

STATE OF NORTH DAKOTA

OFFICE OF SECURITIES COMMISSIONER

IN THE MATTER OF:)
)
Preferred Trust and Management,) **FINDINGS OF FACT, CONCLUSIONS**
LTD, and Todd Haskins,) **OF LAW AND ORDER**
)
Respondents.)
)

On April 10, 2001, the Securities Commissioner issued a separate Cease and Desist Order, Notice of Civil Penalty, and Notice of Right to Request a Hearing to Todd Haskins ("Haskins"), along with a number of other individuals who had been involved in the sale of Preferred Trust and Management, LTD ("Preferred Trust"), securities in North Dakota. On April 22, 2003, the Securities Commissioner requested the designation of an administrative law judge ("ALJ") from the Office of Administrative Hearings ("OAH") to conduct a hearing and to issue recommended findings of fact and conclusions of law, and a recommended order in regard to the Cease and Desist Order issued to Haskins, among others. Allen C. Hoberg, ALJ, was designated to preside as hearing officer for Haskins's case, which was consolidated with four others because the same attorney, Tom P. Slorby of Minot, represented those respondents. All parties agreed to consolidation.

Proceedings in the case were stayed pending the appeal on a related matter before the Commissioner to the District and Supreme Court. Henry, et al v. Commissioner, 2003 ND 62, 659 N.W.2d 869. On April 15, 2003, the Supreme Court issued its decision in Henry, dismissing the appeal because the Commissioner's July 31, 2001, Order was not a final order. Id.

On May 8, 2003, the ALJ issued a Notice of Consolidated Hearing for Haskins and those other respondents consolidated with his case. The hearing was scheduled for July 21, 2003. The hearing was held as scheduled on July 21, 2003, in the Office of Administrative Hearings, Bismarck, North Dakota. Special Assistant Attorney General Matthew O. Bahrenburg represented the Securities Commissioner. Haskins, along with other respondents, was present and was represented at the hearing by Mr. Slorby.

The Securities Commissioner called as witnesses its investigator and examiner, Kelly Mathias, the respondents, and several other witnesses. During the course of his testimony, Mr. Mathias was qualified as and declared an expert on high yield investment fraud and prime bank fraud. The Commissioner offered many exhibits. The respondents offered one exhibit. Two exhibits offered were withdrawn, exhibits W-3 and W-4. Exhibits E, G-Q, R and F were conditionally admitted over objection by respondents. The rest of the exhibits were admitted.

On July 23, 2003, the Commissioner filed a letter brief on the evidentiary matter. On August 12, 2003, the Commissioner filed the Commissioner's "Post-Hearing Brief and Closing Argument." On August 29, 2003, the respondents filed their letter brief which addressed only the evidentiary matter of the conditional exhibits. On September 11, 2003, the ALJ received the Commissioner's e-mail correspondence stating that no reply brief would be filed. Accordingly, the record in this matter was closed on September 11, 2003.

On September 25, 2003, the ALJ issued Recommended Findings of Fact, Conclusions of Law and Order. The ALJ found that Preferred Trust was a fraudulent investment scheme. The ALJ found that the Preferred Trust investment scheme is a

security as defined in N.D.C.C. § 10-04-02(15). The ALJ found that the scheme was not registered as a security in North Dakota and is not exempt from registration under the Securities Act. The ALJ found that the respondents included in the consolidated hearing, including Haskins, were not at that time and had never been registered as securities investment advisor representatives or securities agents in North Dakota.

The ALJ found that the many of the documents supporting the actions of the respondents in violation of the securities laws were not admissible and, therefore, found that there was no evidence showing an offer or sale of any security by any of the respondents in the consolidated hearing, including Haskins.

As discussed below, the Commissioner adopts in part and rejects in part the ALJ's recommendations and, in lieu thereof, issues this final order in the matter of Haskins.

Admissibility of the Evidence

The ALJ originally admitted over objection as hearsay Exhibits E, G-Q, R and F. Exhibits E, G-Q, R and F are documents seized from and found on the computer of Frederick Keiser, a commodities broker in Minot who acted as a principal for the Preferred Trust investment scheme in North Dakota. These documents were offered through Kelly Mathias, who qualified as an expert on high yield investment fraud and prime bank fraud. A trial deposition and trial transcripts from the trial of Fred Keiser for his actions in the Preferred Trust scheme were offered and received. The transcripts identified how the documents came to be in Mr. Mathias' possession. See Exhibits S, T, U. They, along with Mr. Mathias' testimony, show that Mr. Mathias was in attendance at the original search in which the computer was removed from Mr. Keiser's office, that

the computer was taken into the possession of a Bureau of Criminal Investigation agent, that the computer was transferred to the Mid-States Organized Crime Information Center where true and accurate copies of the documents on the computer were retrieved onto a compact disc, and that the compact disc was returned to the North Dakota Bureau of Criminal Investigation and provided to the Securities Department. There was no evidence introduced that undermined the authenticity of the documents taken from Mr. Keiser's computer.

However, the ALJ "struck" the admission of those exhibits as to the respondents in the consolidated hearing on the grounds that there was no testimony that identified the documents as business records of either the present respondents or of the absent respondent, Preferred Trust. The ALJ indicated that no witness was familiar with the offered exhibits and none had specific knowledge about the procedures under which the records were created. Finally, the ALJ claimed that there was no evidence about what these records mean in the business context, if anything, for Preferred Trust. In complete contradiction to these statements, the ALJ then identified that Mr. Mathias was able to testify about them as business records and could interpret them and could even make an apparently relevant summary about them.

The ALJ also identified that Mr. Mathis and many of the witnesses recognized the Keiser business records as part of the Preferred Trust investment scheme, a fraudulent investment scheme in which the respondents participated. Because the investment scheme was fraudulent, however, the ALJ claimed that these were not ordinary business records or subject to interpretation as common business records. The ALJ's explanation of this ground for rejecting the records is just not logical. Merely because a

business is fraudulent does not mean that the records kept by the business are not accurate records of the transactions that were conducted in the course of operating the business.

Further, the ALJ, in the course of three separate proceedings involving similar respondents and Preferred Trust, treated the introduction and use of these records differently as to the different respondents. The Commissioner finds this unacceptable. In the hearing for respondents Dennis Skarphol, Gerald Henry and Brian Henry, the ALJ admitted the same now-excluded exhibits, finding that the documents "showed that the three respondents were entitled to compensation from securities referrals, and monies were possibly earmarked for them."¹ In the separate hearings for respondents Larry Borud and Mark Dostert, the ALJ struck the same exhibits relating to information taken from Fred Keiser's computer as to those respondents, and then extensively cited and relied upon those excluded exhibits to support his findings that Borud and Dostert had violated the securities laws. The Commissioner is unwilling to have the same evidence offered as to the various respondents treated in such an inconsistent manner. Under these similar circumstances, either they are admissible or they are not. The Commissioner finds they are admissible, as follows.

The Commissioner finds that the documents taken from Keiser's computer concerning the Preferred Trust accounts are admissible as to all respondents who were involved in the referral of potential purchasers to the Preferred Trust website and who, as a result of the referrals, were eligible to receive the equivalent of commissions for the

¹ The ALJ did not believe this evidence showed that an actual offer or sale had been proven, a finding with which the Commissioner takes issue.

subsequent sale of Preferred Trust shares, including Haskins, to the extent the respondents can confirm the referrals identified in Keiser's records. Keiser acted as an agent for Preferred Trust and maintained records of those individuals in North Dakota who had made referrals to Preferred Trust, including Haskins. Preferred Trust is a co-respondent with Haskins. Haskins referred one or more individuals to Keiser to invest in the Preferred Trust scheme. Mr. Mathias, who qualified as an expert on high yield investment fraud and prime bank fraud, was able to identify what the records meant and how they were kept in the ordinary course of Keiser's business on behalf of the fraudulent Preferred Trust investment scheme. The documents from Keiser's computer are equally relevant as to Preferred Trust and to Haskins. Finally, Haskins confirmed that the records are accurate as to at least one referral he made to Preferred Trust through Keiser for investment in Preferred Trust. Mr. Mathias laid sufficient foundation for the introduction of these records and, although hearsay, they have substantial guarantees of trustworthiness through Mr. Mathias' explanations of their meaning and the confirmation of that meaning through the testimony of the respondents in the consolidated hearing.

For these reasons, the Commissioner rejects the ALJ ruling that Exhibits E, G-Q, R and F are not admissible in this hearing as to Haskins.

The ALJ's Evaluation of the Evidence

The ALJ included a discussion of his personal "Evaluation of the Evidence." Essentially, this appears to be an effort by the ALJ to buttress his recommended findings of fact and conclusions of law by a "personal" statement of his view of the credibility of the respondents' statements and his view of the "investment scheme" as

related to these respondents. While the Commissioner agrees that these individuals are also “victims” because they lost their own money on a scheme that was fraudulent, the Commissioner also finds that the various respondents, including Haskins, referred others to this investment scheme because of a desire to receive bonuses, in the nature of commissions, based on a percentage of the invested amount.² In this regard, the Commissioner believes the evidence shows Haskins discussed this investment with at least one other person and recommended he look at Preferred Trust as an investment and, as a result of this referral, Haskins knew that he would receive a bonus if the individual invested in Preferred Trust. The Commissioner listened to the same evidence listened to by the ALJ and takes exception with the ALJ’s evaluation of the evidence and inferences to be drawn from the evidence, finding the ALJ’s evaluation of the evidence unsubstantiated by the totality of the evidence.

Additional documents were admitted by the ALJ through Mr. Mathias’ testimony that identified how the Preferred Trust scheme operated. These documents were printed from the Preferred Trust website. Mr. Mathias’ testimony was accepted to prove that the Preferred Trust scheme was a prime bank fraud. Based on his understanding of the fraudulent scheme and the information on the website about the referrals and bonuses, Mr. Mathias was able to explain how each individual who “referred” someone else to the website would be paid for his referral. Finally, Mr. Mathias, based on his knowledge of the operation of the Preferred Trust scheme and his review of Mr. Keiser’s

² The Commissioner believes the “bonuses,” based on a percentage of the referred party’s initial investment, are similar to a commission or finder’s fee, however, in the interests of continuity, this Order will continue to refer to them as “bonuses” as that is the nomenclature used by Preferred Trust and used in the evidentiary hearings.

documents, was able to tie Haskins to an account number and to the referral Haskins made to the Preferred Trust website or to Keiser. There was no evidence that disputed Mr. Mathias' expert testimony as to how the Preferred Trust scheme operated or how the bonuses were calculated for Haskins's referral to Preferred Trust.

For these reasons and based on the testimony and evidence, the Commissioner finds that Haskins took action and had knowledge, as follows.

Haskins was brought to Keiser by his father, Gerald Haskins, who knew Keiser from a period when he had worked as a commodities broker with Keiser. Prior to working with Keiser, Gerald Haskins had worked for Paine Webber. Gerald Haskins testified that he referred a number of individuals to Preferred Trust and Keiser. At that time, he believed that he would not live much longer as he had just had a transplant and believed he would not be around to collect his monthly bonuses from his referrals. For that reason, he had Keiser list his son, Haskins, as the referral source for many of Gerald's referrals.³

According to Haskins, he and his father went to Keiser to discuss commodities investments. Keiser recommended Preferred Trust to them and printed pages from the website for them to review. After Haskins and his father reviewed the material, they both invested in Preferred Trust. Haskins testified that he did not "recall" whether he was told or read about the bonuses for referrals. This claim is just not credible.

³ This is the only inaccuracy in Keiser's records noted by any of the witnesses. In this case, the inaccuracies were not because Keiser did not keep accurate records in the ordinary course of his business, but because in this one case, he agreed to reassign the bonuses for Gerald Haskins to Todd Haskins, at Gerald Haskins' request.

First, Haskins testified he read the information from the Preferred Trust website; a fair inference is that he read about the bonuses for referrals to Preferred Trust. He was investing in Preferred Trust himself. It is presumed he would have wanted to know what benefits he would have from his investment. See N.D.C.C. § 31-11-03 (establishing a rebuttable presumption “[t]hat a person takes ordinary care of that person’s own concerns”). That information is contained in two back-to-back parts of the “Policies and Procedures” portion of the investment information. See Exh. A, Policies and Procedures at 3. Those sections, “Offshore Investment Program,” and “Bonuses,” describe clearly how an investment in Preferred Trust will return earnings, including a description of a “Business Builder Bonus” that clearly advises an investor that the investor “may earn monthly bonuses by introducing other investors.” The information clearly identifies that the bonus is paid based on the amount the introduced party invests. Further, another section of the Preferred Trust information identifies, in a section referred to as “Frequently Asked Questions,” that the Business Builders Bonus is the “only bonus paid on a monthly basis, and is *readily available for withdrawal from the Trust Account without any penalties.*” Exh. A, Frequently Asked Questions, page 4 of 4 (emphasis added).

Second, he discussed Preferred Trust, as an investment, in Keiser’s office with his father, who was a former broker. It is a fair inference that his father and Keiser would have noted the bonuses that would be paid for referrals as an attractive part of investing in Preferred Trust. In any event, however, Haskins claimed to have read the material on Preferred Trust from the web page; that is sufficient to establish his knowledge of the bonuses for referrals.

Haskins claims that he did not know that his father was attributing referrals to him. Whether this is credible or not is immaterial.⁴ Inasmuch as the evidence establishes that Haskins only referred one individual to Preferred Trust, Haskins would have "earned" the bonus only for that individual, even though he was credited with bonuses from a number of referrals.

Gerald Thomas testified that Haskins referred him to Preferred Trust and Keiser. He asked Haskins what was doing well in the stock market and Haskins told him about Preferred Trust. Haskins told him it was an investment in which they could make good money and referred him to Keiser for instructions in how to invest. Thomas invested \$10,000 in June 2000 under the business name of Productive Management, Ltd. Because he is listed as referred by Haskins, a fair inference is that either he indicated to Keiser that Haskins had referred him to Preferred Trust or Haskins himself indicated it to Keiser.

Based on the totality of the evidence presented at the hearing, the Commissioner finds that Haskins had knowledge that he would earn a bonus for introductions he made to Preferred Trust. The evidence shows that Haskins introduced at least one individual to Preferred Trust who invested in Preferred Trust securities. This investment earned Haskins a 1% bonus of the amount invested. Further, the information provided by Preferred Trust shows that Haskins received the bonus because the bonus money was

⁴ Haskins, as noted, had reviewed at least three of his statements. These would have shown the bonuses for all of the referrals made by his father that were attributed to Haskins.

in his Trust account and that it was available to him at any time he chose to collect it through the use of a debit card.

Findings of Fact

1. The Securities Commissioner investigated the activities of Frederick W. Keiser ("Keiser") of Minot and seized a computer from him. As a result of that investigation, separate Cease and Desist orders were issued against Preferred Trust and, amongst others individuals, Haskins.

2. The testimony by Haskins identified that he referred at least Gerald Thomas to Preferred Trust, as is accurately reflected on the records taken from Keiser's Computer as relevant to Haskins' account.

3. The information from Preferred Trust's website identifies to investors the nature of Preferred Trust's investments and that monthly bonuses will be paid for introductions of other investors. See Exh. A, Policies and Procedures at 3. The information clearly identifies that the bonus is paid based on the amount the introduced party invests.

4. The Preferred Trust's website identifies that the bonus is "paid on a monthly basis, and is *readily available for withdrawal from the Trust Account without any penalties.*" Exh. A, Frequently Asked Questions, page 4 of 4 (emphasis added).

5. Haskins knew that he would receive a bonus for each referral he made to Preferred Trust when the referral resulted in an investment.

6. Haskins referred at least one individual to Preferred Trust and the referral resulted in an investment by that person.

7. Haskins discussed Preferred Trust with at least one other individual and referred that individual to Preferred Trust in North Dakota.

8. Haskins received one or more bonus payments for the referral made to Preferred Trust where that referral resulted in an investment by the referred person.

9. The bonus payment paid Haskins was deposited in a Trust Account and was available for withdrawal whenever Haskins chose to withdraw the funds by applying for and using a debit card.

10. Haskins was not, at any of the time relevant to the issues in this matter, registered as a securities investment advisor representative or securities agent in North Dakota.

Conclusions of Law

1. The Preferred Trust investment scheme is a security as defined in N.D.C.C. § 10-04-02(15) (1999).

2. Preferred Trust was not registered or exempt from registration in North Dakota. See N.D.C.C. § 10-04-05 (1999), N.D.C.C. § 10-04-07 (1999), N.D.C.C. § 10-04-07.1 (1999), N.D.C.C. § 10-04-08 (1999), N.D.C.C. § 10-04-08.1.

3. The Preferred Trust securities were not offered for sale or sold in an exempt transaction. See N.D.C.C. § 10-04-06 (1999).

4. The Preferred Trust investment scheme is a fraudulent investment scheme.

5. An "offer for sale" or "offer to sell" includes an attempt to solicit an order for a security for value. N.D.C.C. § 10-04-02(9) (1999). This language has been interpreted to and does include action that materially aids in a sales transaction of a

security, including the solicitation of a buyer. See Pinter v. Dahl, 486 U.S. 622, 646-47 (1987). Other states have found such payments of finders fees, which would be equivalent to the referral bonuses paid in this case, to require registration as an agent by the person receiving the fee. See Blue Sky Law, Joseph C. Long, Vol. 12A, §8.33, © 2003. The federal Securities and Exchange Commission has stated that it would be a violation of the securities law for an individual who was not registered to make referrals to a broker and receive compensation for the referrals. See CCH ¶79,959 (1988).

6. Haskins's referral of at least one individual to the Preferred Trust investment scheme with the knowledge that he would be entitled to compensation when that individual invested constituted an "attempt to offer to dispose of . . . a security or interest in a security for value," and therefore would be an "offer for sale" or "offer to sell." See N.D.C.C. § 10-04-02(9) (1999). When that person actually invested, the referral became a sale under N.D.C.C. § 10-04-02(13) (1999). Haskins acknowledged referring another person to the scheme and identified that he was personally invested in the scheme. Haskins knew about the bonuses available for referrals. This is sufficient evidence to establish that Haskins was a seller within the meaning of the language of N.D.C.C. § 10-04-02 (1999). As such, Haskins violated the provisions of N.D.C.C. § 10-04-04 by offering a security for sale that was not registered in North Dakota.

7. The evidence shows that Haskins violated the provisions of N.D.C.C. § 10-04-10 (1999) requiring that an individual offering for sale or selling any securities in North Dakota must be registered as a dealer or agent. Haskins referred at least one other individual to the scheme with the knowledge that he would be entitled to compensation if he invested. That referral constituted "an attempt to offer to dispose of

... a security or interest in a security for value” and is, therefore, an “offer for sale” or “offer to sell” as defined in N.D.C.C. § 10-04-02(9) (1999). When Haskins referred another to Keiser for investment in the Preferred Trust scheme, he was offering to sell and selling to an investor in North Dakota and was acting as an unregistered agent of the unregistered securities dealer Preferred Trust (through Fred Keiser). Thus, Haskins was in violation of N.D.C.C. § 10-04-10 (1999).

8. Haskins violated the provisions of N.D.C.C. § 10-04-15(2) and (4) by offering for sale investments in a fraudulent investment scheme. Any person who solicits investors to invest in a fraudulent program is engaging in a course of business that operates as a fraud or deception upon investors. There is no intent required under N.D.C.C. § 10-04-15(2) or (4). Preferred Trust is a fraudulent investment scheme. Haskins violated the provisions of N.D.C.C. § 10-04-15(2).

9. Under N.D.C.C. § 10-04-16 (1999), a \$10,000 civil penalty may be imposed for each violation of N.D.C.C. ch. 10-04.

10. As to Haskins, the evidence shows one violation each of N.D.C.C. § 10-04-04, N.D.C.C. § 10-04-10 (1999), and N.D.C.C. § 10-04-15.

Therefore the Commissioner has authority to impose a civil penalty against Haskins in the amount of \$30,000.

Order

The greater weight of the evidence shows that Haskins violated the provisions of N.D.C.C. §§ 10-04-04, 10-04-10 (1999), and 10-04-15 and, therefore, it is ordered that the Cease and Desist Order issued against him on April 10, 2001, remain in effect, indefinitely, unless otherwise lifted or dismissed by the Securities Commissioner.

Further, although a civil penalty may be imposed in the amount of \$30,000 against Haskins, the evidence shows that Haskins, as many of the individuals who participated in the furtherance of the Preferred Trust scheme, was a victim as well as a perpetrator. It would be unfair to impose a very large civil penalty against any one of them.

Therefore, it is ordered that a civil penalty is imposed against Haskins in the amount of \$1,000.

Dated at Bismarck, North Dakota, this 5th day of March, 2004.



NORTH DAKOTA SECURITIES DEPARTMENT



Karen Tyler
Securities Commissioner