

2005 BCSECCOM 471

Schedule A Settlement Agreement

Michael Fenwick French

Securities Act, RSBC 1996, c. 418

¶ 1 Michael Fenwick French (French) has settled the following issues with the Executive Director.

Agreed statement of facts

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

1. French, a British Columbia resident, has never been registered in any capacity in British Columbia under the *Securities Act, RSBC 1996, c.418* (the Act) or in any other jurisdiction under the equivalent statute.
2. In or about mid-1999 French began trading securities through on-line securities trading accounts he maintained in his name.
3. Shortly thereafter, third parties (the Investors) advanced money to French on the understanding that French would invest the money in securities, which he did as follows:
 - (a) The Investors gave money to French, who guaranteed them an annual return of 10% (the Guaranteed Return), plus a share in any profit made in excess of the Guaranteed Return.
 - (b) French pooled the Investors' money in accounts with his own money and traded securities on a discretionary basis through his personal on-line trading accounts and by making private investments.
 - (c) French provided each Investor with an annual statement showing the amount of their initial investment plus the Guaranteed Return. These annual statements were the only written communication between French and each Investor.
 - (d) French had no expertise or training in investing or advising and did not address the inherent risks associated with his investing strategy with the Investors.
4. Between June 1, 2000 and June 30, 2003, French received from Investors, and lost, at least \$2.3 million by engaging in discretionary on-line and other

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trading on behalf of the Investors. He also lost at least \$200,000 of his own money in securities trading.

Breaches of the Act and conduct contrary to the public interest

5. French breached section 34 of the Act by engaging in discretionary trading for the Investors and thereby acting as an unregistered portfolio manager.
6. French's conduct was contrary to the public interest.

Mitigating factors

- ¶ 3 The Executive Director has taken into account the following facts as mitigating the sanctions which would otherwise apply in the public interest:
7. French fully cooperated with Commission staff after they contacted him, and admitted all relevant facts at the earliest opportunity. He voluntarily disclosed inculpatory information which was previously unknown to Commission staff, including the names of certain Investors and their investment amounts.
 8. French has provided satisfactory evidence to Commission staff that he is insolvent and is an undischarged bankrupt. Except for his insolvency, the monetary sanction in this case would amount to \$50,000.

Undertaking

- ¶ 4 French undertakes not to say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

Order

- ¶ 5 French consents to an order by the Executive Director (the Order):
1. that he comply with the Act, the *Securities Rules* and any applicable regulations, policies and guidelines;
 2. under section 161(1)(b)(ii) of the Act, that French cease trading in and be prohibited from purchasing any securities for 15 years from the date of the Order except that he may trade on his own behalf through one RRSP account in his name at a financial institution identified to the Executive Director;
 3. under section 161(1)(d)(i) of the Act, that French resign from any position that he may hold as a director or officer of any issuer;
 4. under section 161(1)(d)(ii) of the Act, that French be prohibited from becoming or acting as a director or officer of any issuer for 15 years from the date of the Order; and

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5. under section 161(1)(d)(iii) of the Act, that French be prohibited from engaging in investor relations activities for 15 years from the date of the Order.

Waiver

- ¶ 6 French 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.

- ¶ 7 June 17, 2005

“Mike French”

- ¶ 8 Michael Fenwick French

“A. French”)

Witness Signature)

Angela French)

Witness Name (please print))

3334 Rolston Cres.)

Address)

Victoria, BC V8Z 4P1)

)

Medical Office Assistant)

Occupation)

- ¶ 9 July 20, 2005

- ¶ 10 Brenda M. Leong
Executive Director