

**PROVINCE OF NEW BRUNSWICK**

**IN THE MATTER OF the Securities  
Act, R.S.N.B. 1973, c.S-6, as amended,**

- and -

**IN THE MATTER OF the Registration of  
Bruce R.H. Logan**

**DECISION AND ORDER**

Hearing : Friday, January 16, 1998, 9:30 a.m.

Tribunal : Donne W. Smith, Jr., Administrator

Appearances: Edouard O. LeBlanc, Deputy Administrator - for the Office of the  
Administrator

John B.D. Logan, Barrister & Solicitor -  
Counsel for Bruce R.H. Logan

## I. INTRODUCTION :

This Decision follows a Hearing conducted pursuant to a Summons to Appear (the "Summons") dated December 18, 1997 and issued to Bruce R.H. Logan ("Logan" or the "Respondent"), a registered salesperson under the Securities Act (the "Act"). The Summons required Logan's attendance before me so that I might consider :

- a) whether pursuant to paragraph 12(1)(c)(v) of the Act it is in the public interest to suspend or cancel the registration of Logan; or
- b) whether pursuant to paragraph 12(1)(f) of the Act the registration of Logan be made subject to such conditions as I deem necessary.

The Summons alleges that between December 1, 1996 and May 1, 1997 Logan violated subsection 5(1) of the Act when he assisted one Earle Mackenzie Smith ("Smith") process three securities trades when Smith was not registered to do so, which assistance was contrary to and in violation of subsection 41(1) of the Act and contrary to the Standard Conditions of Registration attached to Logan's certificate of registration.

As a preliminary matter counsel for Logan argued that the Summons was bad in law in one respect. Counsel made reference to paragraph 6 and the inclusion of subsection 41(1) of the Act which Logan is alleged to have breached. Counsel argued that this subsection creates a summary conviction offence triable by provincial court judge only and outside the jurisdiction of the Administrator. Nevertheless, counsel agreed that even with the removal of this defect, the Administrator had jurisdiction to consider Logan's violation of Standard Conditions of Registration as also alleged in paragraph 6 of the Summons.

At the Hearing, I agreed with counsel that it was inappropriate in this Summons to make reference to allegations of summary conviction offences against the Act as such violations could only be determined by provincial court and not by the Administrator. Nevertheless, because Logan's counsel otherwise agreed to the jurisdiction of the Administrator, the Hearing proceeded.

## **II FINDINGS OF FACT :**

This matter is before me as a consequence of a national compliance examination commenced in May, 1997 into the activities of a mutual fund dealer, Fortune Financial Corporation. As a consequence of this review administrative action was commenced and action taken against a number of registrants at the Saint John work location of this mutual fund dealer.

The facts before me now are simple and not in dispute. On at least two occasions the Respondent processed mutual fund trades for individuals who were clients of Smith. At all times material to the matter before me Smith while a colleague of the Respondent was not registered under the Securities Act to trade in securities.

At the Hearing the Deputy Administrator submitted as Exhibits 1 through 3, photocopies of an "Order for Investment" and "Switch Request" which the Respondent admits were executed by him as "representative". More particularly, Exhibit 1 evidences an order for investment dated December 23, 1996 for Roger Corey in the amount of \$2,000.00 of Trimark Select Canadian Growth Fund for a registered savings plan account. Exhibits 2 and 3 evidence switch requests in the name of Judy Corey and Arthur Chiasson in amounts of \$1,572.00 and \$1,940.00 respectively. These relate to registered savings plan transactions and are dated in February, 1997. The copies are not clear on the particular dates in February.

Also submitted as Exhibits 4 and 5, respectively, were the Code of Ethics & Conduct outlined in the Conduct and Practices Handbook published by the Canadian Securities Institute, and the Code of Practice promulgated by the Investment Funds Institute of Canada as part of its Investment Funds in Canada course. The Respondent's registration record on file in the Office of the Administrator indicates his successful completion of examinations based upon materials including these codes.

The registration history of the Respondent is not in question. Paragraph 1 through 5 of the Summons briefly outlines this history. Logan first became registered under the Act as a mutual fund representative with Regal Capital Planners Ltd. on May 20, 1993. On December 7 of that year his registration was transferred to Fortune Financial Group Inc., another national mutual fund dealer and he remained so registered until October 31, 1994. His registration was then transferred on November 1, 1994 to a full service dealer, Fortune Financial Corporation, an affiliate of the mutual fund dealer. This registration remained in effect until August 2, 1996 when the operations of the full-service dealer were suspended and Logan's registration transferred, along with all others so registered with the full-service dealer, back to the mutual fund dealer. The record discloses that Logan remained continuously registered with this dealer from August 12, 1996 until June 10, 1997 when he was terminated in good standing by Fortune Financial Corporation, the most recent corporate name of the mutual fund dealer. Shortly thereafter Logan's registration was reinstated and transferred to Brunswick Funds Group Ltd. on June 24, 1997 and he remains currently registered with this New Brunswick mutual funds dealer.

### III PENALTY :

Because the facts are admitted by the Respondent and, as noted-above, simple and straight forward, both the Deputy Administrator and counsel for Logan spent considerable time making representations as to the administrative consequences of the Respondent's violations of the Act.

The Deputy Administrator argued that the Respondent knew or ought to have known that in processing the admitted trades he was violating a number of fundamental principles of securities regulation, in particular, the "know your client rule" which requires that a registered salesperson have sufficient knowledge of the personal and investment history and requirements of an investor before undertaking to trade on his or her behalf. Additionally, it is fundamental to securities regulation that trades in securities can only be effected by individuals who are registered and approved in accordance with applicable legislation. Of particular importance in this matter is Condition 3 of the Standard Conditions of Registration for Salespersons under the Act attached as Schedule "A" to the Respondent's certificate of registration. This condition reads :

"3. The Registrant, whether or not a member of or employed by a member of an SRO, is required to conform to standard business conduct guidelines common to the industry. Such guidelines include but are not limited to the "know your client rule", the duty to report breaches or apparent breaches of securities law requirements by others which come to the attention of the Registrant, and the duty to report to the Office of the Administrator customer complaints regarding the Registrant;"

The Deputy Administrator argued that sanctions against the Respondent are required in this instance in order to protect the integrity of the capital markets, the integrity of its participants and to promote and protect the public and investors from fraudulent activities. Sanctions should act as a deterrent to others in the industry as well as penalize the individual.

In speaking of sanctions the Deputy Administrator made no specific recommendations other than suggesting a range of penalty from a reprimand to a suspension or cancellation of registration. For my guidance he did make reference to Records of Decision in the record book in this Office, in particular, In The Matter of Donald Campbell, dated September 18, 1992 (at Tab 15) and In The Matter of Janet Miller, dated March 23, 1993 (at Tab 18) as well as recent administrative decisions involving former colleagues of the Respondent while employed at Fortune. In the latter instances, penalties of several days suspension to several months resulted and in one case an agreement to forfeit commissions earned.

In his turn, counsel for the Respondent fully acknowledged Logan's violations of the conditions of registration. While the Respondent has no reasonable excuse and fully acknowledges his action as a severe error in judgment, counsel sought to emphasize the disorganized nature of the Fortune office at the time the incidents occurred. Counsel also stressed the minor nature of the securities trades themselves which, he argued, minimalised the Respondent's transgressions. While the investors were not securities clients of the Respondent, they were known to him through his activities as an insurance salesman. The switches as outlined above did not involve "new money" but were transfers within the same family of mutual funds for RSP investment purposes. Finally, he argued, the Respondent was not motivated by financial gain as he received only \$200.00 to \$300.00 in commission for his involvement.

Speaking to the appropriate penalty in this matter, counsel for the Respondent argued that nothing the Respondent did warranted a suspension of registration and interruption of his ability to earn an income. Indeed, because of the circumstances surrounding the compliance examination of Fortune and the subsequent closure of its Saint John work location, the Respondent suffered a de facto suspension. As a consequence the Respondent's income for 1997 dropped by at least one third, placing great stress on the Respondent and his family. The Respondent's actions subsequent to his termination by Fortune such as his preparation of a compliance training manual for his new sponsoring dealer and his involvement with a community college advisory committee in which compliance was identified by him as a key issue for inclusion in course materials, all demonstrated his recognition of the importance of complying with securities regulations. Counsel argued that circumstances warrant at most a Letter of Reprimand being placed on the Respondent's file.

#### **IV. DECISION AND ORDER :**

That the Respondent offended the Standard Conditions of Registration under which he is permitted to trade securities in New Brunswick is not in question before me. Such violations are clear and admitted. The true issue as recognized by both the Deputy Administrator and counsel for the Respondent is the extent to which the Respondent is to be sanctioned or penalized for these violations.

The Deputy Administrator cited previous administrative decisions of this Office as precedents which I might choose to follow in determining what penalty, if any, is appropriate in this case. Reference was made to In The Matter of Donald Campbell, an Order of the Administrator dated September 22, 1992. In this instance a registrant was

suspended for three months as a consequence of processing orders from an individual he knew not to be registered to trade under the Securities Act and who purported to act on behalf of three clients unknown to the registrant.

Additionally, the Deputy Administrator made reference to penalties imposed during recent administrative hearings involving former colleagues of the Respondent. While not specifically cited at the Hearing two of the more pertinent Orders relate to In The Matter of Brian Lund, dated December 18, 1997 (Records of Decision - Tab 25) in which Lund was suspended for fourteen days as a consequence of his trading on behalf of five clients when he was not registered to do so; and In The Matter of Paul Wilson, dated December 18, 1997 (at Tab 26) in which Wilson was suspended for two days and made a voluntary contribution to the Province of New Brunswick of \$600.00 an amount equal to commission earned on the sale to 10 clients of labor sponsored investment funds which Wilson was not registered to trade. Other decisions relating to individuals involved in the Fortune investigation are not, in my opinion, comparable to the fact situation before me here.

Counsel for Logan sought to distinguish in particular the Campbell decision because, at first glance, the fact situation between his client and Campbell appeared similar. He pointed out, however, that unlike Campbell the clients involved were known to the Respondent as was the general investment approach adopted by the non-registrant who the Respondent sought to assist.

Regardless of these precedents, counsel for Logan rightly questions whether the fact situation before me warrants the suspension or cancellation of registration of the Respondent. As I have stated in previous decisions there must be clear and cogent evidence of serious wrongdoing before a registrant is to be deprived of an opportunity to earn a living. This must always be balanced with the need to protect the investing public, in particular as a deterrence to others.



In the matter before me there is no evidence of intentional fraudulent conduct. The two incidents involving three orders or trades amounted to several thousand dollars only. The investors were known to the Respondent. Nevertheless, the Respondent did earn income from the trades. His actions were not altruistic.

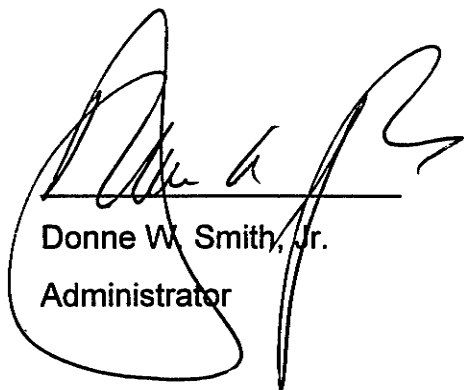
I have no doubt that the Respondent now appreciates the significant importance of compliance as a consequence of his involvement in this matter. He admits to being humbled by the experience. The Deputy Administrator acknowledges the Respondent's cooperation in the investigation. The Respondent never denied that the violations occurred.

In the final result, the Respondent did violate important conditions of registration and thus Section 12 of the Act. These violations are acknowledged and while I agree with counsel for the Respondent that neither cancellation nor suspension of registration is particularly warranted in this case, they are serious enough to require a reprimand. As a result, this decision shall constitute a Letter of Reprimand and will be placed on the Respondent's registration file. Should there ever be occasion again to consider allegations of improper conduct or violation of the Securities Act, or its regulation this Letter of Reprimand may be raised as evidence of previous administrative sanctions.

The Respondent has demonstrated to my satisfaction that he understands the importance of compliance. Therefore, it will not be necessary to order that he retake a mutual funds course.

The Respondent is reminded that an appeal from this decision is possible pursuant to section 39 of the Act.

DATED at Saint John, New Brunswick this 25<sup>th</sup> day of February, 1998.



Donne W. Smith, Jr.  
Administrator