

2006 BCSECCOM 589

Schedule "A" Settlement Agreement

Douglas Arnold Clarke and Bick Financial Services Inc.

Securities Act, RSBC 1996, c. 418

- ¶ 1 Douglas Arnold Clarke (Clarke) and Bick Financial Services Inc. (Bick) have 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, Clarke and Bick acknowledge the following facts are correct:

Background

1. Bick is a British Columbia company, with its head office in Nanaimo, British Columbia. Bick has never been registered in any capacity under the *Securities Act, RSBC 1996, c. 418*. Bick promotes itself as a financial services company.
2. Clarke is a resident of Nanaimo, British Columbia. Between April 7, 1999 to April 1, 2003, Clarke was a salesperson registered to trade in mutual funds with various registrants. Clarke has never been registered as an advisor under the Act. Since July 1998, Clarke has been the director, president and officer of Bick.
3. Kleincorp Mgmt. Inc., doing business as Insta-Cash Loans (Kleincorp) is a British Columbia company, with its head office in Nanaimo. Kleincorp is a pawn broking business. Kleincorp grants short term loans to its clients at high interest rates in exchange for a security interest in their motor vehicles. If Kleincorp's clients default under their loans with Kleincorp, it attempts to repossess and sell its clients' vehicles to collect on the loans.
4. Neither Bick nor Kleincorp has ever filed a prospectus under the Act.

Misconduct

Illegal Trading and Distribution of Securities

5. In 2001, Clarke, through Bick, began soliciting investors to invest in Kleincorp securities.
6. Kleincorp and Bick entered into two loan agreements (Loan Agreements) relating to the proceeds of Bick's solicitation efforts. Under the first loan agreement, Kleincorp agreed, among other things, to pay Bick 4.5% monthly

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interest on the funds Bick provided to Kleincorp. In the second loan agreement, entered into in November 2004, the monthly interest rate was converted to a 54% annualized rate.

7. Clarke and Bick represented to potential investors who invested in Kleincorp securities that Bick would pay the investors a monthly interest rate of 2.5%. This arrangement was formalized in the application forms that each investor completed with Bick.
8. Investors wrote cheques for their purchase of Kleincorp securities to either Kleincorp or Bick. Bick generally deposited the investors' cheques payable to Bick into its main operating bank account. From this account, Bick issued cheques to Kleincorp in respect of the purchase of Kleincorp securities made by each investor.
9. Bick retained as its fees the difference between the monthly interest that Kleincorp paid on the investors' funds (4.5%) and the amount of monthly interest that Bick paid on the Investors' funds (2.5%). Bick sometimes paid a monthly interest rate of more than 2.5% to investors depending upon how much the individual investor had invested.
10. Between November 2001 and August 2004, Kleincorp prepared monthly financial summaries for each of the investors who invested in Kleincorp securities through Bick. Bick copied Kleincorp's financial summaries into a monthly statement and sent one to each investor under Bick's name.
11. After September 2004, Clarke and Bick prepared and sent financial summaries to the investors. These financial summaries included the amount of interest earned and the amount of each investor's investment in Kleincorp securities.
12. Between November 2001 and December 5, 2005, Clarke and Bick raised approximately \$4.4 million from approximately 225 investors for investment in Kleincorp securities. Most of these investors were British Columbia residents.
13. Clarke and Bick:
 - (a) traded in securities without being registered, contrary to section 34(1)(a) of the Act; and
 - (b) distributed securities without having filed a prospectus, contrary to section 61(1) of the Act.

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Unregistered Advising

14. Clarke held himself out as being engaged in the business of advising others with respect to the purchase or sale of securities and recommended that investors purchase Kleincorp securities. He was remunerated for these services.
15. Clarke gave potential investors a brochure that described and recommended an investment in Kleincorp securities.
16. Clarke also gave investors a spreadsheet of projected returns on their investment in Kleincorp securities through Bick.
17. Investors relied on Clarke for investment advice.
18. Clarke acted as an Advisor without being registered, contrary to section 34(1)(c) of the Act.

Misrepresentations

19. Clarke gave potential investors a brochure that stated Insta-Cash Loans was:
 - (a) an attractive investment in any economic climate; and
 - (b) an investment opportunity that Bick can fully endorse.
20. Clarke personally stated to various investors that Insta-Cash Loans:
 - (a) had little or no risk;
 - (b) was perfectly safe;
 - (c) was a really good investment; and
 - (d) was guaranteed.
21. When making these statements to investors Clarke omitted to inform them that he:
 - (a) had not viewed any financial statements of Kleincorp and that when he asked Klein to see them Klein refused; and

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- (b) sometimes used money received from new investors to pay out earlier investors who wanted their money back.

22. These were material facts in relation to the investors' investment in Kleincorp securities. Clarke's failure to inform the investors of these facts made his statements to them misleading in the circumstances in which they were made, contrary to section 50(1)(d) of the Act.

Public Interest

- ¶ 3 Clarke and Bick acted contrary to the public interest by engaging in the conduct as set out above.

Mitigating Factors

- ¶ 4 The Executive Director has taken into account, as a factor mitigating the sanctions that might otherwise have applied in the public interest that Clarke and Bick have provided satisfactory financial evidence that their liabilities exceed their respective worldwide assets, and that they do not have any reasonable prospect of being able to pay the sanction amount of \$150,000 each that would otherwise be assessed in the public interest for the misconduct described in this settlement.

Order

- ¶ 5 Clarke and Bick each consent to an order by the Executive Director (the Order) that:
1. under section 161(1)(a) of the Act, Clarke and Bick comply with the Act, *Securities Rules*, BC Reg. 194/97 and any applicable regulations;
 2. under section 161(1)(b) of the Act, Clarke and Bick will cease trading in and will not purchase any securities for 20 years from the date of the Order, except that Clarke may trade and purchase securities in one account in his name held with a registered dealer provided Clarke gives a copy of the Order to the registered dealer;
 3. under section 161(1)(d)(i) and (ii) of the Act, Clarke resign any position he may hold, and is prohibited from becoming or acting, as a director or officer of any issuer for the later of:
 - (a) 20 years from the date of the Order; and
 - (b) until Clarke successfully completes a course of study satisfactory to the Executive Director concerning the duties and responsibilities of directors and officers,

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with the exception that Clarke may continue to act as director or officer of any issuers solely for the purpose of dissolving, winding down, or filing a proposal in bankruptcy for that issuer; and

4. under section 161(1)(d)(iii) of the Act, Clarke and Bick will not engage in any investor relations activities for 20 years from the date of the Order.

Consent to Reciprocal Orders

- ¶ 6 Clarke and Bick consent to any securities regulator in Canada relying on the facts admitted in this settlement to make orders against them.

Waiver

- ¶ 7 Clarke and Bick waive any right they may each 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, other than as agreed upon by the parties.

- ¶ 8 October 17, 2006

- ¶ 9 “D. Clarke”
Bick Financial Services Inc.
(Signing Authority)

“Cherisse Friesen”)
Witness Signature)
Cherisse Friesen)
Witness Name (please print))

1000 – 840 Howe Street)
Vancouver, BC)
(Address)

Lawyer)
Occupation)

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¶ 10 October 17, 2006

¶ 11 “D. Clarke”
Douglas Arnold Clarke

“Cherisse Friesen”)
Witness Signature)
Cherisse Friesen)
Witness Name (please print))

1000 – 840 Howe Street)
Vancouver, BC)
(Address)

Lawyer)
Occupation)

¶ 12 October 17, 2006

¶ 13 Brenda M. Leong
Executive Director