

IN THE MATTER OF
The Securities Act
S.N.B. 2004, c. S-5.5

- and -

IN THE MATTER OF
BASKIN FINANCIAL SERVICES INC. and DAVID BASKIN

REASONS FOR THE DECISION

Date of Hearing: 1 May 2007

Date of decision: 1 May 2007

Panel:

William Aust, Panel Chair

Hugh J. Flemming, Q.C., Panel Member

Representatives:

Jake van der Laan

For the staff of the New Brunswick
Securities Commission

Arthur Doyle

For Baskin Financial Services Inc.
and David Baskin

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IN THE MATTER OF
BASKIN FINANCIAL SERVICES INC. and DAVID BASKIN ("THE RESPONDENTS")

REASONS FOR THE DECISION

1. INTRODUCTION

The New Brunswick Securities Commission (the "Commission") was empanelled on 1 May 2007 pursuant to a Notice of Hearing dated 26 April 2007 to consider whether, in the opinion of the Commission, it was in the public interest to approve a Settlement Agreement (the "Agreement") reached by the parties and to make certain orders against the Respondents pursuant to sections 184, 185 and 186 of the *Securities Act* (the "Act").

On 26 April 2007, counsel for Staff of the Commission filed the Agreement with the Commission. The parties executed the Agreement on 12 April 2007. In the Agreement the Respondents admitted that they violated New Brunswick securities law, specifically section 45 of the *Act*, by engaging in the provision of securities investment advice and portfolio management services for residents of New Brunswick without being registered under the *Act*.

In the Agreement, the Respondents agreed to the making of an order (the "Order") whereby:

- a) The Respondents shall immediately seek proper registration under the applicable provisions of the *Act*, or cease providing any services to New Brunswick residents which require registration under the *Act*;
- b) The Respondents shall pay the registration fees which would have been due in 2004, 2005 and 2006, in the amount of \$3,600.00;
- c) Pursuant to section 186(1) of the *Act* the Respondents shall jointly and severally pay an administrative penalty for failing to comply with New Brunswick securities law, in the amount of \$35,000.00; and
- d) Pursuant to section 185(1) of the *Act* the Respondents shall jointly and severally pay the fees and expenses for the costs of the investigation, in the amount of \$750.00.

At the hearing on 1 May 2007, the Agreement was entered into evidence and counsels for Staff and for the Respondents both made arguments with regard to facts and law that they felt were relevant to the matter.

The Panel considered and accepted the Settlement Agreement and made the Order as of 1 May 2007. The following is the Panel's reasons for its decision.

2. FACTS

Baskin Financial Services, Inc. ("BFS") is an Ontario corporation having its head office in Toronto, Ontario. David Baskin ("Baskin") is the President and a Director of BFS. Neither BFS nor Baskin are or had been registered with the Commission in any capacity. Baskin is registered as a portfolio manager and investment counsel/financial advisor in Alberta, British Columbia, Nova Scotia and Ontario.

In November 2006, Staff became aware that BFS and Baskin were engaged in the provision of securities investment advice and portfolio management services for which they should have been registered with the Commission pursuant to section 45 of the *Act*.

In March 2004 and again in June 2005, BFS and Baskin were contacted by New Brunswick residents to request that BFS and Baskin act as their securities advisor and portfolio manager. Both times BFS and Baskin agreed to so act, and they provided these services to a total of four New Brunswick residents. BFS billed investment management fees in relation to this unregistered activity in the amount of approximately \$43,000.00.

Neither BFS nor Baskin solicited clients resident in New Brunswick. The New Brunswick residents contacted BFS and Baskin on their own accord.

Other than the failure of the Respondents to register, there is no evidence to suggest that any investors were harmed or that the services rendered to the New Brunswick residents were inappropriate or improper.

The Respondents acknowledge that their failure to register constitutes a violation of New Brunswick securities laws. It appeared to the Panel that the failure was unintended and inadvertent and was described as an administrative error. The Respondents are remorseful and concerned about their reputation in the marketplace, and have therefore fully cooperated with Staff's investigation and have made all efforts to become fully compliant with the *Act*.

3. RELEVANT SECTIONS OF THE ACT

The Respondents acknowledge that they violated section 45 of the *Act*, which states:

45 Unless exempted under this *Act* or the regulations, no person shall:

a) trade in a security or act as an underwriter unless the person is registered as a dealer, or is registered as a salesperson, as a partner or as an officer of a registered dealer and is acting on behalf of the dealer, or

b) act as an advisor unless the person is registered as an advisor, or is registered as a representative, as a partner or as an officer of a registered adviser and is acting on behalf of the adviser.

4. REASONS FOR DECISION

On 1 May 2007, the Panel was convened to determine whether it was in the public interest to approve the Agreement and whether the sanctions agreed to by the parties were appropriate.

The role of a Commission in reviewing a settlement agreement, as stated in *Re Sohan Singh Koonar*, (2002), 25 O.S.C.B. 2691 at page 2692, is not to substitute the sanctions it would impose for what is proposed in the settlement agreement. Rather, the Commission should ensure that the agreed sanctions are within acceptable parameters.

The Agreement proposed that because of their violation of section 45 of the *Act*, along with immediately seeking proper registration, the Respondents would pay an administrative penalty of \$35,000.00, costs of the investigation of \$750.00 and past registration fees of \$3,600.00.

The determination of whether the proposed sanctions are in the public interest is based mainly on the specific circumstances of each case. Prior to imposing the proposed sanctions, as stated in *MCJC Holdings Inc., Re* (2002), 25 O.S.C.B. 1133 at para. 4, the Commission must be "satisfied that proposed sanctions are proportionately appropriate with respect to the circumstances facing the particular respondents."

To assist in this determination, Counsel for Staff directed the Panel to the Ontario Securities Commission's (the "OSC") decisions in *Beltco Holdings Inc., Re* (1998), 21 O.S.C.B. 7743 and *MCJC Holdings Inc., Re* (2002), 25 O.S.C.B. 1133, where the

OSC listed a number of factors to consider in imposing penalties. These factors include:

- (a) the seriousness of the allegations proved,
- (b) the respondent's experience in the marketplace,
- (c) the restraint of future conduct that is likely to be prejudicial to the public interest (with reference to past conduct),
- (d) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets,
- (e) any mitigating factors,
- (f) the size of any profit (or loss avoided) from the illegal conduct;
- (g) the reputation and prestige of the respondent; and
- (h) the remorse of the respondent.

The Respondents admit that they failed to register with the Commission and that this failure is a violation of New Brunswick securities law. This is a serious violation, as registration is the foundation of our regulatory system. Through registration, the Commission can ensure that market participants meet an appropriate standard and assist in carrying out the purposes of the *Act*, which are providing protection to investors from unfair, improper or fraudulent practices; and fostering fair and efficient capital markets and confidence in capital markets.

Without registration, the Commission is deprived of the ability to monitor market participants to ensure they meet the appropriate standards.

The Respondents are experienced market participants and are duly registered in four other provinces. However they began performing services for New Brunswick residents for which they should have been registered under the *Act*, and due to an error on their part they did not seek registration. The Panel found it important that the Respondents did not solicit any clients in New Brunswick; the

New Brunswick clients contacted the Respondents directly to request their services. There is also no indication that the investors were harmed in any way.

The Respondents' failure to register was not a conscious attempt by the Respondents to avoid New Brunswick registration fees. However, though inadvertent, it was a serious oversight.

The Respondents are remorseful; they fully cooperated with Staff's investigation and they made all efforts to undertake to be fully compliant with the *Act*. Prior to the 1 May 2007 hearing, the Respondents forwarded all of the funds payable under the proposed settlement agreement to Staff of the Commission to be held in trust pending the decision of the Panel. Prior to the hearing, the Respondents also substantially completed the process of becoming properly registered under the New Brunswick *Act*.

Based on the specific circumstances in this matter, the Panel finds that the administrative penalty contained in the Agreement is within an acceptable range and meets the appropriate public interest test. The proposed administrative penalty of \$35,000.00 provides both a specific deterrent to the Respondents and a general deterrent to market participants. It sends a message that it is unacceptable to not register in accordance with the *Act*, and that there is no benefit in failing to register. This stresses the importance of registration to market participants and the seriousness of not complying with the *Act*.

For the Respondents specifically, the administrative penalty is very close to the fees they billed for the unregistered activity. Along with this payment, the Respondents are faced with the publication of their violation and resulting Order. As a result of this decision, the Respondents will retain no benefit from their failure to register.

The other proposed sanctions are also appropriate in the circumstances. The low costs of the investigation reflected the cooperation of the Respondents and the efficient resolution of this particular matter. The payment of past registration fees also sends the message that there is no benefit in failing to register. And if they wish to continue to do business in the province, the Respondents must obtain and maintain proper registration under the *Act*, a process they have already begun.

For the reasons set out above, under section 191(1)(a) of the *Act*, the Panel approved the Agreement on 1 May 1007 and executed the Order of the same date.



William D. Aust, (Panel Chair)



Hugh J. Flemming, Q.C., (Panel Member)