

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

**AND**

**IN THE MATTER OF  
KENNETH GUY JORGENSEN**

**AGREEMENT AND UNDERTAKING**

The following agreement and undertaking (“Agreement”) has been reached between Kenneth Guy Jorgenson (“Jorgenson”), and the director (the “Director”) of the Securities Division of the Saskatchewan Financial Services Commission, (the “Commission”):

**FACTS**

Jorgenson acknowledges and agrees as follows:

1. Jorgenson is a resident of Saskatoon, Saskatchewan and is currently licensed as a mortgage broker under *The Mortgage Brokers Act* (the “MB Act”).
2. From April 27, 1997 to December 3, 1999 Jorgenson was registered as a mutual fund salesperson licensed to sell mutual funds on behalf of The Height of Excellence Financial Planning Group Inc. (“TFPG”).
3. On December 3, 1999 Jorgenson sent a letter of resignation to TFPG and to the Commission. On January 12, 2000 TFPG filed a Uniform Termination Notice with the Commission giving notice that, effective January 6, 2000, it had dismissed Jorgenson for cause.
4. Pursuant to subsection 27(3) of the Act, Jorgenson’s registration was suspended upon his resignation and the termination of his employment with TFPG.

**Marlene Ross**

5. Marlene Ross (“Ross”) is a resident of Yorkton, Saskatchewan. She is retired and has not worked since 1993.
6. Sometime in 1997, Ross attended a seminar on investing and saving money presented by Darcy Bergen (“Bergen”) in Yorkton, Saskatchewan. She completed a form at the end of the meeting and indicated she would be interested to speaking to someone from Bergen’s office. Bergen called her and told her that she could meet Jorgenson.

7. In November 1997, Jorgenson met Ross at her residence and they reviewed her finances. As a result of Jorgenson's suggestion, Ross transferred approximately \$104,000 from other investments to TFPG. Jorgenson recommended that Ross invest the transferred funds in a series of mutual funds. Ross signed several forms to process this transfer. Ross believed that Jorgenson would be reviewing his investment recommendation with Bergen.
8. Ross told Jorgenson that she had little investment knowledge, did not consider herself a high-risk investor and wanted conservative growth so she would have income from investments at age 65. She also told Jorgenson that she would be depending on him to advise her and look after her investments.
9. Ross was aware that there would be changes on her quarterly statements, depending on how a particular fund was performing, that Jorgenson was managing her investment portfolio and would not call when any changes were made. Therefore Ross did not question Jorgenson when she saw changes in her mutual fund investments on her statements.
10. Ross trusted Jorgenson as her financial adviser and relied on him to make investment decisions on her behalf.
11. Sometime after March 31, 1999 Ross became aware that she had a \$50,000 investment in an entity named "Platinum".
12. When Ross questioned Jorgenson about her investments he repeatedly told her that everything was safe, but she received no specific information from him.
13. Ross last spoke to Jorgenson in July 2000. Jorgenson told Ross not to worry and that everything would be okay.
14. Ross has not received any returns on her investment in Platinum, nor has she received her investment in Platinum back.

### **Betty Jean Johnson**

15. In 1997, Betty Jean Johnson ("Johnson") engaged the services of Jorgenson to act as her financial advisor.
16. Johnson had very limited knowledge regarding investments and depended on Jorgenson for investment advice. Johnson put her trust in Jorgenson relying on him to make sound investment decisions on her behalf.
17. In December 1999, at Jorgenson's request, Johnson attended Jorgenson's office to discuss an alternative investment because the returns on her mutual fund investments were falling. Jorgenson believed, after several meetings with the investment realtor for Cascade Financial Corp. ("Cascade"), that an investment in the securities of Cascade would be good to recommend to Johnson. At this meeting, Jorgenson suggested an

investment in Cascade and said that it would pay Johnson approximately \$500 per month. Jorgenson said that she would, at a minimum, receive a return of 10% per year, payable 3 times per year and that she could get her money out of this investment in three months time. Jorgenson did not mention a minimum or maximum investment requirement.

18. Johnson decided to invest \$50,000 by giving Jorgenson a cheque made payable to "Cascade" dated December 15, 1999. Johnson redeemed several mutual funds to make up the \$50,000.
19. Cascade was incorporated in Saskatchewan on October 25, 1999 with a registered office in Regina, SK as an investment business. It was struck from the corporate registry on March 31, 2001, restored on October 31, 2001 and then struck again on March 31, 2003. Cascade is currently inactive.
20. Johnson signed several documents, including a promissory note for \$100,000 to process the transfer. Johnson did not sign them in front of Jorgenson, nor did anyone explain the documents to her.
21. At no time was Johnson aware that she had signed a promissory note for \$100,000.
22. Johnson did not receive the \$500 per month return Jorgenson told her she would receive. She did not receive any interest on her investment in the securities of Cascade.
23. Johnson contacted a lawyer and was able to get her investment of \$50,000 back.

### **John and Karen Ginter**

24. From June 1998, Jorgenson acted as the financial advisor for John and Karen Ginter (the "Ginters"). The Ginters placed their trust and confidence in Jorgenson.
25. In December 1999, Jorgenson recommended that the Ginters invest in the securities of Cascade by moving \$50,000 from their mutual fund investments to Cascade.
26. Jorgenson told the Ginters that they would receive a \$5,000 return in the first three months and a minimum of 10% three times per year from their investment in Cascade. Jorgenson also told the Ginters that he fully expected the investment would provide this kind of profit since it was an investment in real estate and the properties could be turned over three times per year for a 10% profit.
27. Jorgenson also told the Ginters that the principal could be redeemed in three months or rolled over for a period of time, which he did not specify.
28. Jorgenson left several forms with the Ginters to process the purchase of the securities of Cascade. The Ginters decided to invest \$50,000 and gave Jorgenson a certified cheque in that amount made payable to Cascade dated January 6, 2000.
29. The Ginters signed several forms at Jorgenson's request. He did not effectively explain any of the forms to them.

30. In January 2000 Jorgenson told the Ginters that he was leaving TPFG, and that they would have to sign a letter of transfer to maintain their relationship. Jorgenson confirmed the same in a letter to the Ginters dated January 27, 2000 and included all the forms for the Ginters to sign. Also included in the letter were the forms they signed for the Cascade investment. Jorgenson told the Ginters that these forms were inaccurate and invalid and had to be resigned.
31. The Ginters received a letter from TPFG dated January 26, 2000 that stated that Jorgenson was no longer licensed through TPFG, and provided the names of other investment advisers that could take over the Ginters' investment accounts.
32. The Ginters decided to consult with legal counsel before resigning the forms. After reviewing the forms, their legal counsel told the Ginters that if they re-signed the forms they would be committed to a promissory note in the amount of \$100,000 repayable over a period of three years.
33. The Ginters did not sign any of the forms and demanded the return of their \$50,000 investment in Cascade.
34. The Ginters have not received any returns on their investment in Cascade, nor have they received their investment back.

## **ALLEGATIONS**

### **Prospectus Requirements**

35. At all material times, the Commission had not issued a prospectus receipt for an entity called Platinum or an entity called Cascade.
36. In 1999 Jorgenson traded Platinum securities to Ross and therefore breached the prospectus requirement in section 58 of the Act.
37. In 1999 Jorgenson traded Cascade securities to Johnson and the Ginters and therefore breached the prospectus requirement in section 58 of the Act.

### **Registration Requirements**

38. Jorgenson was registered to sell mutual funds, but was not registered to sell other securities nor as an adviser in the category of investment counsel or portfolio manager.
39. In 1999 Jorgenson traded Platinum securities to Ross when he was not registered to sell them. He therefore breached the registration requirement in section 27 of the Act.
40. In 1999 Jorgenson traded Cascade securities to Johnson and the Ginters when he was not registered to sell them. He therefore breached the registration requirement in section 27 of the Act.

41. In 1999 Jorgenson acted as a portfolio manager when he made investment decisions on Ross's behalf and managed her investments for her. He was not registered as a portfolio manager and therefore breached the registration requirement in section 27 of the Act.

#### **Failure to act in the investors' best interest**

42. In 1999 Jorgenson traded Platinum securities to Ross when those securities were speculative, high risk, were not suitable for her and resulted in significant losses to her. He thereby breached the duty of care he owed to her as a salesperson.
43. In 1999 Jorgenson traded Cascade securities to Johnson when those securities were speculative, high risk and not suitable for her. He thereby breached the duty of care he owed to her as a salesperson.
44. In 1999 Jorgenson traded Cascade securities to the Ginters when those securities were speculative, high risk, not suitable for them and resulted in significant losses to them. He thereby breached the duty of care he owed to them as a salesperson.

#### **KENNETH GUY JORGENSON'S UNDERTAKING**

Kenneth Guy Jorgenson hereby undertakes, agrees and consents, effective the date of execution of this Agreement:

1. To waive his right to a hearing in this matter scheduled to be held on January 26, 2005 or to any other hearing and/or appeal with respect to this matter;
2. To dispose of this proceeding by agreement without a hearing pursuant to section 135.3 of the Act;
3. To cease trading for a period of 25 years from the issuance of an order of the Commission in any and all securities and exchange contracts in Saskatchewan or with any resident of the province of Saskatchewan personally or by any other means including, but not limited to, by means of any company, limited partnership, association, joint venture or other entity of which he is a director, officer, promoter or control person as defined by the Act;
4. That the exemptions contained in the following provisions of the Act do not apply to him for a period of 25 years from the issuance of this Order:
  - (a) Sections 38, 39, 39.1, 81, 82 and 102 of the Act;
  - (b) *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;
  - (c) Any decision providing for exemptions from any provision of the Act or Regulations;

unless upon prior written application to the Director, the Director exempts Jorgenson from the application of this paragraph;

5. To resign any position that he holds as a director or officer of an issuer or registrant;
6. Not to act as a director or officer of any issuer or registrant;
7. Not to be employed by any issuer or registrant;
8. To pay an administrative penalty in the amount of \$7,500;
9. To pay the costs of the investigation into this matter by the staff of the Commission in the amount of \$500; and

10. To the issuance of an order by the Commission substantially in the form as attached hereto as Exhibit "A" ordering Jorgenson to, among other matters, cease trading in any and all securities and removing his right to use any exemptions under the Act until 25 years from the date of the order.

**DIRECTOR'S AGREEMENT**

The Director hereby agrees that this Agreement and Undertaking are the only sanctions the Director will seek to have the Commission impose upon Jorgenson pursuant to the Act with respect to the matters set out in this Agreement, provided 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 of Jorgenson.

IN WITNESS WHEREOF Kenneth Guy Jorgenson and the Director have executed this Agreement and Undertaking on this "24" day of January 2005.

SIGNED, SEALED AND DELIVERED )  
in the presence of: )  
)  
)  
"Drew Belobaba" )

"Kenneth Jorgenson"  
Kenneth Guy Jorgenson

SIGNED, SEALED AND DELIVERED )  
in the Presence of: )  
)  
"Patti Pacholek" )

"Barbara Shourounis"  
Barbara Shourounis, Director  
Securities Division

AFFIDAVIT OF EXECUTION

I, "Drew Belobaba", of "Regina",  
in the Province of Saskatchewan:

MAKE OATH AND SAY THAT :

1. I was personally present and did see Kenneth Guy Jorgenson named in the within instrument, who is personally known to me to be the person named herein, duly sign and execute the same for the purposes named therein;
2. The same was executed at "Regina", in the Province of Saskatchewan, on the "24" day of "January", 2005 and that I am the subscribing witness thereto;
3. I know the said Kenneth Guy Jorgenson and he is, in my belief, "18" years of age or more.

SWORN before me at \_\_\_\_\_ )  
in the province of Saskatchewan \_\_\_\_\_ )  
this \_\_\_\_\_ day of \_\_\_\_\_, 2005)

*"John Roberts"*

A Notary Public in and for the *"Province of Saskatchewan"*

My appointment expires: \_\_\_\_\_  
- Or - Being a Solicitor.

*"Sealed with Notary Seal"*



AFFIDAVIT OF EXECUTION

I, "Patti Pacholek", of "Regina", in the Province of Saskatchewan:

MAKE OATH AND SAY THAT :

4. I was personally present and did see Barbara Shourounis named in the within instrument, who is personally known to me to be the person named herein, duly sign and execute the same for the purposes named therein;
5. The same was executed at "Regina", in the Province of Saskatchewan, on the "20" day of "January", 2005 and that I am the subscribing witness thereto;
6. I know the said Barbara Shourounis and she is, in my belief, "18" years of age or more.

SWORN before me at "Regina" )  
in the province of Saskatchewan )  
this "20" day of "January", 2005)

*"Dean Murrison"*

A Notary Public in and for the *"Province of Saskatchewan"*

~~My appointment expires: \_\_\_\_\_~~

~~—Or— Being a Solicitor.~~