

STATE OF NORTH DAKOTA

SECURITIES DEPARTMENT

IN THE MATTER OF:

Preferred Trust and
Management, LTD., and
Brian Henry.

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CONSENT ORDER

The North Dakota Securities Commissioner brought this action by service of a Cease and Desist Order on April 10, 2001, on Respondent, Brian Henry. This action seeks, under N.D.C.C. § 10-04-16, to restrain and enjoin actions taken by Henry, who is not a registered agent, in connection with the offer or sale of unregistered securities, fraudulently issued by Preferred Trust and Management, Ltd., an offshore investment company. On June 28, 2001, the Commissioner served a Notice of Intent to Seek Civil Penalties in excess of \$20,000. Henry was cited for his involvement in the sale of Preferred Trust securities to at least one individual in North Dakota which action, pursuant to N.D.C.C. § 10-04-16, carries a civil penalty up to \$10,000 per violation.

An appeal was brought by Henry and, after a continuance while the Respondent pursued an appeal to the North Dakota Supreme Court, a hearing was held before an Administrative Law Judge on June 6, 2003.¹

At the conclusion of the hearing, the Administrative Law Judge issued recommended findings of fact to the Commissioner, including that Preferred Trust and Management, Ltd., was involved in a fraudulent investment scheme to sell securities in

¹ The appeal hearing was consolidated with two other similar cases represented by the same counsel.

North Dakota. At the hearing, Henry did not testify, claiming a Fifth Amendment right not to incriminate himself. The ALJ found that there was evidence that Henry was listed as having referred individuals to Preferred Trust and was entitled to compensation for such referrals, but there was no evidence of an offer or sale, or purchase of any security between Henry and the individuals with whom he discussed the securities.

It is the Commissioner's position that the evidence from the hearing, and additional evidence from previous trial testimony, shows that Henry, directly or indirectly, took action in connection with an offer or sale of unregistered securities and took this action for purposes of receiving a payment as a result of a subsequent sale of such securities in violation of N.D.C.C. §§ 10-04-15(3), (4). Henry denies that he violated any provision of N.D.C.C. ch. 10-04, denies that he had any knowledge of any fraudulent scheme when he invested in the program, denies that he referred other individuals to the program, or offered for sale or sold unregistered securities, and denies that there is sufficient evidence for the Commissioner to assess civil penalties against him under N.D.C.C. § 10-04-16. The parties wish to end their dispute, however, and to avoid the continued expense, delay, and uncertainties of further litigation, and have agreed to the entry of this Consent Order.

The Commissioner finds the following Order is necessary and appropriate in the public interest.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Respondent Brian Henry shall refrain from taking any action in connection with the offer for sale or sale in North Dakota of Preferred Trust and Management, LTD,

securities or any other securities until such security has been registered with the Securities Department or properly exempted.

2. Respondent Brian Henry shall refrain from taking any action in connection with the offer for sale or sale of securities in North Dakota until such time as he has registered with the Securities Department as a dealer or agent.

3. Respondent Brian Henry shall pay to the Securities Department the sum of \$500 to resolve this matter. This payment is accepted as a civil penalty by the Commissioner, however, the payment is not an admission of any wrongdoing by Respondent.

4. Respondent Brian Henry agrees to cooperate with any investigation by the Commission or any law enforcement agency and shall willingly and openly testify in any proceeding related to the subject of this action.

5. The Commissioner shall not refer Brian Henry to any jurisdiction for criminal prosecution for any violations cited in the Cease and Desist Order issued April 10, 2001.

6. The Cease and Desist Order issued April 10, 2001, is hereby withdrawn.

Dated this 3rd day of December, 2003.



Karen Tyler, Commissioner
North Dakota Securities Department