

STATE OF NORTH DAKOTA

BEFORE THE

COUNTY OF BURLEIGH

SECURITIES COMMISSIONER

In the Matter of Investment Advisory)
Services and Thomas H. Marsden,)
)
Respondents.)

**ORDER FOR AND NOTICE
OF CIVIL PENALTY AND
NOTICE OF RIGHT TO
REQUEST A HEARING**

.....
The North Dakota Securities Commissioner has conducted an investigation into the above-captioned matter and has determined, as follows:

1. The Respondent, Investment Advisory Services, is an investment adviser headquartered in Fargo, North Dakota. For all times relevant to this matter, Investment Advisory Services has been registered as an investment adviser in North Dakota.

2. The Respondent, Thomas H. Marsden, is the owner of Investment Advisory Services and serves as an investment adviser representative of Investment Advisory Services. Marsden has never been registered as an investment adviser representative of Investment Advisory Services, but such registration is not required as Marsden is the sole proprietor of Investment Advisory Services and is also its sole investment adviser representative. Marsden has been the sole proprietor of Investment Advisory Services since its inception, and for all times relevant to this matter.

3. On October 13, 2003, employees from the North Dakota Securities Department conducted an examination of Investment Advisory Services. The following were among issues noted during the examination:

a. Investment Advisory Services did not have an investment advisory contract with each of its clients.

- b. The client account agreement, as had been executed by some clients and had been maintained among Investment Advisory Services' files, did not contain a fee schedule or provide information about the fees to be charged for the services provided.
 - c. Investment Advisory Services had not maintained a current copy of its ADV Part II, or offered to provide the same to any of its clients.
 - d. Most of the client files did not contain any information relating to the investment objectives or risk temperament of the individual client.
 - e. Investment Advisory Services did not maintain a file of incoming or outgoing correspondence.
 - f. Investment Advisory Services did not have a privacy policy and did not communicate any privacy policy to clients.
4. In a letter from the Securities Department dated November 24, 2003, the issues discussed in paragraph 3, above, were communicated to the Respondents. The letter requested that respondents provide a plan of action detailing their proposed efforts to resolve these concerns. This plan of action was to be provided by January 30, 2004.
5. The November 24, 2003 letter also required that the deficiencies be corrected within six months. It further stated: "a follow-up exam will be conducted in the next six to nine months wherein penalties maybe (sic) assessed for violations noted during the follow-up exam."
6. On July 21, 2004, employees of the North Dakota Securities Department visited Investment Advisory Services with the intention of conducting an examination of the same. During the conversation that followed, Marsden stated that he had addressed some of the

concerns raised in the November 24, 2003 letter. Marsden acknowledged, however, that he had not addressed all of the issues, and that he had not secured customer agreements with his clients or secured the updated investment objectives and risk assessments of his clients. He was told that he would have 30 days to resolve all outstanding issues raised in the November 24, 2003 letter.

7. In a follow-up letter dated July 28, 2004, it was noted that the Respondents progress had been unsatisfactory and that the deficiencies would need to be corrected by August 31, 2004. Respondents were warned that after a follow-up exam, "any violations will be subject to penalties at the discretion of the Commissioner."

8. On October 7, 2004, employees from the North Dakota Securities Department conducted an examination of Investment Advisory Services. During that examination, the following facts were noted:

a. Form ADV Part II had not yet been updated.

b. Not all customers had signed customer accounts in their files. The Respondents did not seek to get a customer agreement with clients who had less than \$25,000 under the management of Investment Advisory Services.

c. Not all customers had risk assessments or investment objectives documented in their files. The Respondents did not seek to get risk assessment or investment objective documents regarding clients who had less than \$25,000 under the management of Investment Advisory Services.

9. Based on the foregoing, the Respondents have not kept and maintained all files as required to be maintained by N.D.C.C. § 10-04-10.1 and N.D.A.C. § 73-02-07-01.

ORDER FOR AND NOTICE OF CIVIL PENALTY

YOU ARE NOTIFIED that the above-cited violations are sufficient grounds for the imposition of civil penalties pursuant to Section 10-04-16(1) N.D.C.C. The Securities Commissioner hereby assesses a civil penalty against the Respondents, jointly and severally, in the amount of \$5,000.

NOTICE OF RIGHT TO REQUEST HEARING

YOU ARE NOTIFIED that pursuant to §10-04-12 N.D.C.C. you may request a hearing before the Securities Commissioner if such a request is made in writing WITHIN FIFTEEN (15) DAYS AFTER THE RECEIPT OF THIS ORDER. The respondents have the right to be represented by legal counsel at the hearing.

Dated at Bismarck, North Dakota on this 20th day of November, 2004.





Karen J. Tyler, Securities Commissioner
North Dakota Securities Department
State Capitol, Fifth Floor
600 East Boulevard
Bismarck, ND 58505-0510
Ph. # (701) 328-2900

STATE OF NORTH DAKOTA

BEFORE THE

COUNTY OF BURLEIGH

SECURITIES COMMISSIONER

In the Matter of Investment Advisory)
Services and Thomas H. Marsden,)
)
Respondent.)

**AFFIDAVIT OF SERVICE
BY MAIL**

.....
I, Jacqui Ferderer, being first duly sworn, state that I am a citizen of the United States over the age of twenty-one years and not a party to or interested in the above-entitled proceeding.

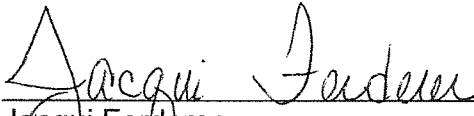
On November 23, 2004, I deposited in the Central Mailing Bureau of the United States Post Office Department in the State Capitol in Bismarck, North Dakota, true and correct copies of the following document:

**ORDER FOR AND NOTICE OF CIVIL PENALTY,
AND NOTICE OF RIGHT TO REQUEST A HEARING**

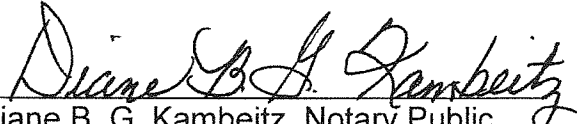
A copy of the above document was securely enclosed in an envelope with postage duly prepaid, sent via certified mail, return receipt requested, addressed to the following:

Thomas H. Marsden
Investment Advisory Services
2501 13th Avenue S., Suite 206
Fargo, ND 58103

To the best of my knowledge, information, and belief, the address given above is the actual mailing address for the party intended to be served.


Jacquie Ferderer

Subscribed and sworn to before me this 23 day of November, 2004.


Diane B. G. Kambeitz, Notary Public
Burleigh County, North Dakota
My commission expires 4/25/2006

