

IN THE MATTER OF
THE SECURITIES ACT, 1988, S.S. 1988, c. s-42.2

Appendix "A"

AND

THE HEIGHT OF EXCELLENCE FINANCIAL PLANNING GROUP INC.

AGREEMENT

The following agreement (the "Agreement") has been reached between The Height of Excellence Financial Planning Group Inc. ("THE Financial Planning Group") and the director ("Director") of the Saskatchewan Securities Commission (the "Commission").

Facts

THE Financial Planning Group acknowledges and agrees as follows:

1. THE Financial Planning Group has been registered as a mutual fund dealer in Saskatchewan continuously since January 10, 1994.
2. William James Britton ("Britton") was at the relevant time the provincial manager for THE Financial Planning Group, responsible for supervising the activities of THE Financial Planning Group in Saskatchewan through its 6 branches in the province. As provincial manager, Britton was responsible for supervising Stanley Eric Dixon ("Dixon") of Prince Albert, Saskatchewan and Darcy Lee Bergen ("Bergen") of Regina, Saskatchewan.
3. Bergen was registered as a mutual fund salesperson from March 4, 1993 to May 18, 1999 and from August 18, 1997 to May 18, 1999 was the branch manager of THE Financial Planning Group's branch at 100 - 1870 Albert Street, Regina, Saskatchewan.
4. As branch manager Bergen was responsible for supervising the salespersons who worked out of that branch including Dennis Raoul Rosaire Gauthier ("Gauthier") and Kenneth Guy Jorgenson ("Jorgenson").
5. THE Financial Planning Group required its salespersons to obtain approval before selling securities other than mutual funds.

6. John Howard ("Howard") on behalf of DPM Securities Inc. ("DPM Securities") gave approval for the sale of securities in Barclay Las Vegas Limited Partnership ("Barclay") and Marina Shores Las Vegas Limited Partnership ("Marina Shores") being sold by THE Financial Planning Group salespersons.
7. Howard was directed by DPM Securities to conduct reviews and approve investments sold in Marina Shores by salespersons of THE Financial Planning Group in Saskatchewan. Branch Managers reviewed sales by representatives and the provincial manager reviewed sales made by the branch manager.
8. In 1997 and 1998 Bergen traded securities of Marina Shores to his clients as listed in Appendix "A", when the purchase of those securities was not suitable for them.
9. Securities of Marina Shores were speculative and subject to the risks set out in the Offering Memorandum.
10. In 1996 and 1997 Bergen traded securities of Barclay to his clients as listed in Appendix "B" when the purchase of those securities was not suitable for them.
11. Securities of Barclay were speculative and subject to the risks set out in the Offering Memorandum.
12. In 1999 Jorgenson traded securities of Marina Shores to his clients as listed in Appendix "C" when the purchase of those securities was not suitable for them.
13. In 1998 Gauthier traded securities of Marina Shores to his clients as listed in Appendix "D" when the purchase of those securities was not suitable for them.
14. In 1996, Dixon traded securities of West Valley of the Sun Limited Partnership ("West Valley"), with regard to a client listed in Appendix "E". In relation to that trade, Dixon failed to learn all the essential facts relative to this client, failed to ensure his advice for the client was within the bounds of good business practice and failed to ensure his recommendations for the portfolio were in keeping with the client's stated investment objectives.
15. Many of Bergen's, Gauthier's and Jorgenson's clients who purchased securities of Barclay and Marina Shores have lost a substantial portion of their principal investment, and it is not likely that they will recover any of their losses.

16. The Commission held a hearing into the conduct of Bergen and by a decision dated October 31, 2000 stated that, "We also find it unacceptable, as a registrant selling an exempt product such as 'Barclay' and 'Marina', to have a customer enter into a sale by signing documents that are not clearly explained to them in regard to highly material matters. We accept the evidence that Bergen either did not tell his customers they were signing promissory notes making them liable for a potential investment of \$150,000 or he explained it away in a fashion that was not correct, that the note was 'not an issue'."

"He clearly admits he had no understanding of 'Barclay' and 'Mariner'. While not understanding these limited partnership offerings, while they were clearly different from mutual funds, he did have access to offering memorandums that clearly warned, on their face page, that they were speculative."

"Bergen defended the suitability because he was involved, to some extent, in controlling the placing of the funds. We do not consider that a justifiable assumption regarding an investment where potential conflicts are undisclosed and investments are in real estate which is not conducive to classification as liquid and liquidity is a prime requirement for someone of that age for estate settlement purposes if for nothing else."

The Commission then ordered that Bergen:

1. Pursuant to subsection 134(1) of *The Securities Act, 1998*, S. S. 1988, c. S-42.2 (the "Act") for a period of ten years from the date hereof:
 - a. All of the following exemptions do not apply to Bergen:
 - i. the exemptions in section 39, 39.1, 81, 82 and 102 of the Act;
 - ii. the exemptions in *The Securities Regulations*, R.R.S., c. S-42.2 Reg 1. (the "Regulations") providing for exemptions from sections 27, 58, 71 or 104 to 109 of the Act; and
 - iii. Any exemption in any decision of the Commission providing for an exemption from any provision of the Act or the Regulations;
 - b. Bergen ceases trading in securities, specified securities, exchange contracts or specified exchange contracts;
 - c. Bergen ceases giving advice respecting securities, specified securities, trades, specified trades, exchange contracts or specified exchange contracts; and

- d. Bergen:
 - i. resigns any position that he holds as a director or officer of an issuer or registrant;
 - ii. is prohibited from becoming or acting as a director or officer of any issuer or registrant; and
 - iii. is prohibited from being employed by any issuer or registrant;

- 2. Pursuant to section 135.1 of the Act Bergen pay an administrative penalty of \$50,000;
 - 3. Pursuant to section 161 of the Act Bergen pay the costs of or relating to this hearing in the amount of \$5,049.75.
17. THE Financial Planning Group approved the securities of Barclay, Marina Shores and West Valley for sale by their salespersons when the securities were speculative and high risk and not suitable for some of the firm's clients.
18. THE Financial Planning Group failed to properly supervise the activities of its salespersons in Saskatchewan in the distribution of Barclay, Marina Shores and West Valley where its salespersons effected sales to clients who were not suitable.

THE Financial Planning Group's Agreement, Consent and Waiver

THE Financial Planning Group hereby undertakes, agrees and consents, effective the date of execution of this Agreement, as follows:

- 1. To pay an administrative penalty in the amount of \$85,000;
- 2. To waive any hearing and/or appeal with respect to this matter; and
- 3. To the issuance of an order by the Commission substantially in the form as set out in Schedule "A" to this Agreement.

DIRECTOR'S AGREEMENT

The Director hereby agrees that this Agreement is the only sanction the Director will seek to have the Commission impose upon the Respondents pursuant to the Act with respect to the matters set out in this Agreement, provided however that nothing herein shall prohibit the Director from considering and dealing with any matter not set out in this Agreement or any new complaint brought to the Director's attention in respect to THE Financial Planning Group (the "Respondents").

IN WITNESS WHEREOF the Respondents and the Director have executed this Agreement and Undertaking this 22nd day of *January*, 2002

SIGNED, SEALED AND DELIVERED) THE Financial Planning Group
This 22nd day of *January*, 2002)
)
) By: "Stephen Ellis, President"
By: "Tim Pryor, Secretary"

SIGNED, SEALED AND DELIVERED)
this 28th day of *January*, 2002)
in the presence of:) "Barbara L. Shourounis"
) Barbara L. Shourounis
) Director

"Vic Pankratz"
V. Pankratz