2012 BCSECCOM 106

Settlement Agreement

Arvindbhai Bakorbhai Patel (aka Arvin Patel)

Securities Act, RSBC 1996, c. 418

¶ 1   The Executive Director of the British Columbia Securities Commission (the Executive Director) and Arvindbhai Bakorbhai Patel (aka Arvin Patel) (Patel) agree as follows:

Agreed Statement of Facts

1. Patel is a resident of Vancouver, BC. Between at least 2006 and the end of January 2012 (the Relevant Period), he was employed by Coast Capital Savings (Coast) as a financial planner, and was registered under the Act as a mutual fund dealing representative with Worldsource Financial Management Inc.

2. During the Relevant Period, Patel introduced his financial planning clients at Coast, colleagues at Coast, and his friends and family, to an investment opportunity through Rashida Samji (Samji), then a notary public in BC (the Notary Trust Fund Investment or NTFI). Patel described the NTFI as including the following:

    (a)   Investors would provide their funds to Samji and sign a letter of direction;

    (b)   The money would not be paid out to any party;

    (c)   Money received from investors would not leave Samji's notary trust account, monitored and audited by the Society of Notaries Public of BC;

    (d)   Samji, based on the funds in her trust account, would provide a comfort letter to a prominent BC winery, the Mark Anthony Group Inc. (Mark Anthony), and other wineries, which would enable the wineries to use the investor funds, without accessing them, as collateral for loans in foreign countries where they conducted their wine business;

    (e)   The investors were required to deposit funds for terms of at least six months and earn interest-like returns described as *fees* of 6% each six months, or 12% per year; and

    (f)   At the end of each six-month period investors could choose to withdraw from the investment, or sign a new letter of direction with Samji.

3. At no time was a prospectus filed with the Commission for the NTFI.

Misconduct
Illegal Distribution and Trading Without Registration
4. As a mutual fund dealing representative Patel was restricted to trading in mutual funds and certain labour-sponsored investment funds unless he had an exemption under the Act from the registration and prospectus requirements.

5. Patel introduced approximately 90 investors (including some couples and a family who invested jointly) (the Investors) to the NTFI, who collectively invested about $28.9 million of which a substantial portion is now lost. Of the Investors, approximately:

    (a)   4 were his family;

    (b)   5 were his coworkers; and

    (c)   63 were his clients at Coast.

6. For at least 80 of the Investors who invested about $25,300,000, no exemption from the registration or prospectus requirements of the Act was available.

7. By distributing the NTFI without having filed a prospectus, and without an exemption from the registration and prospectus requirements of the Act, Patel breached sections 34 and 61 of the Act.

Misrepresentations
8. Patel made representations to the Investors including:

    (a)   The statements at paragraph 2(b)-(e) above;

    (b)   That returns of 12% per year were not only possible but guaranteed; and

    (c)   That Mark Anthony was preparing an Initial Public Offering.

9. Patel ought to have known that all of the above statements were false:

    (a)   Patel never obtained verification from Samji, a bank or anyone else, about the use of Investor funds;

    (b)   The represented returns were impossible to achieve consistently over the Relevant Period; and

(c) The NTFI had no actual relationship with Mark Anthony, who was not preparing an IPO.

10. Patel, while engaged in investor relations activities, made the false statements in paragraph 8 that were misrepresentations, in breach of section 50(1)(d) of the Act.

General Conduct Attracting Capital Market Bans in the Public Interest
11. Patel failed to recognize the many signs that made the NTFI unsuitable to recommend to the Investors including:

(a) It was not approved by his employer or registering firm;

(b) There was no disclosure documentation or paperwork other than the letter of direction available about the investment;

(c) It was introduced to him as an exclusive investment opportunity not available to the general public;

(d) The returns were not consistently achievable over a 6-year period;

(e) High returns without risk are not achievable; and

(f) Some Investors needed to use money that they had borrowed to make the investment.

12. Patel was a registrant and a financial planner. Patel knew his clients were relying on him to provide investment and financial guidance and yet he introduced them to the NTFI with little to no due diligence of his own, except for his own experience, on the NTFI.

13. Patel's actions described in this Settlement were not in the public interest.

Mitigating Factor and Inability to Pay Administrative Penalty
14. Patel invested about $600,000 in the NTFI, of which $350,000 is lost.

15. Patel's family invested about $1.6 million in the NTFI, of which about $1.4 million is lost.

16. Patel is 58 years old, unemployed, has substantial liabilities, and his assets are subject to freeze orders and securities liens under section 151 of the Act (the Freeze Orders).

17. Patel is a defendant in multiple civil actions by investors in the NTFI.

18. The Supreme Court for British Columbia, at the request of the British Columbia Securities Commission, has appointed a receiver under section 152 of the Act.

19. Patel transferred to the receiver his legal and beneficial interest in five properties that are subject to the Freeze Orders. The Freeze Orders remain in place over his other assets.

20. Accordingly, Patel has no reasonable prospect of being able to pay the multi million dollar administrative penalty that would otherwise be appropriate for the misconduct described in this Settlement Agreement.

Order

¶ 2   The Executive Director will order (the Order) that:

1. under sections 161(1)(b) and 161(1)(c) of the Act, Patel permanently cease trading in any securities or exchange contracts, and all of the exemptions set out in the regulations to do not apply to Patel, except that he may trade:

    (a)   in accounts in his own name held exclusively through a registered dealer under the Act, provided that he gives the registered representative a copy of this Order prior to any trade taking place;

2. under section 161(d)(i) that Patel resign any position that he may hold as a director and officer of any issuer; and

3. under sections 161(1)(d)(ii)-(v), Patel is permanently prohibited from:

    (a)   becoming or acting as a director or officer of any issuer or registrant;

    (b)   becoming or acting as a registrant or promoter;

    (c)   acting in a management or consultative capacity in connection with activities in the securities market; and

    (d)   engaging in investor relations activities.

Consent to Reciprocal Orders

¶ 3   Any securities regulator in Canada may rely on the facts admitted in this agreement solely for the purpose of making an order similar to the one contemplated above.

Waiver

¶ 4   Patel 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.

Counterpart

¶ 5   This Settlement Agreement may be executed in counterpart or by facsimile execution and all such counterparts of executed copies or faxed copies shall be read or construed together as if they formed one originally executed document.

¶ 6   April 3, 2012

¶ 7   ___Arvindbhai Bakorbhai Patel_____
Arvindbhai Bakorbhai Patel
(aka Arvin Patel)

___Sean Boyle_____)
Witness Signature   )
___Blake, Cassels & Graydon LLP___)
Witness Name (please print)   )
___Suite 2600, Three Bentall Centre)
)
___Vancouver, BC V7X 1L3_____   )
Address   )
___Barrister and Solicitor_____   )
Occupation   )

¶ 8   April 3 2012

Paul C. Bourque, Q.C.

¶ 9   Paul C. Bourque, Q.C.
Executive Director