

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **SECURITIES DIVISION**

4 IN THE MATTER OF DETERMINING
5 whether there has been a violation
6 of the Securities Act of Washington by:

7 M & W CHARITABLE FOUNDATION;
8 M & W CHARITABLE TURST;
9 THE CLARKE 2001 SUBSCRIBER TRUST;
10 RUSSELL F. KENAGE, JR.;
11 VICTOR H. CLARKE,

12 Respondents.

Order Number S-04-187-08-FO01

ENTRY OF FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND FINAL
ORDER TO CEASE AND DESIST AND
IMPOSE FINES

13 THE STATE OF WASHINGTON TO:

14 M & W Charitable Foundation
15 M & W Charitable Trust
16 The Clarke 2001 Subscriber Trust
17 Russell F. Kenaga, Jr.
18 Victor H. Clarke

19 On December 28, 2007, the Securities Administrator of the State of Washington issued
20 Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Impose Fines, and
21 Recover Costs S-04-187-07-TO01, hereinafter referred to as "Statement of Charges," against M & W
22 Charitable Foundation; M & W Charitable Trust; The Clarke 2001 Subscriber Trust; Russell F.
23 Kenaga, Jr.; and Victor H. Clarke.

24 The Statement of Charges, together with a Notice of Opportunity to Defend and Opportunity for
Hearing, hereinafter referred to as "Notice of Opportunity for Hearing," and an Application for
Adjudicative Hearing, hereinafter referred to as "Application for Hearing," were served on M & W
Charitable Foundation; M & W Charitable Trust; and Russell F. Kenaga, Jr. on January 5, 2008. The

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1 Notice of Opportunity for Hearing and Application for Hearing were served on Victor Clarke and The
2 Clarke 2001 Subscriber Trust on January 11, 2008.

3 The Notice of Opportunity for Hearing advised M & W Charitable Foundation; M & W
4 Charitable Trust; The Clarke 2001 Subscriber Trust; Russell F. Kenaga, Jr.; and Victor F. Clarke that a
5 written application for an administrative hearing on the Statement of Charges must be received within
6 twenty days from the date of receipt of the notice. M & W Charitable Foundation; M & W Charitable
7 Trust; The Clarke 2001 Subscriber Trust; Russell F. Kenaga, Jr.; and Victor F. Clarke failed to request
8 an administrative hearing within twenty days of receipt of the Statement of Charges, either on the
9 Application for Hearing provided or otherwise.

10 Russell F. Kenaga, Jr. returned the Application for Hearing and indicated that he waived the
11 right to a hearing. In lieu of requesting a hearing, Russell F. Kenaga, Jr. submitted a statement for
12 consideration by the Securities Administrator.

13 Finding no grounds for amendment of the Statement of Charges, the Securities Administrator
14 will therefore adopt as final the findings of fact and conclusions of law as set forth in the Statement of
15 Charges.

16 **FINDINGS OF FACT**

17 Respondents

- 18
- 19 1. M & W Charitable Foundation, a Corporate Sole incorporated in Utah, has a principal place
20 of business in Vancouver, Washington.
 - 21 2. M & W Charitable Foundation is doing business as M & W Charitable Trust.
 - 22 3. The Clarke 2001 Subscriber Trust is an entity controlled by Victor H. Clarke and Sam
23 Greenberg.

1 4. M & W Charitable Foundation is controlled by Russell F. Kenaga Jr. (Kenaga). Kenaga is
2 the Trustee for M & W Charitable Foundation. Kenaga is a resident of Vancouver, Washington.

3 5. Victor H. Clarke, a resident of Palm Desert, California, is a principal of The Clarke 2001
4 Subscriber Trust.

5 **NATURE OF THE OFFERING**

6 6. Beginning no later than October 2000 and continuing through November 2001, Kenaga, via
7 M & W Charitable Foundation and M & W Charitable Trust, raised and collaborated with others to raise at
8 least \$13,190,000 from at least 145 individuals for a high-yield investment program. Investors are located
9 in 26 states (including Washington), the District of Columbia, Australia, Canada, Chile, Egypt, Finland,
10 France, Germany, Greece, Japan, Luxembourg, the Netherlands, Singapore, the Slovak Republic, South
11 Africa, Spain and the United Kingdom.

12 7. Investors thought that they were going to receive a return of investment of 25% per week for
13 49 weeks over a one year period based upon documents provided to investors by Kenaga and Kenaga's
14 oral representations. Investors thought their funds were going to be invested in Medium Term Notes,
15 Prime Bank Instruments or High Yield Notes. Clarke and Kenaga told investors that their funds would go
16 into a non-depletion bank account where their principal investment amount would stay in the bank account
17 and then be returned to the investors four weeks after their investment. The investors were told that the
18 investment would continue to earn the return based upon the compounding of the weekly profits.

19 8. Investors were required to complete a number of documents, including a Joint Venture
20 Agreement, Limited Power of Attorney form, Non-Disclosure Non-Solicitation document and an
21 Authority to Move Funds document. Kenaga provided the investors with these documents as well as
22 answering the investors' questions regarding the investment and receiving investors' funds.

1 that Kenaga was to receive for soliciting investors and the fact that the investors' funds were not actually
2 placed into a bank account where their funds would not be removed.

3 12. Kenaga also failed to disclose to investors that the Oregon Department of Consumer and
4 Business Services, Division of Finance and Corporate Securities issued a Cease and Desist Order against
5 Kenaga in 1995 for the offer and sale of unregistered securities and selling securities in Oregon without a
6 securities salesperson or broker-dealer license, to which Kenaga consented.

7 13. The Securities Division's investigation has found that these types of purported investments
8 are the subject of an October 21, 1993, a June 11, 1996, and a May 20, 2002 Investment Scheme Advisory
9 issued by the Board of Governors of the Federal Reserve System warning the public about illegal high
10 yield note schemes which often utilize language including "prime bank," "top world banks," "top
11 European banks," and "medium term notes."

12 14. The offer and/or sale of investments in The Clarke 2001 Subscriber Trust is not currently
13 registered under the Securities Act of Washington nor has the offer and/or sale previously been so
14 registered.

15 15. Kenaga and Clarke are not currently registered as securities salespersons or broker-dealers in
16 the state of Washington and none have previously been so registered.

17 16. The Securities Administrator finds that the continued offering of this investment opportunity
18 in the manner described in Tentative Finding of Facts represents a threat to the investing public.

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21 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

22 **CONCLUSIONS OF LAW**

1 It is further ORDERED that the Respondents, M & W Charitable Foundation; M & W Charitable
2 Trust; The Clarke 2001 Subscriber Trust; Russell F. Kenaga, Jr.; Victor H. Clarke, and their agents and
3 employees, each cease and desist from violating RCW 21.20.010, the anti-fraud section of the
4 Securities Act of Washington.

5 It is further ORDERED that Respondents M & W Charitable Foundation; M & W Charitable
6 Trust; The Clarke 2001 Subscriber Trust; Russell F. Kenaga, Jr.; and Victor H. Clarke shall be jointly
7 and severally liable for and pay a fine of \$50,000.

8 It is further ORDERED that Respondents M & W Charitable Foundation; M & W Charitable
9 Trust; The Clarke 2001 Subscriber Trust; Russell F. Kenaga, Jr.; and Victor H. Clarke, shall be jointly
10 and severally liable for and pay costs in the amount of \$2,000.

11 **AUTHORITY AND PROCEDURE**

12 This Final Order is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.395
13 and is subject to the provisions of RCW 21.20.440 and Chapter 34.05 RCW. Respondents each have
14 the right to petition the superior court for judicial review of this agency action under the provisions of
15 chapter 34.05 RCW. For the requirements for filing a Petition for Judicial Review, see RCW
16 34.050.510 and sections following. Pursuant to 21.20.395, a certified copy of this order may be filed
17 in Superior Court. If so filed, the clerk shall treat the order in the same manner as a Superior Court
18 judgment as to the fine, and the fine may be recorded, enforced, or satisfied in like manner.
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20 **WILLFUL VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

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DATED AND ENTERED this 12th day of February, 2008.

Michael E. Stevenson

MICHAEL E. STEVENSON
Securities Administrator

Approved by:

Suzanne Sarason

SUZANNE SARASON
Chief of Compliance & Examinations

Presented by:

Jill M. Vallely

JILL VALLELY
Enforcement Attorney

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