

2004 BCSECCOM 229

Schedule A Settlement Agreement

Kenneth Kim Leiske

And

**Aspen Capital Management Inc.,
Cambria Bancorp Ltd., and 3644871 Canada Inc.**

Securities Act, RSBC 1996, c. 418

- ¶ 1 The following settlement of issues has been reached between Kenneth Kim Leiske (Leiske), Aspen Capital Management Inc. (Aspen Capital), Cambria Bancorp Ltd. (Cambria), 3644871 Canada Inc. (Aspen Group) (collectively the Respondents) and the Executive Director.

Agreed Statement of Facts

- ¶ 2 As the basis for the undertakings and orders referred to in this settlement, the Respondents acknowledge the following facts as correct:
1. Aspen Capital was registered as a securities dealer and portfolio manager under the *Securities Act, RSBC 1996, c.418* (the Act) from December 27, 1987 to March 6, 2000, after which it was licensed as a mutual fund dealer and portfolio manager. Aspen Capital surrendered its registration on September 18, 2000. It commenced bankruptcy proceedings on September 19, 2000.
 2. Cambria was incorporated in BC on August 20, 1997.
 3. Aspen Group was federally incorporated on July 29, 1999, and has been registered as an extra-provincial company in BC since May 5, 2000.
 4. Neither Cambria nor Aspen Group has ever filed a preliminary prospectus, prospectus, offering memorandum or a report of exempt distribution with the Commission.
 5. Leiske was registered as a mutual fund salesperson with Aspen Capital from July 20, 1998 until September 18, 2000. He was a director, officer, and controlling shareholder of Aspen Group and Cambria during material times. He was the president and secretary of Aspen Capital from May 1998 to May 2000, and a director from September 2000 to the present.

2004 BCSECCOM 229

Aspen Capital Failed to Segregate Client Funds

6. Aspen Capital received subscription money and prepayments for securities that its clients intended to purchase.
7. Aspen Capital, as a dealer, was required under section 58(a) of the *Securities Rules*, BC Reg. 194/97, as amended (the Rules) to hold client subscription money and prepayments in a trust account and, under section 58(b) of the Rules, to segregate those funds from its own assets.
8. However, on March 12, 1999, a Statement of Claim was filed in the Supreme Court of British Columbia against Leiske and Aspen Capital in a commercial dispute involving the purchase and sale of Aspen Capital. On March 15, 1999, \$84,975.33 was taken from Aspen Capital's operating bank accounts as a result of a garnishing order.
9. On March 23, 1999, Aspen Capital transferred \$6,620.96 in client funds from its mutual fund trust account to another trust account in the name of Cambria (the Cambria Account), intending to avoid any future garnishment of client trust funds.
10. On March 24, 1999, Aspen Capital obtained the release of the garnished funds in the amount of \$84,965.33. It deposited them in the Cambria Account. The result was that client funds became commingled with operating funds.
11. From March 26, 1999 until August 16, 1999, 251 transactions were settled through the Cambria Account. Many of these transactions included transfers of funds between the Cambria Account and Aspen Capital's trust and operating accounts. Throughout this period, Aspen Capital used the Cambria Account to hold client trust funds and operating funds at the same time.
12. As a result, Aspen Capital failed to segregate client funds from Aspen Capital's own assets, contrary to section 58(b) of the Rules.

Aspen Capital Failed to Remit Trust Interest

13. The funds that Aspen Capital held on behalf of clients for the purchase of mutual funds earned interest.
14. From October 1998 until May 2000, Aspen Capital failed to calculate and remit to mutual fund companies on a monthly basis the interest earned on client funds held in trust for investment in mutual funds, contrary to section 58(c) of the Rules.

2004 BCSECCOM 229

Aspen Capital Failed to Maintain Adequate Capital

15. As a securities dealer until March 6, 2000, Aspen Capital was required to maintain positive risk adjusted capital under section 19(2) of the Rules.
16. After March 6, 2000, as a mutual fund dealer that held client funds, Aspen Capital was required to maintain working capital of greater than \$75,000 plus its bond deductible, under section 19(3) of the Rules.
17. As a portfolio manager from December 16, 1999 to September 18, 2000, Aspen Capital was required to maintain working capital greater than \$25,000 plus its bond deductible, under section 20(1) of the Rules.
18. Aspen Capital, as a securities dealer until March 6, 2000, failed to maintain positive risk adjusted capital in September and December 1998, December 1999, and in February 2000, contrary to section 19(2) of the Rules.
19. Aspen Capital, as a mutual fund dealer from March 6, 2000 until September 18, 2000, failed to maintain the minimum prescribed working capital in April, May, and September 2000, contrary to section 19(3) of the Rules.
20. Aspen Capital, as a portfolio manager from December 1999, failed to maintain the minimum prescribed working capital from December 1999 and in February, April, May and September 2000, contrary to section 20(1) of the Rules.

The Trade and Distribution of Cambria Securities

21. From February 3, 1999 to December 20, 1999, Leiske sold at least 75,600 Cambria shares to six investors.
22. From August 27, 1999 to December 8, 1999, another director of Cambria sold 260,000 Cambria shares to thirteen investors.
23. Cambria distributed its securities without a prospectus or an applicable exemption from the Act or Rules, contrary to section 61 of the Act.
24. Leiske distributed securities of Cambria without the proper category of registration and without a prospectus, contrary to sections 34 and 61 of the Act.

The Trade and Distribution of Aspen Group Securities

25. In December 1999, persons other than Leiske sold 296,000 shares of Aspen Group to fourteen investors. Leiske acted in furtherance of the sale of 200,000 of these shares of Aspen Group to two investors (the Aspen Group Investors).

2004 BCSECCOM 229

26. Aspen Group distributed its securities without a prospectus or an applicable exemption from the Act or Rules, contrary to section 61 of the Act.
27. Leiske, by acting in furtherance of a trade in the Aspen Group shares with the Aspen Group Investors, distributed the securities of Aspen Group without the proper category of registration and without a prospectus, contrary to sections 34 and 61 of the Act.

The Aspen Group Scheme

28. With the intention of promoting the purchase of Aspen Group shares by the Aspen Group Investors, Leiske caused a chartered accountant to prepare and issue a requirement letter dated December 23, 1999 that stated that the Aspen Group shares would meet the requirements for a qualified investment in a registered retirement savings plan (RRSP).
29. Among other things, the requirement letter identified and relied upon the following assumptions provided by Leiske:
 - (a) Aspen Group had issued over 2,000,000 common shares, and
 - (b) the Aspen Group Investors would hold less than 10% of Aspen Group's issued and outstanding shares.
30. These assumptions were false as at December 23, 1999, because included in the figure representing the issued and outstanding common shares of Aspen Group were over 1,500,000 shares of Aspen Group intended to be issued to founders and key staff of Aspen Group, but that had not yet been paid for or issued. Leiske provided the false information to the accountant.
31. The proceeds from the sale of the Aspen Group shares to the Aspen Group Investors in the amount of \$100,000 represented substantially all of the capital of Aspen Group at the time. These proceeds were then used by Aspen Capital to meet its minimum capital requirements. Leiske failed to ensure the Aspen Group Investors were aware of the financial condition of Aspen Group at the time of their investment, or how their money would be used.
32. The Aspen Group Investors would not have invested in Aspen Group had they known that the purchase of shares in Aspen Group may not have been eligible for their RRSPs or that the money would be used to fund Aspen Capital.

2004 BCSECCOM 229

33. Leiske, by providing false information to the chartered accountant for the purpose of causing the requirement letter to be prepared, made a statement that he knew, or ought reasonably to have known, was a misrepresentation, contrary to section 50(1)(d) of the Act.

Breaches of the Act and Rules, and Actions Contrary to the Public Interest

34. Leiske breached the following sections of the Act:

- (a) section 34 of the Act, by trading in the Cambria and Aspen Group shares without registration or an exemption from the registration requirement of the Act;
- (b) section 61 of the Act, by participating in the distribution of the Cambria and Aspen Group shares without a prospectus or an exemption from the prospectus requirement of the Act; and
- (c) section 50(1)(d) of the Act, by providing the chartered accountant with false information in order to obtain a requirement letter that would assist the sale of the Aspen Group securities to the Aspen Group Investors.

35. Cambria and Aspen Group breached section 61 of the Act by distributing their securities without a prospectus and without an exemption from the prospectus requirement of the Act.

36. Aspen Capital breached the following sections of the Rules:

- (a) section 58(b) of the Rules, by failing to keep separate its clients' investment funds from its operating funds;
- (b) section 58(c) of the Rules, by failing to remit interest earned on client funds; and
- (c) sections 19(2), 19(3) and 20(1) of the Rules by failing to maintain the prescribed minimum capital.

37. Under section 168.2 of the Act and in respect of conduct of Aspen Capital after June 29, 1999, Leiske breached sections 19(2) and (3), 20(1), and 58(b) and (c) of the Rules by authorizing, permitting or acquiescing in Aspen Capital's contravention of those provisions while he was a director and senior officer of Aspen Capital.

2004 BCSECCOM 229

38. As a director or officer of each of Cambria and Aspen Group, Leiske failed to take reasonable care to ensure the companies complied with section 61 of the Act, and therefore failed to exercise the care, diligence, and skill of a reasonably prudent person contrary to sections 118 and 135 of the *Company Act*, RSBC 1996, c. 62.
39. The conduct of, and breaches of the Act and Rules by, the Respondents as set out in this agreement was contrary to the public interest.

Mitigating Factors

- ¶ 3 Leiske agrees that in the circumstances it would be appropriate for him to undertake to pay \$50,000 to the Commission. The Executive Director has determined that this payment, which would otherwise have applied in the public interest, is not required in light of the following mitigating factors:
1. Leiske and Aspen Capital represent, and the Executive Director accepts, that none of Aspen Capital's clients lost any money from the fact that Aspen Capital's trust account monies were commingled with Aspen Capital's operating funds in the Cambria Account.
 2. In or about May 2000, Aspen Capital remitted the required interest on funds held in its mutual fund trust account on a bulk basis for the preceding period.
 3. Leiske invested and lost approximately \$170,000 in Aspen Capital. Members of his family invested and lost an approximately \$400,000 in Aspen Capital.
 4. Leiske has satisfactorily established that he is unable to pay any money and has no prospect of being able to do so in the foreseeable future.

Undertaking

- ¶ 4 Leiske undertakes to:
5. comply with the Act and the Rules;
 6. not to apply for registration under the Act for twelve years from the date of the order of the Executive Director consented to in this settlement (the Order); and
 7. not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

2004 BCSECCOM 229

Order

- ¶ 5 The Respondents each consent to an Order that:
8. under section 161(1)(b) of the Act, all persons cease trading in the securities of each of Aspen Capital, Cambria, and Aspen Group;
 9. under section 161(1)(b) and (c) of the Act, Leiske cease trading in securities for twelve years from the date of the Order, except that Leiske may rely on the exemption in section 45(2)(7) of the Act to trade in one RRSP account in his own name, through a registered dealer, as long as Leiske provides the registered dealer with a copy of the Order before any trade takes place;
 10. under section 161(1)(d), Leiske resign any position he holds as a director or officer of any issuer and be prohibited from becoming or acting as a director or officer of any issuer for the later of:
 - (a) twelve years from the date of the Order, and
 - (b) the date Leiske successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers; and
 11. under section 161(1)(d) of the Act, Leiske be prohibited from engaging in investor relations activities for twelve years from the date of the Order.

Waiver

- ¶ 6 The Respondents each waive any right they may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this settlement.

2004 BCSECCOM 229

¶ 7 April 15, 2004

¶ 8 “Kenneth Kim Leiske”
Kenneth Kim Leiske

“David W. Martin”)
Witness Signature)
David W. Martin)
Witness Name (please print))
701 West Georgia St.)
Vancouver, BC)
Address)
Enforcement Officer)
Occupation)

¶ 9 April 15, 2004

¶ 10 “Kenneth Kim Leiske”
Aspen Capital Management Inc.
(Kenneth Kim Leiske, Signing Authority)

“David W. Martin”)
Witness Signature)
David W. Martin)
Witness Name (please print))
701 West Georgia St.)
Vancouver, BC)
Address)
Enforcement Officer)
Occupation)

2004 BCSECCOM 229

¶ 11 April 15, 2004

¶ 12 “Kenneth Kim Leiske”
Cambria Bancorp Ltd.
(Kenneth Kim Leiske, Signing Authority)

“David W. Martin”)
Witness Signature)
David W. Martin)
Witness Name (please print))
701 West Georgia St.)
Vancouver, BC)
Address)
Enforcement Officer)
Occupation)

¶ 13 April 15, 2004

¶ 14 “Kenneth Kim Leiske”
3644871 Canada Inc.
(Kenneth Kim Leiske, Signing Authority)

“David W. Martin”)
Witness Signature)
David W. Martin)
Witness Name (please print))
701 West Georgia St.)
Vancouver, BC)
Address)
Enforcement Officer)
Occupation)

¶ 15 April 15, 2004

¶ 16 Stephen J. Wilson
Executive Director

2004 BCSECCOM 229