

2004 BCSECCOM 276

Settlement Agreement

**DPM Securities Inc./Valeurs Mobilieres DPM Inc.,
The Height of Excellence Financial Planning Group Inc.,
John Wilson Howard and James Gordon Armit**

Securities Act, RSBC 1996, c. 418

- ¶ 1 The following settlement of issues has been reached between DPM Securities Inc./Valeurs Mobilieres DPM Inc. (DPM), The Height of Excellence Financial Planning Group Inc. (The Height), John Wilson Howard (Howard) and James Gordon Armit (Armit) (collectively, the Respondents) and the Executive Director.

Agreed Statement of Facts

- ¶ 2 Solely for securities regulatory purposes in British Columbia and as the basis for the undertakings in this settlement, the Respondents acknowledge the following facts as correct:
1. DPM is a company formed under the laws of Canada and was registered as an extra-provincial company with the Registrar of Companies for British Columbia on June 10, 1994.
 2. From June 29, 1994 to June 1, 1997, DPM was registered under the *Securities Act*, RSBC 1996, c. 418 (the Act) or the *Securities Act*, SBC 1985, c. 83 (the Former Act), as a securities dealer. From June 2, 1997 to December 31, 1999, DPM was registered under the Act as a broker. From January 1, 2000 to September 8, 2002, DPM was registered under the Act as an investment dealer. DPM is no longer registered in any capacity under the Act.
 3. The Height is a company formed under the laws of the province of Ontario and was registered as an extra-provincial company with the Registrar of Companies for British Columbia on December 13, 1995.
 4. From March 13, 1997 to March 12, 2001, The Height was registered under the Act as a mutual fund dealer. The Height is no longer registered in any capacity under the Act.
 5. DPM and The Height are related parties within the meaning of the *Securities Rules*, B.C. Reg. 194/97 (Securities Rules). On March 13, 1997, the mutual fund salespersons who were registered with DPM had their registrations transferred to The Height.

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6. From June 29, 1994 to June 1, 1997, Armit was registered under the Act as a trading partner/director/officer and was designated as the compliance officer for DPM. From March 13, 1997 to November 17, 2000, Armit was a trading partner/director/officer and was designated as the compliance officer for The Height. Armit is currently registered under the Act as a salesperson and a branch manager.
7. At all material times, Howard was a director and an officer of DPM. Howard is not currently registered under the Act.

Sale of Limited Partnerships

8. The Fairways (I) Limited Partnership (Fairways LP), the Valley of the Sun Limited Partnership (Valley of the Sun LP), and the West Valley of the Sun Limited Partnership (West Valley of the Sun LP) were three limited partnerships formed under the laws of the Province of Ontario (collectively, the Limited Partnerships).
9. The offering memorandum for each of the Limited Partnerships indicated, among other things, that they:
 - (a) gave investors the opportunity to acquire an interest in residential units in the United States of America; and
 - (b) were speculative investments that lacked liquidity, except in certain limited and prescribed circumstances.
10. DPM and The Height each permitted their registered representatives to sell units of the Limited Partnerships.
11. From about May 1996 to February 1997, mutual fund salespersons who were representatives of DPM sold the following units of the Limited Partnerships to investors in British Columbia:
 - (a) five units of Fairways LP to five investors;
 - (b) one unit of Valley of the Sun LP to one investor; and
 - (c) three units of West Valley of the Sun LP to three investors.

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12. From about June 1997 to December 1997, a mutual fund salesperson who was a representative of The Height sold five units of Valley of the Sun LP to investors in British Columbia.
13. The investors described in paragraphs 11 and 12 are collectively referred to as the Purchasers.
14. The offering memoranda for the Limited Partnerships were not in the required form for sales in British Columbia. As a result, DPM distributed units of the Limited Partnerships contrary to section 42 of the Former Act and section 61(1) of the Act. The Height traded and distributed units of the Limited Partnerships, contrary to sections 34(1)(a) and 61(1) of the Act.
15. Contrary to section 48 of the Securities Rules, DPM and The Height each approved the sales of the units of the Limited Partnerships to the Purchasers even though:
 - (a) as indicated in paragraph 14, they were not suitable for any of the Purchasers because the units were sold in breach of the registration and prospectus requirements of the Former Act and the Act; and
 - (b) they did not meet the general investment needs and objectives of some of the Purchasers.
16. DPM and The Height each failed to provide the Purchasers with account statements that detailed the quantity and description of the Limited Partnerships units and all other securities held in their accounts, contrary to section 38 of the Securities Rules.
17. As the provincial compliance officer for DPM and The Height, Armit did not review all of the sales of the units of the Limited Partnerships. Howard and other representatives of DPM and The Height conducted some reviews outside of British Columbia, contrary to sections 47 and 65 of the Securities Rules.
18. The Height failed to maintain, at its chief place of business in British Columbia, a complete and accurate paper record of its British Columbia transactions, including: trading blotters, know your client forms, orders, instructions, confirmations for each purchase and sale, and monthly account statements, contrary to section 27 of the Securities Rules.

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Mitigating Factors

- ¶ 3 The Executive Director has taken into account the following factors as mitigating the sanctions which might otherwise have applied in the public interest:
1. None of the Respondents has a previous disciplinary history with the Commission.
 2. All of the Respondents actively cooperated with staff of the Commission in the course of this investigation.

Undertakings

- ¶ 4 The Respondents each agree and undertake to:
1. comply fully with the Act, the Securities Rules, and any applicable regulations, policies and guidelines, from the date of this agreement; and
 2. not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.
- ¶ 5 DPM agrees and undertakes to pay to the Commission, upon execution of this agreement, the total sum of \$60,000, which, among other things, includes the commissions DPM earned from the sales of the units of the Limited Partnerships and \$18,000, which represents a portion of the cost of the investigation.
- ¶ 6 The Height agrees and undertakes to pay to the Commission, upon execution of this agreement, the total sum of \$35,000, which, among other things, includes the commissions The Height earned from the sales of the units of Valley of the Sun LP and \$10,500, which represents a portion of the cost of the investigation.
- ¶ 7 Howard agrees and undertakes to not apply to be a compliance officer in British Columbia.
- ¶ 8 Armit agrees and undertakes to not apply to be a compliance officer in British Columbia.

Waiver

- ¶ 9 The Respondents 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.

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Execution in Counterparts and by Facsimile

¶ 10 This settlement agreement may be executed in counterparts and a signed copy transmitted by facsimile shall have the same force and effect as an originally signed copy.

¶ 11 May 17, 2004

DPM Securities Inc.

¶ 12 “Tim Pryor”
Authorized Signatory

“James E. Roth”
Authorized Signatory #2

“M. Roland”)
Witness Signature)
Michael J. Roland)
Witness Name (please print))
)
700 – 800 Bay Street)
Toronto, Ontario M5S 3A9)
Address)
Lawyer)
Occupation

¶ 13 May 17, 2004

The Height of Excellence Financial Planning Group Inc.

¶ 14 “Tim Pryor”
Authorized Signatory

“James E. Roth”
Authorized Signatory #2

“M. Roland”)
Witness Signature)
Michael J. Roland)
Witness Name (please print))
)
700 – 800 Bay Street)
Toronto, Ontario M5S 3A9)
Address)
Lawyer)
Occupation

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¶ 15 May 17, 2004

¶ 16 “J. Howard”
John Wilson Howard

“Nick Rodrigo”)
Witness Signature)
Nick Rodrigo)
Witness Name (please print))
)
1501 McGill College Ave)
Montreal, QC)
Address)
Lawyer)
Occupation

¶ 17 May 14, 2004

¶ 18 “J.G. Armit”
James Armit

“Marko Vesely”)
Witness Signature)
Marko Vesely)
Witness Name (please print))
)
1600 – 925 W. Georgia Street)
Vancouver, BC V6C 3L2)
Address)
Barrister and Solicitor)
Occupation

¶ 19 May 18, 2004

¶ 20 Brenda M. Leong
A/Executive Director