

2006 BCSECCOM 286

Settlement Agreement

Elliot Kagna

Securities Act, RSBC 1996, c. 418

¶ 1 Elliot Kagna has settled the following issues with the Executive Director.

Agreed Statement of Facts

¶ 2 As the basis for the undertakings and order referred to in this settlement, Kagna acknowledges the following facts as correct:

Background

1. Kagna, a resident of British Columbia, became a registered representative under the *Securities Act, RSBC 1996, c. 418* (the Act) in January 1994. He was employed by Union Securities Ltd. (Union) from January 1994 to present.
2. Union is a British Columbia company, with its head office in Vancouver, British Columbia. Union has been a member of the Vancouver Stock Exchange (VSE), now the TSX Venture Exchange, since 1963, a member of the Toronto Stock Exchange since 1991 and a member of the Investment Dealers Association of Canada (IDA) since June 4, 1997. Union has been continuously registered as an investment dealer under section 34 of the Act or equivalent predecessor provisions since 1982.

Misconduct

3. From 1999 to 2001 (the Review Period), Kagna was the registered representative for US dollar accounts held at Union by the following clients:

Jimmy Dean Dowda
Surelock Inc.
Short Capital Investment Inc.
Spartan Development Inc.
Select Media Inc.
Roger Tichenor
Tentrino-Val S.A.
Bona Vista West Ltd.
Ascent Financial Incorporated
World Capital Funding LLC

4. None of these clients or the individuals who gave trading and other instructions on the accounts were residents of Canada. The accounts traded

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primarily securities listed or quoted on the Over-The-Counter Bulletin Board quotation system (OTCBB) in the United States.

5. Kagna failed to learn the following essential facts relative to these clients. He failed to:
 - (a) obtain sufficient information to complete new client application forms fully and accurately;
 - (b) ascertain the identity of the beneficial owners of some of the accounts;
 - (c) perform Lexis Nexis searches on the clients and the individuals authorized to provide trading and other instructions for their accounts, as required by Union's policy and procedures manual; and
 - (d) make enquiries concerning the reputation of the clients after he became aware of information, including the Account Characteristics described below, that caused doubt about whether they were of good business or financial reputation,

all contrary to section 48(1) of the *Securities Rules*, B.C. Reg 194/97, VSE Rules F.1.01 and F.2.08, Canadian Venture Exchange (CDNX) Rules F.1.01, F.1.02 and F.2.03, IDA Regulation 1300 and IDA By-Law 29.1.

6. The accounts had some or all of the following characteristics (Account Characteristics):
 - (a) they were introduced or opened by non-residents of Canada with no connection to the geographic location of the branch of Union at which Kagna worked;
 - (b) the clients frequently paid commissions for execution-only services;
 - (c) large denomination stock certificates in OTCBB issuers, often restricted or registered in the name of third parties, were delivered into the accounts;
 - (d) the accounts purchased and sold primarily OTCBB securities, sometimes with no apparent economic purpose; and
 - (e) security positions were transferred out of the accounts or liquidated, with the transfers and sale proceeds often directed to third parties.

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7. Kagna had a duty, as a gatekeeper to the securities industry, to refuse to engage in conduct which would tend to bring the integrity of the capital markets into disrepute and to ensure that he did not assist in, or permit, conduct by clients which would have a similar effect. The Account Characteristics ought to have raised significant client integrity concerns for Kagna. Despite this, Kagna in his capacity as a registered representative failed to make further enquiries and continued to process orders and transactions in breach of his duties to act as a gatekeeper.
8. Kagna earned net commissions of over \$1 million during the Review Period from trading in the accounts listed above.

Public Interest

- ¶ 3 Kagna's conduct as described in this settlement was contrary to the public interest.

Mitigating Factors

- ¶ 4 The Executive Director has taken into account the following factors as mitigating the sanctions that might otherwise have applied in the public interest:
1. Kagna was relatively inexperienced as a registered representative during the Review Period;
 2. Kagna met with all of his clients and did some due diligence on their identity and trading;
 3. When several of his clients came under investigation by the United States Securities and Exchange Commission, Kagna brought it Union's attention and was not told to investigate further, stop trading in or to close their accounts;
 4. Union gave Kagna minimal compliance support.

Undertaking

- ¶ 5 Kagna undertakes to:
1. pay to the British Columbia Securities Commission, upon execution of this settlement, the sum of \$50,000; and
 2. not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

- ¶ 6 Kagna consents to an order (the Order) by the Executive Director that:

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1. under section 161(1)(a) of the Act, Kagna comply fully with the Act, the *Securities Rules*, B.C. Reg. 194/97, and any applicable regulations, policies and guidelines; and
2. under section 161(1)(f) of the Act, Kagna's registration is subject to the following conditions:
 - (a) Kagna must be closely supervised by an IDA member that agrees to file monthly Close Supervision Reports, in the form established by the IDA, for two years from the date of the Order, and
 - (b) Kagna must successfully complete the Canadian Securities Institute's Conduct and Practices Handbook Course, or a course that the Executive Director considers to be equivalent, within six months of the date of the Order.

Consent to Reciprocal Orders

- ¶ 7 Kagna consents to any securities regulator anywhere in Canada relying on the facts admitted in this settlement to make orders of a similar nature against him for the misconduct described above.

Waiver

- ¶ 8 Kagna waives any right he 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.

- ¶ 9 March 17, 2006

"Elliot Kagna"

Elliot Kagna

Winton Derby)

Witness Signature)

Winton Derby)

Witness Name (please print))

1300-777 Dunsmuir Street)

)

Vancouver, BC V7Y 1K2)

Address)

Barrister & Solicitor)

Occupation

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¶ 10 March 21, 2006

“Brenda Leong”

¶ 11 Brenda M. Leong
Executive Director