

IN THE MATTER OF THE SECURITIES ACT,
SNB 2004, c. S-5.5, as amended

AND

IN THE MATTER OF

**BRIAND, HARRISON & ASSOCIATES CORPORATION,
STEPHEN V. HARRISON and CRAIG D. BRIAND**

(Respondents)

SETTLEMENT AGREEMENT

Part I

1. STAFF TO RECOMMEND SETTLEMENT

Staff of the New Brunswick Securities Commission ("Staff") agree to recommend approval of settlement of this matter with respect to the Respondents Briand Harrison and Associates Corporation ("BHAC"), Stephen V. Harrison ("Harrison"), Craig D. Briand ("Briand") (together the "Respondents") to a panel of the New Brunswick Securities Commission pursuant to section 191(1)(a) of the *Securities Act*, 2004 S.N.B., c. s-5.5 (the "*Securities Act*") in accordance with the following terms and conditions:

- a. The Respondents agree to the Statement of Facts set out in Part II hereof, and consent to the making of an order, on the basis of those facts, substantially similar to that set out in Schedule "A"; and
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Commission.

2. RESPONDENT'S OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, the Respondents undertake and/or agree as follows:

- a. Not to make any statement, either directly or indirectly, which is inconsistent with the Agreed Statement of Facts herein. Any such statement shall constitute a breach of this Settlement Agreement;
- b. In accordance with an order substantially similar to that set out in Schedule "A", that:
 - i. Pursuant to section 184(1)(d) of the *Securities Act*, any exemptions contained in New Brunswick securities law shall not apply to the Respondents;
 - ii. Pursuant to section 186(1) of the *Securities Act*, the Respondent Harrison shall pay an administrative penalty in the amount of six thousand dollars

(\$6,000.00);

- iii. Pursuant to section 186(1) of the *Securities Act*, the Respondent Briand shall pay an administrative penalty in the amount of two thousand dollars (\$2,000.00);
- iv. Pursuant to section 185(1) of the *Securities Act*, the Respondents Harrison and Briand shall each pay investigative costs in the amount of one thousand dollars (\$1,000.00).
- c. The Respondents' financial obligations under this Settlement Agreement do not constitute a claim provable in bankruptcy and are not discharged by any bankruptcy.
- d. Harrison has provided Staff with a \$1,000 pre-payment of the amounts owing under this agreement, and post-dated cheques for the remainder, to be held in escrow pending approval of this Settlement Agreement. The debt owing by Briand will be secured by way of judgment.

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and by the Respondents, Staff will apply to the Commission for an order approving the Settlement Agreement.
- b. If the Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence submitted respecting the Respondents in this matter.
- c. If the Settlement Agreement is approved by the Commission, the Respondents agree to waive any right to a hearing and/or appeal with respect to this matter.
- d. If, for any reason whatsoever, this settlement is not approved by the Commission and the order set forth in Schedule "A" is not made by the Commission:
 - i. Staff and the Respondents will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing, unaffected by the Settlement Agreement or any of the settlement negotiations;
 - ii. The terms of this agreement will not be referred to in any subsequent proceeding or disclosed to any person, except with the written consent of both Staff and the Respondents or as may be required by law; and
 - iii. The Respondents further agree that they will not raise, in any proceeding, the Settlement Agreement or the negotiation or process of approval thereof, as a basis for any attack on the jurisdiction of the Commission.

4. PROCEDURE ONCE SETTLEMENT APPROVED

- a. The Respondents acknowledge and agree that their financial obligations under this Settlement Agreement may be collected as a judgment of the Court of Queen's Bench for the recovery of a debt.

5. DISCLOSURE OF SETTLEMENT AGREEMENT

- a. The terms of the Settlement Agreement will be treated as confidential by the parties hereto until approved by the Commission and forever if, for any reason, the Settlement Agreement is not approved by the Commission; and
- b. Upon the approval of the Settlement Agreement by the Commission, any obligation as to confidentiality shall terminate and the Settlement Agreement will become public information.

6. BREACH OF SETTLEMENT AGREEMENT

- a. The Respondents acknowledge and understand that in the event of a breach of or failure to comply with this settlement agreement, Staff may commence proceedings under section 179(2) of the *Securities Act* against the Respondents and seek any remedy available under that section, including an order for imprisonment and/or a fine.

7. STAFF COMMITMENT

If this settlement is approved by the Commission, Staff will not initiate any other proceeding under the Act against the Respondents in relation to the facts set out in Part II of this Settlement Agreement.

8. EXECUTION OF SETTLEMENT AGREEMENT

The Settlement Agreement shall constitute a binding agreement and a facsimile copy of any signature shall be as effective as an original.

DATED at the City of Saint John this 12th day of April, 2010.

"Original signed by"
Jake van der Laan
Director, Enforcement, NBSC

DATED at the City of Fredericton this 10th day of April, 2010.

BRIAND, HARRISON & ASSOCIATES CORPORATION

"Original signed by"
Per: Craig D. Briand, President

Witness:

"Original signed by"
Stephen V. Harrison

Witness:

"Original signed by"
Craig D. Briand

Witness:

Part II
STATEMENT OF FACTS

1. Briand, Harrison & Associates Corporation ("BHAC") is a company incorporated pursuant to the laws of New Brunswick, with a head office at 461 King Street, Suite 201, Fredericton, New Brunswick.
2. Stephen V. Harrison ("Harrison") is an individual resident in Kingsley, New Brunswick. Harrison was engaged from time to time as an independent contractor to BHAC.
3. Craig D. Briand ("Briand") is an individual resident in Fredericton, New Brunswick. Briand is the sole officer and director of BHAC.

Background concerning Harrison

4. Harrison has an extensive history in the securities industry, and was employed as a registered representative for two investment dealers between 1988 and 2001. He initially worked for Merrill Lynch Canada (and its predecessor firms), where he was promoted to the position of Vice President. He then left Merrill Lynch Canada and worked as a registered representative at HSBC Securities beginning in 1999.
5. In 1997, Harrison settled a disciplinary proceeding before the Toronto Stock Exchange concerning allegations of inappropriate trading advice and excessive trading commissions (i.e. what would commonly be referred to as churning).
6. In 2001, Harrison purchased a company called 1310095 Ontario Limited, which conducted business using the name Lozinsky Investment Services ("Lozinsky"). At the time of the purchase the business operated as an agency selling guaranteed investment certificates on a retail basis.
7. Subsequent to the purchase of Lozinsky, Harrison employed the company's capital to conduct trading in the securities markets and suffered significant losses. These losses included capital or funds that had been provided to Lozinsky by former clients of Harrison when he worked at Merrill Lynch Canada and HSBC Securities.
8. The losses sustained by Lozinsky resulted in a civil lawsuit claiming fraud and damages of approximately \$750,000.00 by a plaintiff who was a former brokerage client of Harrison. This lawsuit was stayed as a result of bankruptcy proceedings involving both Harrison and Lozinsky. As such, the allegations of fraud were not determined. Net claims in the bankruptcy amounted to approximately \$2,380,000.00.
9. Another former securities brokerage client of Harrison provided \$200,000.00 to Lozinsky, which was also lost.
10. In June of 2008, Harrison contacted Staff of the New Brunswick Securities Commission ("Staff" and "NBSC" respectively) on behalf of BHAC to determine the regulations around establishing a financial advisory business. Harrison specifically stated that the business would not make specific recommendations concerning the trading of specific securities, but would rather deal with education regarding investment strategies.

11. In February of 2009, Harrison again consulted Staff of the NBSC, this time concerning the business of portfolio management.

NBSC Investigation

12. On 18 March 2009, the Respondents had created and posted a sign in a public area adjacent to their offices. The sign suggested that their clients had not lost money during the recent downturn in the financial markets.
13. The sign posted was misleading in that, at the time, BHAC had only a single client. Harrison created the sign and Briand was aware of the sign and acquiesced to the misrepresentation contained therein.
14. The website for BHAC contained short biographies for Harrison and Briand. The biography for Harrison mentioned his relationship to Lozinsky, which was described as a "successful" company. Lozinsky was not a successful company, and the statement constitutes a misrepresentation.
15. The Respondents created another website under the name "Financial Myth Busters", which stated that Harrison and Briand offered fee-based investment advice at a rate of \$300.00 per hour.
16. On 9 April 2009, a Staff investigator attended at the offices of BHAC and met with Harrison and Briand, posing as a potential client and inquiring as to the services available.
17. During the meeting, Harrison related the services offered by the Respondents, concentrating on the educational aspects of the services available, but including services that would constitute "advising" under the *Securities Act*.
18. Harrison stated to the investigator that BHAC had 337 clients, which is a misrepresentation in that they had only a single client. Briand was present at the time that Harrison made this misrepresentation and said nothing to correct it.
19. The investigator specifically stated to Harrison that he required the assistance of someone who could recommend specific stocks. Harrison confirmed that the services available included recommending specific securities. This confirmed the representation made earlier concerning the newsletter.

The Respondents' only Client

20. The Respondents state that they only provided paid services to a single client. Enforcement Staff has interviewed this client, who states that the Respondents did not offer to recommend specific securities, and indeed related that such services were not available.

Agreement that acts constitute violations of New Brunswick securities law

21. The Respondents agree that they violated section 45(b) of the *Securities Act* by holding themselves out as advisors without registration.

Agreement that acts contrary to the public interest

22. The Respondents agree that the violation of the *Securities Act* and the misrepresentations as described herein constitute acts contrary to the public interest.

Cooperation and other mitigating factors

23. The Respondents have cooperated with Staff's investigation.

24. The Respondents are remorseful about having failed to comply with New Brunswick securities law.

25. The Respondents BHAC and Briand have no prior history of regulatory non-compliance.

26. No investors have suffered a financial loss as a result of the Respondent's violations.

Schedule "A"

IN THE MATTER OF THE SECURITIES ACT,
SNB 2004, c. S-5.5, as amended

AND

IN THE MATTER OF

**BRIAND, HARRISON & ASSOCIATES CORPORATION,
STEPHEN V. HARRISON and CRAIG D. BRIAND**

(Respondents)

ORDER

WHEREAS Staff of the Commission filed a Statement of Allegations against the Respondents on 19 October 2009.

AND WHEREAS the Respondents entered into a Settlement Agreement dated ~ April 2010 (the "Agreement") in which they agreed to a proposed settlement of violations of New Brunswick securities law as alleged in the Statement of Allegations, subject to the approval of the Commission;

AND UPON REVIEWING the said Agreement and the Agreed Statement of Facts therein;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order.

NOW THEREFORE IT IS HEREBY ORDERED THAT:

- i. Pursuant to section 184(1)(d) of the *Securities Act*, any exemptions contained in New Brunswick securities law shall not apply to the Respondents;
- ii. Pursuant to section 186(1) of the *Securities Act*, the Respondent Stephen V. Harrison shall pay an administrative penalty in the amount of six thousand dollars (\$6,000.00);
- iii. Pursuant to section 186(1) of the *Securities Act*, the Respondent Craig D. Briand shall pay an administrative penalty in the amount of two thousand dollars (\$2,000.00);
- iv. Pursuant to section 185(1) of the *Securities Act*, the Respondents Harrison and Briand shall each pay investigative costs in the amount of one thousand dollars (\$1,000.00).

DATED at the City of Saint John this day of _____, 2010.

~, Panel Chair

~, Panel Member

~, Panel Member

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