

September 20, 2002

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Utah Department of Commerce  
Division of Securities  
Attention: George Robison  
Director of Licensing  
P. O. Box 146760  
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## **RE: LETTER OF COMPLAINT**

### **1. WE ATTENDED AN INVESTMENT STRATEGY MEETING**

Late in November 2001 Roberta and I received a mailed invitation to attend a seminar on investment planning presented by Henry (Hank) S. Brock who is president of a group of financial investment corporations, including Apex Advisers Inc. and Five Star Asset Management L.L.C. This invitation stated that the seminar would address the most serious mistakes people make regarding their investments. Our investment adviser for several years had become disabled through an accident with his horse and we needed to find a new adviser. Those who attended, who wished to do so, could arrange a private interview with Mr. Brock. We did so. At that meeting Hank presented the program and the only other person we saw at that time was his secretary who came into the room as needed. We were interested enough to arrange another meeting.

### **2. CREDIT ENHANCEMENT DESCRIBED AS A GIFT**

At the next meeting on November 27<sup>th</sup> Hank was the presenter. He explained that our investment would be in the form of a Variable Deferred Annuity. I expressed my reluctance to go into a deferred annuity knowing that it imposed a heavy penalty for early withdrawal or partial withdrawal in excess of a stated permissible amount per year. Hank replied that the annuity policy included a Credit Enhancement Rider, a gift equal to 5% of our investment to be added to our account. He whimsically likened this to the giving of a "toaster or other small appliance" used in promotional tactics banks formerly used with new clients for opening accounts with their bank. He observed that 5% of our investment of \$102,610 would be \$5,130 and would "take the sting out of the surrender penalty if we should choose to surrender the annuity." We decided to go with the program at which time Hank's brother, Wendell W. Brock, a registered representative of Freedom Financial Inc. a registered Broker/Dealer of Omaha, NE, joined us in the room with the forms and papers needed. Hank introduced Wendell to us and left the room. Wendell, assisted by secretaries, had me sign blank forms for Apex Advisers, Five Star Investment and Security Benefit Life Insurance Co. We were surprised by this as nothing at all had been said about Wendell. That is the only time we have seen Wendell although his name appears as "Your Representative" on all documents from Security Benefit Life Insurance Co., issuer of the annuity policy.

### **3. "GIFT" REALLY A LOAN**

The \$102,610 we invested was received by Security Benefit Life from our former investments in two amounts. The first was \$53,978 which they received Dec. 6, 2001 and the annuity policy was issued that date for that amount. The second for \$48,632 was received Dec. 10<sup>th</sup>. We received the policy and acknowledgments about Dec. 15<sup>th</sup> in the midst of our rush to get ready for Christmas. The policy particulars gave us 10 days in which to review the policy and return it if unsatisfactory for full refund of our money. We neglected to study the policy until after that time interval. Upon studying the policy we discovered that the \$5,130 is actually not a “gift” but a seven-year loan which we are required to pay by a fee levied on each of the next seven anniversary dates equal to .75% of the value of our investment on each date. The “gift” is vested in us only 1/7th each year. In the event of early withdrawal the non-vested portion is recaptured by Security Benefit Life Insurance Co.

#### 4. RISK TOLERANCE PROFILE

During the meeting on November 27<sup>th</sup> Hank came in and out of the room more than once. I was given a printed form called “Investment Risk Tolerance Profile.” In the interest of time, for their convenience, Hank and/or Wendell suggested that I fill it out at home, which I did and returned it some days later. We have never received a copy of this profile, nor did Hank ever discuss it with us before moving our money from the Government Money Market Account into other sub-accounts. A report from Security Benefit showed that on December 11<sup>th</sup> our money had been invested in electronics and technology sub-accounts. This greatly concerned us because we had lost heavily in such volatile accounts in 2001 with Solomon Smith Barney. Hank’s choice of sub-accounts made us wonder whether he had made any use of the Risk Tolerance Profile.

#### 5. NUMEROUS MEETINGS - - - NO CHANGE IN SUB-ACCOUNTS

Early in January we received 2001 year-end reports from Security Benefit which showed that our account had fallen from \$107,041 to \$103,336. Hank Brock moved his business offices during the weeks surrounding the year end. When they were settled in we met with Hank and expressed our concern about being invested in technology and electronics sectors of the economy because they had done nothing in the market but go down for about two years. Hank said he felt they had about reached the bottom and it was important to be invested in them in the early days of an approaching bull market. Some weeks later we met again with him and voiced our deepening concern about our diminishing account. No investment changes were made and our account continued to diminish. We seriously considered surrendering the policy. During the months of February, March and April I met with Hank several times and voiced my growing concern and still nothing was done. Roberta became discouraged and preferred not to accompany me again because of Hank’s failure to respond to our distress.

## 6. HANK'S PERSONAL GUARANTEE

On May 2<sup>nd</sup> I met with Hank with the intention of surrendering the annuity policy. Hank strongly advised against this action, emphasizing the value of the Death Benefit feature and the loss of the 7% withdrawal penalty. I stated that the 7% penalty would approximately equal the total amount of management fees payable to Five Star Management and Security Benefit during the next eighteen months. Hank said he would waive Five Star fees for the present after June 30<sup>th</sup>, to which date they had been paid. He also said that he would personally guarantee us against any further loss from May 2<sup>nd</sup> to August 2<sup>nd</sup>. He left the room and returned a short time later with two typed copies of such a guarantee, signed both in my presence and gave me one. The guarantee stated that he, Hank, would personally pay to me the amount by which our account value on August 2<sup>nd</sup> might be less than on May 2<sup>nd</sup>, less any amount we might withdraw during that time. On May 31<sup>st</sup> Hank transferred our entire account to the Government Money Market. About July 20<sup>th</sup> I again met with Hank. At that time, according to my best memory at this time on September 16<sup>th</sup>, the value of our account had gone down by about \$2,800 below the guaranteed amount in Hank's guarantee statement. In May, June and July we had withdrawn \$2,100. Hank offered to pay the approximate \$700 difference. I declined to accept it and returned the guarantee to Hank. On September 16<sup>th</sup> the value of our account was \$80,915, including the \$5,130. From \$107,741 (including the \$5,130) to \$80,915 the shrinkage of our account is \$26,826, of which we have withdrawn for our use \$6,900 and paid fees of \$1,326 to Five Star for their careless management. . . indicating a net loss of \$19,926. By my calculation this is a loss of 18.5% in just nine months.

## 7. ENTIRE PROGRAM INAPPROPRIATE

The money we invested is the remnant of our life savings. We feel that the investment and the investment council and assistance we have received from Hank Brock has been most inappropriate for our situation. I am 77 years old and Roberta is 76. I had heart by-pass surgery 16 years ago and according to my cardiologist there is again "significant blockage" in the small arteries which is inoperable, which makes my condition terminal. Our only income is our Social Security. We have continuing need for monthly withdrawal from this IRA annuity to meet our daily living expenses. Our income tax exposure is minimal and our only savings were already in IRAs, so a recommendation to transfer into a deferred annuity was very questionable advice. Hank's investment choices placed all our money into highly volatile, speculative accounts.

## 8. RESIGNATION FROM FIVE STAR

In mid-August I met with Hank and terminated our management contract with Five Star. Hank mentioned a new investment program, (Flexible Plan Investments, Ltd.) which he had just become authorized to represent. Hank said that if he had had this new plan when we signed up he would have recommended it because it would be much more appropriate for senior citizens and those with a low risk tolerance. This infers that the plan he did recommend is not favorable to this group of investors, which includes us. Hank would have done us a great kindness if he had declined to sell his program to us, knowing it was not appropriate for people in our circumstances.

Respectfully yours,

Merlin N. Larsen

Roberta C. Larsen