

STATE OF NORTH DAKOTA

BEFORE THE

COUNTY OF BURLEIGH

SECURITIES COMMISSIONER

In the Matter of Preferred Trust )  
and Management, LTD. and )  
Marlene Hupka, )  
Respondents. )

CONSENT ORDER

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The North Dakota Securities Commissioner has a determined, and the Respondent, Marlene Hupka, admits as follows:

1. On April 10, 2001, the North Dakota Securities Commissioner issued a Cease and Desist Order in the above captioned matter based on the fact that Marlene Hupka solicited one person to invest in the Preferred Trust and Management investment scheme. Specific information regarding this matter is contained in the Affidavit of Marlene Hupka, attached hereto and incorporated herein by reference.
2. Each solicitation was made in violation of section 10-04-04 N.D.C.C. because the Preferred Trust and Management program was not registered as a security in North Dakota, nor does the program qualify for any exemption from the securities registration provisions of the Securities Act.
3. Each solicitation was made in violation of section 10-04-10 N.D.C.C. because Marlene Hupka was not registered as an agent in North Dakota, nor did the transaction constitute an exempt transaction under the Securities Act.
4. Each solicitation was made in violation of section 10-04-15 N.D.C.C. because the program, as a whole, is a scheme or artifice to defraud investors or potential

investors. It does not appear that Marlene Hupka made the solicitation with knowledge that the program was a scheme to defraud investors.

5. Pursuant to section 10-04-16 N.D.C.C., when it shall appear to the Commissioner that any person has engaged in, or is engaging in, or is about to engage in any act or practice which is declared illegal in this chapter, the Commissioner may, in his discretion, issue any order and collect civil penalties against any person found in an administrative action to have violated any provision of the chapter in an amount not to exceed \$10,000 for each violation.
6. The violations described above are sufficient grounds for the Commissioner to assess civil penalties against respondent pursuant to section 10-04-16 N.D.C.C..
7. Respondent, Marlene Hupka, has admitted the factual and legal conclusions contained in this Order, and enters into this Order willingly. Respondent, Marlene Hupka, acknowledges his/her right to a hearing regarding this matter to present arguments before the Commissioner, and has waived all rights to a hearing regarding this matter.
8. The following Order is necessary and appropriate in the public interest.

**NOW, THEREFORE, IT IS ORDERED, THAT:**

1. Respondent, Marlene Hupka, shall pay to the Securities Commissioner, pursuant to section 10-04-16 N.D.C.C., a civil penalty in the amount of \$500.
2. Respondent, Marlene Hupka, shall pay to the Securities Commissioner's Securities Protection Fund all funds, which have been or will be received in profits, commissions or other payments from soliciting persons to participate in

the program. Any additional funds received shall, within ten (10) days of their receipt by Marlene Hupka, shall be paid to the Securities Protection Fund.

3. Respondent, Marlene Hupka, shall agree to cooperate with any investigation by the Securities Commissioner or any law enforcement agency, regardless of jurisdiction, and shall willingly and openly testify in any proceeding, be it administrative, civil or criminal in nature, in a truthful matter not inconsistent with the Affidavit submitted herewith (Attachment A).
4. Respondent, Marlene Hupka, shall and herein does acknowledge liability, pursuant to section 10-04-17 N.D.C.C., to each of the persons he/she solicited. Respondent, Marlene Hupka, shall not contest any civil claim of liability to any of those persons based on any denial of applicability of that statute, or that the facts of this case do not give rise to a claim under that statute.
5. The Cease and Desist Order, as issued on April 10, 2001, shall remain in effect, and any violations of that Order can be pursued without any regard to this Consent Order.
6. This Order shall be effective upon signature of the Commissioner.

IN TESTIMONY WHEREOF, witness my hand and seal this 3rd day of ~~May~~, June, 2003.



  
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Karen J. Tyler, Securities Commissioner  
Office of the Securities Commissioner  
600 East Boulevard Ave.  
State Capitol – Fifth Floor  
Bismarck, ND 58505-0510  
(701) 328-2910

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CONSENT TO ENTRY  
OF ORDER

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The undersigned Respondent, Marlene Hupka, states that she has read the foregoing Consent Order, and that she knows and fully understands its contents and effects. Marlene Hupka further acknowledges that she has waived his/her right to a hearing with respect to this matter; and that she consents to the entry of the Consent Order by the Securities Commissioner, and expressly admits the findings of fact and conclusions of law contained therein. It is further expressly understood that the Consent Order constitutes the entire settlement agreement between the parties hereto, there being no other promises or agreements, either expressed or implied.

Dated this 2nd day of ~~May~~ <sup>June</sup>, 2003.

Marlene Hupka  
Marlene Hupka  
425 20th Street NW  
Minot, ND 58703

Sworn before me this 2nd day of ~~May~~ <sup>June</sup>, 2003.

Kathy Kragh  
, notary public  
State of: \_\_\_\_\_, County: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

KATHY KRAGH  
Notary Public, State of North Dakota  
My Commission Expires Mar. 18, 2009