

IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: TWC FINANCIAL CORP.

STATEMENT OF ALLEGATIONS OF STAFF OF
THE MANITOBA SECURITIES COMMISSION

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

Registration

1. TWC Financial Corp. ("TWC") has been continuously registered as a broker-dealer under the Securities Act, R.S.M. 1988, c. S50 (the "Act") since November 23, 1990.
2. TWC registered a branch office under the Act located at 503 – 386 Broadway, Winnipeg, Manitoba on November 23, 1990 (the "Winnipeg Office") which continues to be so registered.
3. TWC registered a branch office under the Act located at 723 Rosser Avenue, Branch, Manitoba (the "Brandon Office") on August 5, 1998. Between July 18, 1991 and August 5, 1998 the Brandon Office was operated as a sub-branch of the Winnipeg Office and was under the supervision of David John Kramer.
4. David John Kramer ("Kramer") has been continuously registered under the Act since July 27, 1988 and has since on or about November 23, 1990 been registered under the Act as a branch manager with TWC for the Winnipeg Office.
5. Richard Dean Whittington ("Whittington") was registered under the Act as a salesman with TWC continuously from January 25, 1993 until November 6, 1997 when his registration was suspended by virtue of his no longer being employed by TWC as of that date.
6. On August 12, 1999 the Commission approved a settlement agreement between staff and Whittington and issued by consent Commission Order No. 2595 whereby the Commission removed Whittington's abilities to rely upon the exemptions under the Act for life (the "Whittington Order"). Pursuant to the Consent Order Whittington acknowledged having acted improperly and contrary to the public interest by, amongst other things:
 - (a) providing false information to clients purportedly showing investments those clients held for which information was in fact exaggerated or entirely fictitious;
 - (b) in accepting instructions and executing trades on behalf of residents of provinces other than Manitoba without being registered to trade in securities in those other provinces;

(c) having clients execute applications to purchase mutual funds without completing the actual purchase information and inducing clients to provide him with monies which he represented would be invested on those client's behalf but were instead deposited into a bank account in the name of RDW Investments Limited ("RDW") which was controlled by Whittington and was used by him in carrying on his activities as a mutual fund salesperson. In particular, monies payable to Whittington as commission on sales would be received by RDW before being disbursed to Whittington.

Activity

7. In addition to the activities acknowledged in the Whittington Order, Whittington did on occasion issue cheques from RDW's bank account to purchase mutual funds on behalf of clients.

Supervision

8. Kramer was TWC's provincial manager for the Province of Manitoba and acted as TWC's branch manager for both the Winnipeg Office and the Brandon Office.

9. Kramer visited the Brandon Office between three and five times a year with visits lasting from 15 minutes to 1 ½ hours.

10. Kramer was not involved in the day to day operations of the Brandon Office.

11. Kramer performed no compliance function and did not review any trades or files or any of the day to day operations of the Brandon Office.

Supervision generally

12. Compliance with respect to the Brandon Office was overseen by TWC's head office in Saskatchewan.

13. While compliance procedures had been adopted by TWC, such procedures were deficient or not properly applied as follows:

(a) Lacked a sufficient process to detect if salespersons accepted instructions and executed trades on behalf of residents in provinces other than Manitoba without being registered to trade in securities in those other provinces;

(b) Did not ensure the maintenance of current KYC information;

(c) Lacked internal systems to prevent a salesperson from placing an order for a client's account which was paid for using a cheque drawn on the salesperson's corporate bank account;

(d) Did not establish and implement a process for file reviews by either the branch manager or compliance personnel;

(e) Lacked internal mechanisms to detect that salespersons were obtaining purchase applications which were signed by the client but left blank to permit the salesperson to fill in purchase information at a later date;

14. The deficiencies noted in paragraph 13 above were identified by staff and brought to the attention of TWC in November 1997. TWC undertook a voluntary review of its policies and procedures in consultation with staff to address these deficiencies as well as others identified by it during the review.

15. Following the review, TWC proposed new and updated procedures and policies to address the deficiencies in supervision and compliance identified during the review (the "New Procedures") which were acceptable to staff.

ALLEGATIONS

1. Staff of the Commission allege that TWC acted improperly and contrary to the public interest in that:

(a) TWC did not adequately supervise the Brandon Office;

(b) TWC's compliance policies and procedures in place prior to the New Procedures were deficient or not properly applied by staff responsible for compliance and supervision of salespeople;

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

DATED May 9, 2001

Director, Legal and Enforcement

TO: TWC FINANCIAL CORP.