



British Columbia Securities Commission

Citation: 2013 BCSECCOM 199

Notice of Hearing

David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group

Section 161 of the *Securities Act*, RSBC 1996, c. 418

¶ 1 The Commission will hold a hearing (Hearing) at which the Executive Director will tender evidence, make submissions and apply for orders against David Michael Michaels and 509802 BC Ltd. doing business as Michaels Wealth Management Group (the Respondents) under sections 161, 162 and 174 of the *Securities Act*, RSBC 1996, c. 418, (Act) based on the following facts:

Background

1. David Michael Michaels (Michaels) resides in Mill Bay, British Columbia.
2. Michaels is a director of 509802 BC Ltd., a British Columbia company doing business as Michaels Wealth Management Group (Michaels Wealth Management Group).
3. Michaels was licensed as a life insurance agent nominee by the Insurance Council of British Columbia from 1996 to 2011.
4. In about 2003, Michaels took a course on aging issues facing people over 55 years of age and obtained the designation of Certified Senior Advisor (CSA). The CSA designation did not entitle Michaels, under the Act, to advise anyone about purchasing securities.
5. Michaels was registered under the Act for ten years as a salesperson restricted to mutual fund securities and, briefly, as a salesperson, but has not been registered under the Act in any capacity since May 2006.
6. In February 2004, Michaels' employment as a mutual fund salesperson was terminated after his employer discovered he conducted a number of off book transactions with clients. This triggered an investigation into his conduct by the Investment Dealers Association of Canada (IDA), during which he repeatedly attempted to conceal information from the IDA.
7. In March 2006, Michaels provided a written summary of events about the IDA investigation to his subsequent employer that included the following:



- He discussed the matter with the IDA in the summer of 2005 and “thought the end was near”.
 - He lied to the IDA about whether there were any other clients involved in off book transactions as he was scared to tell the IDA the truth.
 - “Once you start a lie you can never get out from it. I thought that was that”.
8. Michaels’ subsequent employer then started its own investigation and forensic audit with respect to his activities.
 9. After receiving a draft notice of hearing from the IDA, Michaels advised his subsequent employer that his future in the IDA was going to either end or become severely limited. Michaels started exploring how he could “escape the IDA” but still generate income from his book.
 10. Faced with the end of his membership in the IDA or a severely limited one, Michaels resigned from his subsequent employer in May 2006 and has not been registered under the Act in any capacity since.
 11. In September 2006, the IDA issued a notice of hearing against Michaels which included the following allegations:
 - Conducting off book transactions.
 - Advising clients about purchasing shares when his registration was restricted to the sale of mutual funds.
 - Attempting to conceal information during the course of the IDA investigation and mislead IDA staff.
 12. In March 2007, the IDA found that the above allegations had been proven against Michaels and ordered that he could not reapply for registration until two months had elapsed and he paid a fine and costs of \$60,000, which he never did.

Michaels’ financial advising business

13. Between 2006 and 2011, Michaels operated a financial advising business through Michaels Wealth Management Group that provided clients with advice purportedly tailored to their financial needs.
14. The focus of Michaels’ financial advising business was advising clients about purchasing exempt market securities, for which Michaels was paid commissions and marketing fees by the exempt market issuers. Michaels also advised clients about purchasing insurance products and tax reduction strategies.



15. The promotion of Michaels' financial advising business targeted retired investors as potential clients.

Weekly infomercials

16. Promotional activities included a weekly infomercial entitled 'Creating Wealth with David Michaels' on CFX 1070 radio in Victoria, where Michaels:
- Promoted various types of exempt market securities.
 - Promoted exempt market securities as being less risky investments than securities that trade in the stock market.
 - Claimed he gave up his registration under the Act in 2006 to sell stocks, bonds and mutual funds because he saw the "writing on the wall" that there was going to be a stock market crash, so he proactively moved his clients' money and his own money into exempt market securities to avoid this.
 - Promoted upcoming monthly seminars about exempt market securities.
 - Passed off his CSA designation as expertise in advising investors about purchasing exempt market securities.
 - Used variations of the tag line "I love making money for seniors".
 - Claimed he could provide a second opinion on listeners' investment portfolios.

Monthly seminars

17. Promotional activities also included monthly seminars, where Michaels:
- Said he specialized in helping retirees earn monthly incomes without stock market uncertainty.
 - Promoted exempt market securities as the key to preserving and creating wealth, without stock market volatility.
 - Questioned whether attendees were meeting their financial goals by listening to their stock broker or mutual fund salesperson.
 - Promoted the benefits of leveraging using a home equity loan.
 - Invited attendees to schedule a one-on-one meeting with him for a free review of their financial situation.

One-on-one meetings

18. The goal of promoting Michaels' financial advising business was to get potential clients to attend one-on-one meetings with Michaels, where he would provide a comprehensive analysis of their financial situation. Potential clients were required to bring their current investment statements and tax returns so Michaels could review them at the meeting.



19. Armed with details of their financial situation, Michaels advised potential new clients and existing insurance clients to purchase various exempt market securities at one-on-one meetings by:
 - Advising that they were good investments.
 - Advising that he had personally made the same investments.
 - Recommending that they make the investments.
 - Recommending that they transfer their current investment holdings to his firm, so they could be liquidated to fund the investments.
 - Advising that they obtain a home equity loan to fund the investments.
 - Advising that the investments were tailored to their needs.
20. After people became his clients and purchased exempt market securities, Michaels continued to advise them to purchase additional exempt market securities, which many did.
21. Between June 2007 and December 2010, Michaels advised 484 clients to purchase over \$65 million worth of exempt market securities, for which he was paid almost \$5.8 million in commissions and marketing fees by the exempt market issuers.
22. Almost all of the roughly \$65 million invested by Michaels' clients is now worthless, leaving many of them financially destitute while their home equity loans remain.

Misconduct

23. By advising his clients to purchase exempt market securities, Michaels acted as an adviser without being registered to do so, contrary to section 34(b) of the Act.
24. By repeatedly and falsely claiming that he gave up his registration under the Act in 2006 because he foresaw the stock market crash and wanted his clients' money out of the stock market, and omitting to tell the truth that he resigned in the face of an ongoing IDA investigation, Michaels perpetrated a fraud on his clients, contrary to section 57(b) of the Act.

Public interest

- ¶ 2 It is in the public interest that the Commission issue orders under sections 161 and 162 of the Act.



Hearing Process

- ¶ 3 The Respondents or their counsel are required to attend at the 12th Floor Hearing Room, 701 West Georgia Street, Vancouver, British Columbia, on Tuesday, July 9, 2013, at 9:00 am if they wish to be heard before the Commission sets a date for the Hearing. Relevant information gathered by Commission Staff in the investigation of this matter will be disclosed to the Respondent upon request to the Executive Director.
- ¶ 4 At the Hearing, the Respondents may be represented by counsel, make submissions and tender evidence. The Respondents are requested to advise the Commission of their intention to attend the Hearing by informing the Secretary to the Commission at PO Box 10142, Pacific Centre, 701 West Georgia Street, Vancouver, BC V7Y 1L2 phone: (604) 899-6500; email: commsec@bcsc.bc.ca.
- ¶ 5 If the Respondents or their counsel do not appear at the Hearing, the Executive Director will apply to have questions of liability and sanction heard at the same time. Determinations adverse to the Respondents may be made in their absence.
- ¶ 6 June 5, 2013.

Paul Bourque

- ¶ 7 Paul C. Bourque, Q.C.
Executive Director