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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY

STATE OF IDAHO, DEPARTMENT OF FINANCE, SECURITIES BUREAU, Plaintiff, vs. VIVIAN HAGEN, an individual, Defendant.	Case No. CV OC 0203036D **VERIFIED COMPLAINT** Fee category: Exempt

COMES NOW the State of Idaho, Department of Finance, Securities Bureau, Gavin M. Gee, Director, by and through its counsel, A. René Martin, Deputy Attorney General, and upon information and belief complains and alleges as follows:

1.

This action is brought pursuant to the Idaho Securities Act, Title 30, Chapter 14, Idaho Code (the Act), and in particular, Idaho Code § 30-1442, wherein the Director is authorized to

bring actions seeking injunctive and other relief against defendants who have either violated or are about to violate provisions of the Idaho Securities Act or any rule promulgated thereunder.

2.

The acts and practices alleged herein comprising violations of law by the above-named defendant occurred in the conduct of trade and commerce in Ada County, and elsewhere in the state of Idaho.

DEFENDANT

3.

Defendant Vivian Hagen (Hagen) is an individual who is approximately 59 years old, and resides in Boise, Idaho. At various times since 1990, Hagen has been registered with the Idaho Department of Finance (Department) as a securities salesperson.

4.

On March 14, 1990 Hagen was first registered as a securities salesperson with the Department, being employed at that time by Edward D. Jones. In approximately October of 1993, Hagen began employment as a securities salesperson with O.N. Equity Sales Company (O.N. Equity), an Ohio corporation doing business in Idaho, and she continued in that capacity until on or about December 2, 1998. From December 13, 2000 until January 31, 2001, Hagen was employed as a securities salesperson by Marquette Financial Group.

5.

During the time period from approximately November of 1995 through September of 2001, Hagen defrauded various Idaho residents who were her investment clients by obtaining moneys from such individuals in connection with the offer, sale or purchase of securities, and

then misappropriating and converting such moneys to her own use. Hagen defrauded her investment clients by transferring moneys from the clients' brokerage account(s) to her personal brokerage account(s) or bank account(s), or receiving moneys from clients intended for investment in their brokerage accounts, and then misappropriating such moneys by depositing the same in her own personal accounts, and converting such moneys to her own use. To aid this fraudulent scheme, Hagen substituted her personal address for the addresses of certain victims, so that checks and account statements intended for her clients would be mailed to her instead. During the time period from February of 1999 through September of 2001, Hagen committed fraudulent acts in connection with the offer, sale, or purchase of securities while she was not registered as a securities salesperson by the Department of Finance, and not employed by any broker-dealer. To the best of the Department's information and belief, Hagen's fraudulent acts resulted in losses to victims of at least $521,157.

FACTS

(VICTIMS M.C. AND E.F.)

6.

M.C. is an Idaho resident who became acquainted with Hagen in 1994, at which time Hagen began providing M.C. with advice regarding financial matters and investments. E.F. is M.C.'s approximately 92-year-old widowed mother, who currently lives in an assisted living facility in Boise. On or about December 5, 1997, M.C. was appointed trustee of a trust of which E.F. is beneficiary. M.C. replaced E.F. as trustee of such trust, as E.F. was no longer able to act as trustee due to a medical impairment. During the time period from 1996 through 1999, M.C. transferred moneys of her own and moneys belonging to E.F. to Hagen to invest. Hagen

ultimately misappropriated and converted M.C.'s and E.F.'s moneys to her own use, consisting of a total sum of at least $465,215.

(VICTIM S.P.)

7.

S.P. is a 73-year-old widow and retiree living in Boise, Idaho. During the time period relevant hereto, S.P. was an investment client of Hagen's. In approximately November of 1995, without authority from S.P. and without S.P.'s knowledge, Hagen ordered a partial liquidation of S.P.'s investment account, which included approximately $12,000 in funds. Hagen then misappropriated and converted such amount to her own use. Subsequently, Hagen misappropriated and converted the additional sum of at least $4,942 from S.P.'s investment account. Amounts Hagen misappropriated and converted from S.P.'s investment account total at least $16,942.

(VICTIMS J.H. AND E.H.)

8.

J.H., an 82-year-old gentleman, and E.H. are an elderly married couple residing in Caldwell, Idaho. J.H. attended an investment seminar conducted by Hagen, and in 1996 began investing through Hagen. On or about April 12, 1996, Hagen misappropriated and converted $5,000 of J.H. and E.H.'s funds intended for deposit in their investment account by placing such funds in Hagen's personal account. In approximately December of 1996, Hagen misappropriated and converted $30,000 of J.H. and E.H.'s funds intended for deposit in their investment account

by placing such funds in Hagen's personal account. Hagen misappropriated and converted moneys belonging to J.H. and E.H. in the total amount of at least $35,000.

(VICTIMS J.C.H. AND M.H.)

9.

J.C.H. and M.H. are a married couple residing in Boise, Idaho. During the time period relevant hereto, J.C.H. and M.H. were investment clients of Hagen's. In or about March of 1997, Hagen misappropriated and converted $25,668.43 of J.C.H.'s and M.H.'s investment funds by placing such funds in Hagen's personal account(s), without the knowledge or permission of J.C.H. and M.H. Approximately nine months later, after M.H. questioned Hagen regarding the $25,668.43, Hagen repaid such amount to J.C.H. and M.H. by depositing a similar sum in their investment account.

(VICTIMS E.R. AND S.R.)

10.

E.R. and S.R. were formerly a married couple living in the Boise, Idaho area, but are now divorced. S.R. resides in Ohio, and E.R. still resides in Boise. During the time period relevant hereto, E.R. and S.R. were investment clients of Hagen's. In or about November of 1995, Hagen misappropriated and converted $4,000 of E.R. and S.R.'s investment funds by placing such funds in Hagen's personal account.

COUNT ONE: FAILURE TO REGISTER AS A SECURITIES SALESPERSON

11.

The allegations set forth in paragraphs 1 through 10 above are fully incorporated herein by this reference.

12.

For a period of time between approximately December 3, 1998 and August of 1999, Hagen acted as a securities salesperson in accepting moneys from clients M.C. and E.F. and others, which moneys were intended by those clients as investments in securities, during which time Hagen was not registered by the Department of Finance as a securities salesperson to offer for sale securities, as required by Idaho Code § 30-1406.

13.

Hagen's conduct as a securities salesperson while not registered pursuant to the Idaho Securities Act, constitutes a violation of Idaho Code § 30-1406.

COUNTS TWO THROUGH EIGHTEEN: VIOLATIONS OF THE ANTIFRAUD PROVISIONS OF THE ACT / MISAPPROPRIATION AND CONVERSION OF INVESTMENT MONEYS

14.

The allegations set forth in paragraphs 1 through 13 above are fully incorporated herein by this reference.

15.

Idaho Code § 30-1403(1) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly, to employ any device, scheme or artifice to defraud. On seventeen different occasions from approximately November of 1995 through September of 2001, Hagen took moneys from victims M.C., E.F., S.P., J.H. and E.H., J.C.H. and M.H., and E.R. and S.R. (paragraphs 7 through 10 above) in connection with the offer, sale or purchase of a security, directly or indirectly, which moneys Hagen misappropriated and converted to her own use, in violation of Idaho Code § 30-1403(1). Each of these acts of misappropriation and conversion of investor funds committed by Hagen constitutes a separate violation of Idaho Code § 30-1403(1).

16.

Idaho Code § 30-1403(3) provides that it is unlawful for any person to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. Hagen's acts, practices, and courses of business which operated as a fraud or deceit include her acts of taking moneys from victims M.C., E.F., S.P., J.H. and E.H., J.C.H. and M.H., and E.R. and S.R. in connection with the offer, sale or purchase of a security, directly or indirectly, and misappropriating and converting the same to her own use, constitute a violation of Idaho Code § 30-1403(3). Each of these acts of misappropriation and conversion of investor funds committed by Hagen constitutes a separate violation of Idaho Code § 30-1403(3).

COUNTS NINETEEN AND TWENTY: VIOLATION OF THE ANTIFRAUD PROVISIONS OF THE ACT / BORROWING MONEY FROM CLIENTS

17.

The allegations set forth in paragraphs 1 through 16 above are fully incorporated herein by this reference.

18.

Idaho Code § 30-1403(1) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly, to employ any device, scheme or artifice to defraud. Further, Idaho Code § 30-1403(3) provides that it is unlawful for any person, in connection with the offer, sale or purchase of a security, directly or indirectly, to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. Rules 110 and 117 of the Rules Pursuant to the Idaho Securities Act, IDAPA 12.01.08.110 and 12.01.08.117, define "scheme to defraud" and "operate as a fraud or deceit" under Idaho Code § 30-1403(1) and -1403(3). Rule 117.20 provides that borrowing money or securities from a customer unless the customer is a broker-dealer, an affiliate, or a financial institution engaged in the business of loaning funds or securities, or immediate family, is a "deceptive or manipulative act or practice," constituting a violation of Idaho Code § 30-1403(1) and 30-1403(3).

19.

During the time period relevant hereto, on at least two occasions, Hagen borrowed money from her investment clients E.F. and S.P. Such loans constitute a "deceptive of manipulative act or practice" in violation of Idaho Code § 30-1403(1) and 30-1403(3).

COUNTS TWENTY-ONE AND TWENTY-TWO: VIOLATIONS OF THE ANTIFRAUD PROVISIONS OF THE ACT / OMISSIONS & MISREPRESENTATIONS

20.

The allegations set forth in paragraphs 1 through 19 above are fully incorporated herein by this reference.

21.

Idaho Code § 30-1403(2) provides that it is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

22.

Hagen violated Idaho Code § 30-1403(2) in that she omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Hagen's omissions include, but are not limited to, the following:

(A) From December of 1998 through September of 2001, failing to disclose to investment clients S.P., E.F., and M.C. that she was not registered as a securities salesperson with the Department of Finance, when on at least two different

occasions during that time period involving these investment clients, Hagen accepted investment moneys from such persons.

23.

Hagen violated Idaho Code § 30-1403(2) in that she made untrue statements of material facts in connection with the offer, sale or purchase of a security. Such misrepresentations include, but are not limited to, the following:

(A) Representing to her investment clients that moneys received from them would be invested in their investment accounts per the clients' instructions, when in reality Hagen took such moneys as part of a scheme to misappropriate and convert the same to her own use.

COUNTS TWENTY-THREE THROUGH TWENTY-FIVE: VIOLATION OF ANTIFRAUD PROVISIONS OF THE ACT: FAILURE TO USE CLIENTS' "BONA FIDE" ADDRESSES

24.

The allegations set forth in paragraphs 1 through 23 above are fully incorporated herein by this reference.

25.

Idaho Code § 30-1403(3) provides that it is unlawful for any person, in connection with the offer, sale or purchase of a security, directly or indirectly, to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. Rule 112.02 of the Rules Pursuant to the Idaho Securities Act, IDAPA 12.01.08.112.02, provides that a "bona fide" address, consisting of the last known home address, business address, or post office box of a customer, is required to be used by a securities salesperson and broker-dealer in

providing written notification regarding the customer's account; a salesperson's address does not constitute a "bona fide" address for the purposes of the rule. Failure to provide notification to a customer's "bona fide" address is a "deceptive or manipulative" practice within the meaning of Idaho Code § 30-1403(3).

26.

As part of Hagen's scheme to defraud her investment clients, as to clients E.F. and M.C., Hagen substituted these clients' "bona fide" addresses with her personal address so that brokerage statements and other notices and information regarding these customers' investment accounts would be sent to Hagen rather than to these clients, which acts constitute a deceptive or manipulative practice within the meaning of Rule 112.02, and a violation of Idaho Code § 30-1403(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment in favor of Plaintiff and against Hagen as follows:

(1) That Hagen be adjudged to have violated the Idaho Securities Act as to any and all counts alleged above, as well as any additional counts proved at trial;

(2) That Hagen be permanently enjoined from engaging in any acts, practices or omissions which would constitute violations of the Idaho Securities Act, Title 30, Chapter 14, Idaho Code, and in particular, that she be permanently enjoined from:

(A) Selling or offering for sale nonexempt securities in any form in the state of Idaho until such time as the securities have been registered with the Idaho Department of Finance in accordance with Title 30, Chapter 14, Idaho Code;

(B) Selling or offering for sale nonexempt securities in any form in the state of Idaho until such time as Hagen has registered as a securities salesperson with the Idaho Department of Finance, in accordance with Title 30, Chapter 14, Idaho Code;

(C) While engaged in or in connection with the offer, sale or purchase of any security:

(1) Employing any device, scheme or artifice to defraud any investors or prospective investors;

(2) Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(3) Engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person;

(4) Aiding, abetting, counseling, inducing or causing any other person to engage in any of the types of conduct described in paragraphs (C)(1), (C)(2), or (C)(3) above;

(3) That Hagen be prohibited from claiming the availability of, using, or offering or selling securities under any exemptions under the Idaho Securities Act without receiving the prior written consent of the Director;

(4) That Hagen be ordered to restore to each person in interest any consideration which may have been acquired or transferred in violation of the Idaho Securities Act, and that the court award a money judgment in the amount of at least $521,157, or such amount as is proved at trial, as restitution for the victims of Hagen's violations of the Idaho Securities Act, pursuant to Idaho Code § 30-1442(3)(a);

(5) That Plaintiff be awarded attorney fees and costs incurred in the preparation and the prosecution of this action and reimbursement for investigative efforts, pursuant to Idaho Code § 30-1442(3)(c). If judgment is taken by default herein, that $5,000 is a reasonable sum for the same;

(6) For such further relief as this Court may deem equitable and just under the circumstances.

DATED this 22nd day of April, 2002.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

A. RENÉ MARTIN
Deputy Attorney General

VERIFICATION

STATE OF IDAHO)
)ss.
County of Ada)

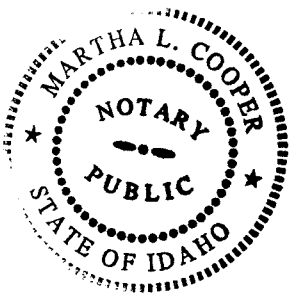
MARILYN T. CHASTAIN, Bureau Chief of the Securities Bureau of the Department of Finance, State of Idaho, being first duly sworn, deposes and says:

That she has read the foregoing verified complaint, that she knows the contents thereof, and that the same are true to the best of her knowledge and belief.

DATED this 22ND day of April, 2002.

Marilyn T. Chastain
MARILYN T. CHASTAIN

SUBSCRIBED AND SWORN to before me this 22nd day of APRIL, 2002.



Martha L. Cooper
Notary Public for Idaho
Residing at: Boise, Id
My Commission Expires: 11-26-02