

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

BEFORE THE
SECURITIES COMMISSIONER

In the Matter of)	NOTICE OF DEFAULT, DEFAULT
Verlin Swartzendurber)	ORDER , NOTICE OF CIVIL
)	PENALTY AND NOTICE OF
)	RIGHT TO MAKE MOTION TO
Respondents)	VACATE DEFAULT ORDER

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**TO: KERMIT EDWARD BYE, ATTORNEY REPRESENTING RESPONDENT,
VERLIN SWARTZENDRUBER, AT THE VOGEL LAW FIRM, P. O. BOX
1389, FARGO, ND 58107.**

NOTICE OF DEFAULT

YOU ARE HEREBY NOTIFIED that at the administrative hearing in the above-referenced matter, held on June 2, 1999, Respondent, Verlin Swarztendruber, was held in default pursuant to §28-32-08.4 N.D.C.C. You are further notified that the following Default Order is issued pursuant to the Order of the Administrative Law Judge and §28-32-08.4 N.D.C.C.

DEFAULT ORDER

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

- 1) On April 22, 1998, the North Dakota Securities Commissioner issued a Cease and Desist Order and Notice of Right to Request a Hearing (See Attachment A, attached hereto and incorporated herein by reference) against Agkota Holdings, Inc., International Joint Ventures Association, Preferred Home Loans, Founders Club, Inc., Verlin Swartzendruber, Terry

Nitschke, Duane Moos, Norman Nitschke, William Ebele, and their officers, directors, agents, and employees.

- 2) In the Cease and Desist Order and Notice of Right to Request a Hearing, dated April 22, 1998, the Commissioner determined that:
 - a) The Respondents have offered for sale and sold investment contracts, which are securities as defined in §10-04-02(13) N.D.C.C., to residents of North Dakota in violation of §10-04-04 N.D.C.C.
 - b) The subject investments have not been registered with the Securities Commissioner under §10-04-07; §10-04-07.1; §10-04-08; or §10-04-08.1 N.D.C.C.; are not exempt securities under §10-04-05 N.D.C.C.; and have not been offered for sale or sold in exempt transactions under §10-04-06 N.D.C.C.
 - c) The Respondents have failed to register as dealers in violation of §10-04-10(1) N.D.C.C.
 - d) The Respondents have failed to register any salesman in violation of §10-04-10(2) N.D.C.C.
 - e) Through offering the subject investments, the Respondents have guaranteed the returns and have stated that the program is without risk of investment loss in violation §10-04-15 N.D.C.C. Further, Respondents engaged in other fraudulent acts in violation §10-04-15 N.D.C.C.

- 3) In the Cease and Desist Order and Notice of Right to Request a Hearing, dated April 22, 1998, the Commissioner ordered the respondents to Cease and Desist:
 - a) From offering for sale or selling in North Dakota the subject investment, or any other investment interest however denominated, unless and until such investment interests have been registered with the Securities Commissioner.
 - b) From offering for sale or selling investments in North Dakota unless and until they have registered with the Securities Commissioner as dealers or salesmen.
 - c) From providing a guarantee on rates of return on investments, guaranteeing against loss of principle invested, or otherwise engaging in a fraudulent act while offering for sale or selling investments in North Dakota.
- 4) In the Cease and Desist Order and Notice of Right to Request a Hearing, dated April 22, 1998, the Commissioner provided Mr. Swartzendruber and the other respondents with notice that the violations are sufficient grounds for the imposition of civil penalties pursuant to §10-04-16(1) N.D.C.C. The Securities Commissioner further notified the respondents that he expressly reserves the authority to assess civil penalties regarding the violations outlined in the Cease and Desist Order, any other violations subsequently discovered, or any future securities violations or violations of the Cease and Desist Order.

- 5) In the Cease and Desist Order and Notice of Right to Request a Hearing, dated April 22, 1998, the Commissioner provided Mr. Swartzendruber and the other respondents with notice that they had a right to a hearing under §10-04-12 N.D.C.C. They were further informed that they could request a hearing in writing within ten (10) days after they received the Cease and Desist Order.
- 6) The Cease and Desist Order and Notice of Right to Request a Hearing, dated April 22, 1998, was served on Verlin Swartzendruber, Norman Nitschke, and all the non-natural persons on April 23, 1998, on Terry Nitschke and William Ebele on April 24, 1998, and Duane Moos, on April 25, 1998.
- 7) The Respondents, Verlin Swartzendruber, Norman Nitschke, Terry Nitschke, William Ebele and Norman Nitschke requested a hearing in the above-referenced matter on May 1, 1998.
- 8) On March 15, 1999, at the request of respondents, the Commissioner created a statement of disputed and undisputed facts (See Attachment B, attached hereto and incorporated herein, by reference) which found the following undisputed facts:
 - a) Respondents, Agkota Holdings, Inc.; International Joint Venture Association; Preferred Home Loans, Inc.; and Founder's Club, Inc.; are businesses which were operated by Respondent, Verlin Swartzendruber and other above-named respondents, out of the offices at 1923 6th Ave. SE, Suite 108 in Aberdeen, SD 57402.

- b) Neither Agkota Holdings, Inc.; International Joint Venture Association; Preferred Home Loans, Inc.; nor the Founders Club, Inc.; are or ever were registered with the North Dakota Securities Commissioner as a broker/dealer in North Dakota.
- c) Respondents, Verlin Swartzendruber, Terry Nitschke, Duane Moos, Norm Nitschke, and William Ebele are natural persons. Neither Verlin Swartzendruber, Terry Nitschke, Duane Moos, Norm Nitschke nor William Ebele are now or have ever been registered with the North Dakota Securities Commissioner as salesmen in North Dakota.
- d) Respondents, Verlin Swartzendruber, Terry Nitschke, Duane Moos, Norm Nitschke, and William Ebele operated and managed an investment scheme through the International Joint Venture Association (the "investment scheme"). Investors, who included North Dakota residents, provided money to the International Joint Venture Association in the form of membership fees, exchanged property (cash) and blocked assets (other property).
- e) The respondents' plan for the investment scheme was to pool the investment moneys, leverage those moneys and to engage in a High Yield Trading Program, which would involve the active purchases and sales of Bank Debentures.
- f) According to documents retained by the respondents and shown to investors, the investors' money is guaranteed from loss by a Bank Endorsed Guarantee, which is issued to secure the principal for the

contract period. Respondents told investors and potential investors that the investor funds are never put at risk.

- g) According to the respondents' plan, any profits or returns on the investment, if realized, would be based in substantial part on the efforts and expertise of the respondents and not on the individual efforts or expertise of the investors.
- h) The investment scheme was not registered with the North Dakota Securities Commissioner as a security in North Dakota. The investment scheme is not an exempt security under §10-04-05 N.D.C.C., nor was it offered through an exempt securities transaction under §10-04-06 N.D.C.C.
- i) Through the respondents' investment scheme, respondents collected \$300,000 in cash and over \$2,300,000 in blocked assets. The investment funds were collected of residents of several states, including North Dakota. In excess of \$800,000 in cash and blocked assets was collected from North Dakota residents.
- j) Respondent, Verlin Swartzendruber, acted as the manager of Agkota Holdings, Inc. and the International Joint Venture Association and participated in the offer and/or sale of investment interests in International Joint Ventures Association to virtually all of the investors.
- k) Respondent, Terry Nitschke, is an insurance agent who is licensed with the North Dakota Insurance Commissioner.

l) Respondent, Terry Nitschke, participated in the offer and/or sale of investment interests in International Joint Ventures Association to several persons including the following:

- i) John Scott
- ii) Lu Nollan
- iii) Don Erickson
- iv) Terrance and Deborah Johnson
- v) Rose Glas
- vi) Ron Thomsen
- vii) Lee Schobinger
- viii) Judy Schobinger
- ix) Adam Schobinger
- x) Amanda Schobinger
- xi) Amy Schobinger
- xii) Vivian Stolz
- xiii) Shirley Sweet
- xiv) Dale Jalsela
- xv) B & B Farm

m) Respondent, William Ebele, participated in the offer and/or sale of investment interests in International Joint Ventures Association to several persons including the following:

- i) Terry Thompson
- ii) Raymond Elbingsen

- iii) Harold Olson
 - iv) Glen Horst
 - v) Al Mayer
 - vi) Larry Slowbaum
 - vii) Dwain Thomas
 - viii) Gerald Busche
- n) Respondent, Norm Nitschke, participated in the offer and/or sale of investment interests in International Joint Ventures Association to several persons including the following:
- i) Lindsay Smith
 - ii) Gene Allen
 - iii) Jeffrey Nitschke
 - iv) Rodney Berg
 - v) Lyle Hollingsworth
 - vi) Craig Dallman
- o) Respondent, Duane Moos, participated in the offer and/or sale of investment interests in International Joint Ventures Association to several persons including the following:
- i) Richard Sweet
 - ii) Shirley Prigge
- 9) In the Statement of Disputed and Undisputed Facts dated March 15, 1999, the Commissioner did not find any disputed facts. The respondents have not submitted any on the record statement which contradicted or would

negate any of the facts set forth in that Statement of Disputed and Undisputed Facts.

10) On May 28, 1999, the Securities Commissioner entered into a Consent Order with Terry Nitschke (See Attachment C, attached hereto and incorporated herein, by reference) and he was released from the Cease and Desist Order dated April 22, 1998. In that Order, the Commissioner found that some of the names set forth in 8(l) above were inaccurate, and determined the following:

- a) Neither Agkota Holdings, Inc.; International Joint Venture Association; Preferred Home Loans, Inc.; nor the Founders Club, Inc.; are or ever were registered with the North Dakota Securities Commissioner as a broker/dealer in North Dakota.
- b) Respondents, Verlin Swartzendruber, Terry Nitschke, Duane Moos, Norm Nitschke, and William Ebele are natural persons. Neither Verlin Swartzendruber, Terry Nitschke, Duane Moos, Norm Nitschke nor William Ebele are now or have ever been registered with the North Dakota Securities Commissioner as salesmen in North Dakota.
- c) Respondents, Verlin Swartzendruber, Terry Nitschke, Duane Moos, Norm Nitschke, and William Ebele operated and managed an investment program through the International Joint Venture Association (the "investment program"). Investors, who included North Dakota residents, provided money to the International Joint

Venture Association in the form of membership fees, exchanged property (cash) and blocked assets (other property).

- d) The respondents' plan for the investment program was to pool the investment moneys, leverage those moneys and to engage in a High Yield Trading Program, which would involve the active purchases and sales of Bank Debentures.
- e) According to documents retained by the respondents and shown to investors, the investors' money is guaranteed from loss by a Bank Endorsed Guarantee, which is issued to secure the principal for the contract period. Respondents told investors and potential investors that the investor funds are never put at risk.
- f) According to the respondents' plan, any profits or returns on the investment, if realized, would be based in substantial part on the efforts and expertise of the respondents and not on the individual efforts or expertise of the investors.
- g) The investment program was not registered with the North Dakota Securities Commissioner as a security in North Dakota. The investment program is not an exempt security under §10-04-05 N.D.C.C., nor was it offered through an exempt securities transaction under §10-04-06 N.D.C.C.
- h) The respondents have been unable to provide and the Commissioner, after an investigation of this matter, has been unable to find any credible evidence that the bank debenture trading

program, as discussed above, actually exists. The investment program, as a whole, constitutes a "scheme or artifice to defraud" investors and potential investors. The investigation of the Commissioner demonstrates that respondent, Terry Nitschke, did not have knowledge of the fraudulent nature of the investment program, nor did he have any intent to defraud investors. Instead, Terry Nitschke believed that this was a legitimate trading program and, not having made any independent inquiries, was relying upon the statements of respondent, Verlin Swartzendruber, in reaching that conclusion.

- i) Through the respondents' investment program, respondents collected \$300,000 in cash and over \$2,300,000 in blocked assets. The investment funds were collected of residents of several states, including North Dakota. In excess of \$800,000 in cash and blocked assets was collected from North Dakota residents.
- j) Respondent, Verlin Swartzendruber, acted as the manager of Agkota Holdings, Inc. and the International Joint Venture Association and participated in the offer and/or sale of investment interests in International Joint Ventures Association to virtually all of the investors.
- k) Respondent, Terry Nitschke, is an insurance agent who is licensed with the North Dakota Insurance Commissioner.

- l) Respondent, Terry Nitschke, participated in the offer and/or sale of investment interests in International Joint Ventures Association to several persons including the following:
 - i) John Scott
 - ii) Lee Hollan
 - iii) Don Erickson
 - iv) Terrance and Deborah Johnson
 - v) Rose Glas
 - vi) Ron Thomsen
 - vii) Lee Schobinger and Family
 - viii) Vivian Stolz
 - ix) Shirley Sweet
 - x) Dale Jakela
 - xi) B & B Farm
 - m) The facts set forth above demonstrate that Respondent, Terry Nitschke, engaged in multiple violations of the Securities Act.
 - n) The information set forth above is sufficient grounds for the Commissioner to assess civil penalties in an amount not to exceed \$10,000 for each violation of the Securities Act, pursuant to §10-04-16(1) N.D.C.C.
- 11) A hearing for the above-captioned matter was scheduled for June 2, 1999. No settlement was reached with Verlin Swartzendruber, Norman Nitschke, Duane Moos or William Ebele prior to the June 2, 1999 hearing. Verlin

Swartzendruber, Norman Nitschke, Duane Moos and William Ebele were all subpoenaed to attend the hearing and to provide testimony at that hearing.

- 12) On June 2, 1999, Verlin Swartzendruber, Norman Nitschke, Duane Moos and William Ebele failed to appear, either in person or via representation, at the hearing and thereby failed to participate in the hearing or to honor the subpoenas issued by the Commissioner. Failure to participate in a hearing is sufficient grounds to find respondents in default, and the Commissioner made motion at that hearing that the respondents, Verlin Swartzendruber, Norman Nitschke, Duane Moos and William Ebele be found in default. The Administrative Law Judge found such action appropriate under the circumstances and granted that motion.
- 13) On June 28, 1999, Norman Nitschke, Duane Moos, and William Ebele entered into Consent Orders with the Commissioner (See Attachment D, attached hereto and incorporated herein, by reference). Those Consent Orders are virtually identical, except for penalties and investigative costs, to the Consent Order issued entered by the Commissioner with Terry Nitschke. The Consent Orders specifically held that the investment program was a scheme or artifice to defraud investors and potential investors.
- 14) Verlin Swartzendruber has not reached a settlement with the Commissioner.

NOW, THEREFORE, the Commissioner hereby Orders that Respondent, Verlin Swartzendruber is hereby in Default and the Commissioner's Cease and Desist Order dated April 22, 1998 is a final order.

NOTICE OF CIVIL PENALTY

You are hereby notified that, Pursuant to the authority of the North Dakota Securities Commissioner under §10-04-16(1) N.D.C.C., the Securities Commissioner hereby assesses a **civil penalty against Verlin Swartzendruber, in the amount of \$80,000** and orders Verlin Swartzendruber shall pay the civil penalty to the Securities Commissioner, based on the securities violations set forth above. The payment of Civil Penalty is due and payable immediately upon service of this document.

NOTICE OF RIGHT TO MAKE MOTION TO VACATE DEFAULT ORDER

You are hereby notified that, pursuant to §28-32-08.4(2) N.D.C.C., you have the right to make a motion to vacate the default order. Such motion, if made, must be made in writing and must state the specific grounds relied upon in contesting the default order.

IN TESTIMONY WHEREOF, witness my hand and seal this 28th day of June, 1999.



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

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

BEFORE THE
SECURITIES COMMISSIONER

In the Matter of Norman Nitschke)
)
)
 Respondents)

**AMENDMENT TO CONSENT
ORDER**

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WHEREAS, on June 28, 1999, the North Dakota Securities Commissioner entered into a Consent Order with Norman Nitschke; and,

WHEREAS, due to a clerical error, the Consent Order referred to the Cease and Desist Order dated April 22, 1998 as the Cease and Desist Order dated April 9, 1998.

Now, Therefore, the Consent Order is hereby amended so that the all references to the Cease and Desist Order dated April 9, 1998 are replaced with references to the Cease and Desist Order dated April 22, 1998. No other changes are made or intended to be made through this document.

Signed and Sealed this 28th day of June, 1999.



Syver Vinje, Securities Commissioner
Office of the Securities Commissioner
State Capitol – Fifth Floor
600 East Boulevard Ave.
Bismarck, ND 58505-0510
(701) 328-4701

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

BEFORE THE
SECURITIES COMMISSIONER

In the Matter of Duane Moos)
)
)
 Respondents)

**AMENDMENT TO CONSENT
ORDER**

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WHEREAS, on June 28, 1999, the North Dakota Securities Commissioner entered into a Consent Order with Duane Moos; and,

WHEREAS, due to a clerical error, the Consent Order referred to the Cease and Desist Order dated April 22, 1998 as the Cease and Desist Order dated April 9, 1998.

Now, Therefore, the Consent Order is hereby amended so that the all references to the Cease and Desist Order dated April 9, 1998 are replaced with references to the Cease and Desist Order dated April 22, 1998. No other changes are made or intended to be made through this document.

Signed and Sealed this 28th day of June 1999.



Syver Vinje, Securities Commissioner
Office of the Securities Commissioner
State Capitol - Fifth Floor
600 East Boulevard Ave.
Bismarck, ND 58505-0510
(701) 328-4701

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

BEFORE THE
SECURITIES COMMISSIONER

In the Matter of William Ebele)
)
)
 Respondents)

**AMENDMENT TO CONSENT
ORDER**

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WHEREAS, on June 28, 1999, the North Dakota Securities Commissioner entered into a Consent Order with William Ebele; and,

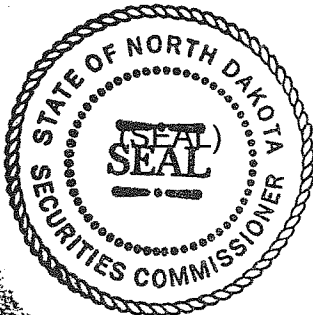
WHEREAS, due to a clerical error, the Consent Order referred to the Cease and Desist Order dated April 22, 1998 as the Cease and Desist Order dated April 9, 1998.

Now, Therefore, the Consent Order is hereby amended so that the all references to the Cease and Desist Order dated April 9, 1998 are replaced with references to the Cease and Desist Order dated April 22, 1998. No other changes are made or intended to be made through this document.

Signed and Sealed this 28th day of June 1999.

Syver Vinje

Syver Vinje, Securities Commissioner
Office of the Securities Commissioner
State Capitol – Fifth Floor
600 East Boulevard Ave.
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(701) 328-4701



STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

BEFORE THE
SECURITIES COMMISSIONER

In the Matter of Terry Nitschke)
)
)
 Respondents)

**AMENDMENT TO CONSENT
ORDER**

.....
WHEREAS, on May 28, 1999, the North Dakota Securities Commissioner entered into a Consent Order with Terry Nitschke; and,

WHEREAS, due to a clerical error, the Consent Order referred to the Cease and Desist Order dated April 22, 1998 as the Cease and Desist Order dated April 9, 1998.

Now, Therefore, the Consent Order is hereby amended so that the all references to the Cease and Desist Order Order dated April 9, 1998 are replaced with references to the Cease and Desist Order dated April 22, 1998. No other changes are made or intended to be made through this document.

Signed and Sealed this 28th day of June 1999.



Syver Vinje, Securities Commissioner
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