
Citation: *New Brunswick (Financial and Consumer Services Commission) v. Hurley et al.*, 2016 NBFCST 6

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c S-5.5

Date: 2016-06-16
Docket: 2300-H2

BETWEEN :

Financial and Consumer Services Commission,

Applicant,

- and -

Charline Hurley

Respondent.

SETTLEMENT APPROVAL ORDER

WHEREAS:

1. As of July 1, 2013, the New Brunswick Securities Commission is continued as the Financial and Consumer Services Commission and the adjudicative functions of the New Brunswick Securities Commission are now performed by the Financial and Consumer Services Tribunal (“Tribunal”);
2. In accordance with section 75 of the *Financial and Consumer Services Commission Act*, S.N.B. 2013, c. 30, decisions issued by the New Brunswick Securities Commission in this proceeding are deemed to be those of the Tribunal;

3. We have reviewed the Settlement Agreement and the Statement of Facts contained therein, the Joint Submissions, and the temporary order and highlight the following facts:
 - a) The Respondent Charline Hurley has been subjected to a temporary order in these proceedings since January 11, 2012, to which she consented, prohibiting her from:
 - i. trading in all securities except in and for her own account through a registered securities dealer;
 - ii. prevailing herself of any exemptions under New Brunswick securities law; and
 - iii. becoming or acting as a director or officer of any issuer, registrant or mutual fund manager;
 - b) The Respondent Charline Hurley entered into a Settlement Agreement with the Financial and Consumer Services Commission dated April 26, 2016 in which she agreed to a proposed settlement of these enforcement proceedings, subject to the approval of the Tribunal;
 - c) The Respondent Charline Hurley was not a registrant under the *Securities Act*;
 - d) The Respondent Charline Hurley pled guilty to one count of making misstatements to Mr. A and Mr. B contrary to subsection 58(4) of the *Securities Act* and was fined \$500;
 - e) Following the issuance of a civil judgment, the Respondent Charline Hurley repaid Mr. and Mrs. B the principal amount of the promissory note as well as legal costs associated with the civil proceeding;
 - f) Mr. A recovered an undetermined amount on the promissory note by exercising his right of foreclosure under the collateral mortgage securing the promissory note and which was registered against the Respondent Charline Hurley's residence;

AND WHEREAS:

4. We heard submissions from the parties' solicitors at the June 7, 2016 settlement hearing;
5. We also note the following mitigating circumstances:

- a) The Respondent Charline Hurley has not been subject to regulatory action in the past;
 - b) The Respondent Charline Hurley accepts responsibility for her actions;
 - c) The Respondent Charline Hurley has cooperated with the Financial and Consumer Services Commission in the resolution of this proceeding;
6. We are of the opinion that it is in the public interest to approve the Settlement Agreement as it recommends an appropriate protective and preventative order and recommends appropriate specific and general deterrence;

IT IS HEREBY ORDERED THAT:

1. Pursuant to clause 184(1)(c)(ii)(A) of the *Securities Act*, the Respondent Charline Hurley shall permanently cease trading in all securities and derivatives, directly or through any agent, except that:
 - a) The Respondent may trade in securities and derivatives in and for her own account through a registered securities dealer; and
 - b) The Respondent may wholly sell or otherwise dispose of shares in a corporation whose securities are only held by herself and/or members of her immediate family (being her parents, siblings or children and their respective spouses) provided that she provides 90 days advance written notice of such intended disposition to Staff of the Financial and Consumer Services Commission or any successor securities regulatory authority in the Province of New Brunswick;
2. Pursuant to paragraph 184(1)(d) of the *Securities Act*, any exemptions under New Brunswick securities law do not apply to the Respondent permanently; and
3. Pursuant to paragraph 184(1)(i) of the *Securities Act*, the Respondent is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager, except that the Respondent may act as an officer or director of an issuer whose securities are only held by the Respondent and/or members of the Respondent's immediate family (being her parents, siblings or children and their respective spouses).

DATED this 16th day of June, 2016.

“original signed by”

Christine M. Bernard

Registrar

Signed for panel members John M. Hanson, Q.C. and Don Moors

pursuant to subsection 40(3) of the *Financial and Consumer Services Commission Act*

PROVINCE OF NEW BRUNSWICK
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BETWEEN:

Financial and Consumer Services Commission,

Applicant,

-and-

Charline Hurley,

Respondent.

SETTLEMENT AGREEMENT

Part I

1. STAFF TO RECOMMEND SETTLEMENT

Staff of the New Brunswick Financial and Consumer Services Commission (“Staff”) agree to recommend approval of settlement of this matter with respect to the Respondent Charline Hurley (the “Respondent”) to a panel of the Financial and Consumer Services Tribunal (the “Tribunal”) 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 Respondent agrees to the Statement of Facts set out in Part II hereof, and consents to the making of an order, on the basis of those facts, substantially similar to that set out in Schedule “A” (the “Order”);
- b. The terms of any settlement will become public information only if, and when, the settlement is approved by the Tribunal.

2. RESPONDENT'S OBLIGATIONS IF SETTLEMENT APPROVED

If the Settlement Agreement is approved, the Respondent undertakes and/or agrees as follows:

- a. The Respondent shall not 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)(c)(ii)(A) of the *Securities Act*, the Respondent shall permanently cease trading in all securities and derivatives, directly or through any agent, except that:
 - a. she may trade in securities and derivatives in and for her own account through a registered securities dealer; and
 - b. she may wholly sell or otherwise dispose of shares in a corporation whose securities are only held by the Respondent and/or members of the Respondent's immediate family (being her parents, siblings or children and their respective spouses) provided that she provides 90 days advance written notice of such intended disposition to Staff of the Financial and Consumer Services Commission or its successor securities regulatory authority in the province of New Brunswick.
 - ii. Pursuant to section 184(1)(d) of the *Securities Act*, any exemptions under New Brunswick securities law do not apply to the Respondent permanently; and
 - iii. Pursuant to section 184(1)(i) of the *Securities Act*, the Respondent is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager, except that the Respondent may act as an officer or director of an issuer whose securities are only held by the Respondent and/or members of the Respondent's immediate family (being her parents, siblings or children and their respective spouses).
- c. The Respondent will make all reasonable arrangements requested to accept personal service of the Order if issued.

3. PROCEDURE FOR APPROVAL OF SETTLEMENT

- a. Upon execution of the Settlement Agreement by Staff and by the Respondent, Staff will apply to the Tribunal for an order approving the Settlement Agreement.
- b. If the Settlement Agreement is approved by the Tribunal, the Respondent agrees to waive any right to a hearing and/or appeal with respect to this matter.

- c. If, for any reason whatsoever, this settlement is not approved by the Tribunal and the order contemplated by this Settlement Agreement is not made by the Tribunal:
 - i. Staff and the Respondent 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 Respondent or as may be required by law; and
 - iii. The Respondent further agrees that she 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 Tribunal.

4. DISCLOSURE OF SETTLEMENT AGREEMENT

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

5. BREACH OF SETTLEMENT AGREEMENT

The Respondent acknowledges and understands that in the event of a breach or failure to comply with this Settlement Agreement, Staff may commence proceedings under section 179(2) of the *Securities Act* against the Respondent and seek any remedy available under that section.

6. STAFF COMMITMENT

If this settlement is approved by the Tribunal, Staff will not initiate any other proceeding under the *Securities Act* against the Respondent regarding the facts set out in Part II of this Settlement Agreement, and Staff will not make any public statement that is inconsistent with this Settlement Agreement.

7. 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 26th day of April 2016.

“original signed by”
Mark McElman
for and on behalf of Staff of the Commission

DATED at the municipality of Moncton this 21st day of April 2016.

“original signed by”
Charline Hurley

“original signed by”
Witness:

Part II

STATEMENT OF FACTS

Background

1. The Respondent Charline Hurley (“**Hurley**”) is a resident of Moncton, New Brunswick.
2. Hurley was at all material times, until 28 May 2014, an officer and director of a corporation that operated group residences in Moncton (the “Corporation” and the “residential home business”, respectively). The Corporation was dissolved on 28 May 2014.

The 29 October 2009 Promissory Note issued to Mr. A.

3. In October of 2009, Hurley, through an intermediary (the “intermediary”), solicited “Mr. A.”, a New Brunswick resident, for a loan for the purported purpose of financing the operations of the residential home business. Mr. A. was from time to time engaged in the business of lending money within the local community. During the solicitation, Hurley represented that funds would soon be available to the Corporation to repay the loan.
4. On or about 29 October 2009, Hurley and her spouse issued a promissory note in the amount of \$125,000.00 to Mr. A. (the “29 October 2009 Note”). Her spouse executed the 29 October 2009 Note at the request of Mr. A. The note is payable on demand and does not provide for any interest. The note was secured by way of a collateral mortgage registered against Hurley’s residence at the time.
5. On 10 December 2009, Hurley provided Mr. A. with a personal cheque in the amount of \$125,000.00 representing the repayment of the loan advanced under the 29 October 2009 Note. At this time, Hurley knowingly made a misrepresentation to Mr. A regarding the Corporation’s finances. Mr. A. presented the cheque to the relevant branch of the bank upon which the cheque was drawn, in order to have it certified. The bank refused to certify the cheque due to a hold status on the account.
6. Hurley failed to remedy this situation and thereby defaulted on the 29 October 2009 Note.
7. Contrary to the language of the 29 October 2009 Note, Hurley had agreed to pay Mr. A. a fee of \$10,000.00 in association with the loan. This agreement is reflected in a second promissory note issued by Hurley to Mr. A. on 6 April 2010.

8. Mr. A. subsequently received certain payments from Hurley in respect of the amount owed to him, and in May of 2012 he exercised his right of foreclosure under the collateral mortgage.
9. No prospectus or Report of Exempt Distribution was filed with the New Brunswick Securities Commission (the "Commission"), as it was then called, in respect of either promissory note issued to Mr. A. As such, Hurley breached section 6.1 of National Instrument 45-106 and section 71(1) of the *Securities Act*, S.N.B. 2004, c. S-5.5 (the "*Securities Act*").

The 17 November 2009 Promissory Note issued to Mr. and Mrs. B.

10. On or about 17 November 2009, "Mr. and Mrs. B.", New Brunswick residents, agreed with Hurley to loan money to the Corporation. Hurley represented to Mr. B. that the Corporation needed to raise \$75,000.00 to pay for renovations, and that without such funds it would be unable to apply for a particular government grant.
11. Hurley further represented that the Corporation would be in a position to repay the loan on 18 December 2009. At this time, Hurley knowingly made a misrepresentation to Mr. B regarding the Corporation's income. Based in part on this misrepresentation, Mr. and Mrs. B. loaned the Corporation \$35,000.00 secured by a note issued on 17 November 2009. The note was issued by Hurley on behalf of the Corporation (the "17 November 2009 Note"), and reflected that \$47,250.00 was due under the note upon maturity on 18 December 2009. At Hurley's request, the funds were provided by cheque payable to Hurley personally.
12. Hurley provided Mr. B. with a cheque in the amount of \$35,000.00 dated 18 December 2009 in repayment of the principal of the 17 November 2009 Note. The cheque, drawn on her personal account, was refused by the bank because the account on which it was frozen by the bank.
13. Mr. B. obtained a civil judgment in respect of the amount outstanding under the 17 November 2009 Note. Hurley eventually repaid the principal due under the 17 November 2009 Note, together with certain legal costs relating to the civil judgment.
14. No prospectus or Report of Exempt Distribution has been filed with the Commission in respect of the distribution of the 17 November 2009 Note, in violation of section 6.1 of National Instrument 45-106 and section 71(1) of the *Securities Act*.

Conviction in Provincial Court

15. On 15 May 2015, Hurley pled guilty to one count of making misstatements to Mr. A. and Mr. B. contrary to section 58(4) of the *Securities Act*. Hurley was fined \$500 (13 days in default).

16. Hurley has not previously been the subject of any investigation or proceeding under New Brunswick securities law.

Schedule "A"

PROVINCE OF NEW BRUNSWICK
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BETWEEN:

Financial and Consumer Services Commission,

Applicant,

-and-

Charline Hurley,

Respondent.

ORDER

WHEREAS the Respondent Charline Hurley entered into a Settlement Agreement dated • ••• 2016 ("Agreement") in which she agreed to a proposed settlement of an enforcement proceeding, subject to the approval of the Financial and Consumer Services Tribunal ("Tribunal"); and

WHEREAS upon reviewing the said Agreement and the Agreed Statement of Facts therein, and upon hearing the submissions of the parties at the • ••• 2016 settlement hearing; and

WHEREAS the Tribunal 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)(c)(ii)(A) of the *Securities Act*, the Respondent shall permanently cease trading in all securities and derivatives, directly or through any agent, except that:
 - a. she may trade in securities and derivatives in and for her own account through a registered securities dealer; and
 - b. she may wholly sell or otherwise dispose of shares in a corporation whose securities are only held by the Respondent and/or members of the

Respondent's immediate family (being her parents, siblings or children and their respective spouses) provided that she provides 90 days advance written notice of such intended disposition to Staff of the Financial and Consumer Services Commission or its successor securities regulatory authority in the province of New Brunswick.

- ii. Pursuant to section 184(1)(d) of the *Securities Act*, any exemptions under New Brunswick securities law do not apply to the Respondent permanently; and
- iii. Pursuant to section 184(1)(i) of the *Securities Act*, the Respondent is permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager, except that the Respondent may act as an officer or director of an issuer whose securities are only held by the Respondent and/or members of the Respondent's immediate family (being her parents, siblings or children and their respective spouses).

DATED at the City of Saint John this ____ day of _____, 2016.

~, Panel Chair

~, Panel Member

~, Panel Member

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