONS

1. Staff of the Commission allege that as to Mr. Z:

- (a) Sagert recommended investments and provided investment advice to Mr. Z that, in all of the circumstances, including investment knowledge, experience and objectives, risk tolerance, age, and financial position, were unsuitable;
- (b) Sagert failed to follow the Know Your Client Rule thereby exposing Mr. Z to unsuitable risk, in the selection of investments within the LIRA Account;
- (c) Sagert failed to follow the Know Your Client Rule thereby exposing Mr. Z to unsuitable risk, in the manner in which Sagert handled the LIRA Account of Mr. Z including the preparation of the Nov 97 KYC;
- (d) Sagert failed to act in the best interests of his client Mr. Z;

and that due to these allegations, it is in the public interest that the registration of Sagert as a salesman under the Act be suspended or cancelled and that an administrative penalty pursuant to section 148.1(1) of the Act be ordered against Sagert.

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

DATED at Winnipeg, Manitoba this 19th day of July, 2002.

Director, Legal and Enforcement

TO: FRANKLIN MARK CAMERON SAGERT