IN THE MATTER OF THE SECURITIES ACT,

RS.N.S. 1989, CHAPTER 418, AS AMENDED ("Act")

- AND -

IN THE MATTER OF JOHN ALEXANDER ALLEN

("Respondent")

Hearing:	**June 29, 2011**
Panel:	**Sarah P. Bradley, Vice Chair**
Present:	**Heidi Schedler, for Commission Staff** **Respondent not present**

Decision

These are the Reasons for Decision of the Commission panel delivered orally on Wednesday, June 29, 2011 with respect to a settlement agreement between the enforcement staff of the Nova Scotia Securities Commission and Mr. John Alexander Allen.

In accordance with Nova Scotia Securities Commission Rule 15-501, section 10.5, my duty in reviewing a settlement agreement is to determine whether it is appropriate and whether it is in the public interest..

The facts agreed to by enforcement staff and Mr. Allen in connection with this settlement are set out in the Settlement Agreement, which will be publicly available at the close of this hearing. I will not summarize all of the relevant facts and circumstances here, though I will note some of the background facts that were important to me in considering the Settlement Agreement..

It is important to recognize that the facts set out in the Settlement Agreement are not findings of fact by this Commission. Rather, they are facts agreed to by enforcement staff and Mr. Allen for the sole purpose of the Settlement Agreement.. I have relied upon the facts set out in the Settlement Agreement in approving it.

Facts

The Settlement Agreement states that for approximately six months in 2007, Mr. Allen promoted a higWy leveraged investment strategy to his clients, many of whom had inadequate financial means to qualify for the loans necessary to effect their participation in that strategy.

Mr. Allen forged and falsified loan applications and 'know your client' forms, by inflating the value of his client's assets, reducing or omitting their liabilities, and fabricating their employment information. He did this without his client's knowledge in order to open accounts, secure loans and make investments that were unsuitable for many of his clients, many of whom had limited means and limited investment experience. He misrepresented the risk inherent in such a leveraged strategy, telling his clients that there was no risk, and they trusted his advice. Mr. Allen also did not provide his clients with copies of the loan documentation or any prospectus for the mutual funds they purchased with the loan proceeds.

In total, during this six month period, his clients borrowed and invested over $14 million in this leveraged strategy, and Mr. Allen reaped personal rewards from this conduct in the form of commissions of approximately $594,000 in the same period.

Mr. Allen has agreed that by forging client information and encouraging and advising clients to invest in this highly leveraged strategy on the basis of forged information, he engaged in unfair practice, in violation of section 44A(2) of the Act and failed to deal fairly, honestly and in good faith with his clients, in violation of section 61 of Rule 31-801.

Mr. Allen has also agreed that he failed to maintain proper books and records, in violation of section 30(1) of Rule 31-801, and that he failed to determine his client's investment needs and determine the suitability of the investments he promoted, in violation of section 31(4) of Rule 31-801..

Applicable Law

The role of a Commission panel reviewing a settlement agreement has been addressed in numerous cases, including *Re Melnyk* 2007 LNONOSC 406; (2007) 30 OSCB 5253, and is well settled.

As outlined in *Re Melnyk,* my role in reviewing this Settlement Agreement is not to require the sanctions that I would impose after a contested hearing of the matter, but rather to ensure that the agreed-upon sanctions are within acceptable parameters and that the Settlement Agreement, as a whole, is in the public interest.. Significant weight should be given to the agreement reached between adversarial parties, as a balancing of factors and interests will have already taken place in reaching the settlement agreement.. My role is not to renegotiate the terms of the Settlement Agreement or to suggest changes to the facts, statements or sanctions set forth. My role is to decide whether to approve the Settlement Agreement, as a whole, on the terms presented to me. *(Re Melnyk, supra,* at para 15, citing *Re Sohan Singh Koonar et al.* (2002), 25 O.S.C.B. 2691 at 2692; and *Re Pollitt* (2004),27 O.S.C.B.. 9643 at para. 33).

In numerous cases, including the decisions of this Commission in *Re Bruce Elliott Clarke* (NSSC, June 28, 2004), and *Re Beaton* (NSSC, May 31, 2011), securities commissions have set out several factors that may be relevant in determining whether, or what, sanctions are in the public interest in the circumstances of a particular case, and I am guided by a consideration of these factors, which include, but are not limited to:

- the seriousness of the allegations proved and the respondent's recognition of the seriousness of these improprieties;
- the characteristics of the respondent, including capital market experience and activity and any prior sanctions;
- any benefits received by the respondent and any harm to which investors or the capital market generally were exposed by the misconduct found;
- any previous decisions based on similar circumstances.
- the effect any sanctions may have on a respondent, including on the respondent's livelihood and ability to participate without check in the capital markets;
- whether or not the sanctions imposed may serve to deter not only those involved in the matter being considered, but any like-minded people, from engaging in similar abuses of the capital markets; and
- any mitigating considerations.

Discussion and Analysis

Mr. Allen's breaches of the securities laws of Nova Scotia are serious.

He has agreed that by forging client information and encouraging and advising clients to invest in the leveraged strategy on the basis of forged information, he engaged in unfair practice, in violation of section 44A(2) of the Act and failed to deal fairly, honestly and in good faith with his clients, in violation of section 61 of Rule 31-801.

Unfair practice is defined in the Act by reference to a non-exhaustive list of examples. In my view, the conduct admitted by Mr. Allen meets the definition set out in section 44A(l)(b), which provides that unfair practice includes:

> taking advantage of a person's inability or incapacity to reasonably protect the person's own interest because of physical or mental infirmity, ignorance, illiteracy, age or inability to under-stand the character, nature or language of any matter relating to a decision to purchase, hold or sell a security.

Through his admitted acts of deceit and forgery, Mr. Allen himself created an incapacity in his clients to protect their own interests and he fostered their ignorance and inability to understand the character and nature of their investments by failing to provide them with suitable documentation. However, even if Mr. Allen's admitted conduct did not fit specifically within one of the enumerated examples in section 44A(l), in my view the conduct he has admitted to nevertheless constitutes unfair practice for the purposes of section 44A(2).

The totality of Mr. Allen's conduct, as admitted in the agreed statement of facts, demonstrates a pattern of behavior towards his clients that was grossly unfair, grossly dishonest and also demonstrates bad faith. His violations of section 44A(2) of the Act and section 61 of the Rules are not inadvertent or minor. His actions towards his clients were calculated, manipulative, dishonest and self-serving and were consistently carried out with many clients over an extended period of time. They represent very serious and egregious violations of the Act and Rules, which make an administrative penalty at the high end of the acceptable range appropriate in this case.

Mr. Allen has also agreed that he failed to maintain proper books and records, in violation of section 30(1) of Rule 31-801, and that he failed to determine the investment needs of his clients and the suitability of the investments he promoted to them in violation of section 31(4) of Rule 31-801..

By committing these breaches of the Act in the manner admitted, Mr. Allen has demonstrated his absolute unfitness for any role relating to the provision of professional investment advice or the administration of a public company.

In *Re Mithras Management Ltd* 1990 LNONOSC 119; (1990), 13 OSCB 1600, the Ontario Securities Commission provided the following often-cited discussion of the mandate of securities commissions in respect of suspension or cancellation of registration and orders denying the benefit of exemptions:

> The role of this Commission is to protect the public interest by removing from the capital markets ...those whose conduct in the past leads us to conclude that their conduct in the future may be detrimental to the integrity of those capital markets. We are not here to punish past conduct; that is the role of the courts ...We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient..

A breach of the duty to deal fairly, honestly and in good faith with clients is exceptionally serious and goes to the heart of the protection securities regulation is meant to provide to investors; proper record-keeping is a fundamental requirement for the management of funds *(Re Norshield Asset Management (Canada) Ltd* 2010 LNONOSC 563; (2010), 33 OSCB 7171 at para 105); and failing to ensure that investors needs are understood and that suitable investments are made on their behalf can result in considerable losses to investors, and can damage the reputation of the investment industry and impair public confidence in the capital markets.

Mr. Allen, as a registrant under Nova Scotia securities laws for over 14 years, was an experienced investment advisor. He understood, or ought to have understood by reason of his registration history, the need to diligently ensure that he scrupulously complied with Nova Scotia securities law requirements. He would have known that the penalties for non-compliance would be significant..

I therefore find that severe administrative penalties are warranted for these three breaches of Nova Scotia securities law.

Sanctions

On February 6, 2007, the Nova Scotia legislature amended Nova Scotia securities laws to raise the maximum administrative penalty to one million dollars per contravention.

Lawmakers in Nova Scotia and other provinces have determined that it is appropriate for Securities Commissions to have the power to order very substantial administrative penalties because contraventions of or failures to comply with securities laws are typically motivated by financial or economic considerations, and can be very lucrative.

Monetary administrative penalties operate as direct and effective specific and general deterrents *(Re Maitland Capital Ltd.* 2007 LNABASC 645; 2007 ABASC 818 at para. 30). However, in order for the penalties to have an appropriate deterrent effect, they must be sufficient to remove any potential financial incentive from unlawful conduct and they must be substantial enough to amount to more than simply an 'acceptable risk' or a 'cost of doing business' .

Administrative penalties for breaches of securities laws of one million dollars or more are therefore permissible and a real possibility. Notably however, this Commission has not previously made an order of that magnitude against any respondent.. **In** my view, sanctions approaching the maximum permissible levels are to be imposed in only the most egregious of cases, and in cases where those breaching the Act have reaped significant financial benefits from their non-compliance.

The sanctions set out in the Settlement Agreement are fully described in that agreement and include:

(i) an order that any or all of the exemptions under the Securities Act do not apply to Mr. Allen;

(ii) an order that he be permanently prohibited from acting as a director or officer of any Issuer;

(iii) an order that he be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;

(iv) a reprimand; and

(v) payment by Mr. Allen to the Commission of an administrative monetary penalty in the amount of one million fifty thousand dollars ($1,050,000.00) and a further seven thousand dollars ($7,000.00) representing a portion of the costs of the Commission's investigation in relation to this matter

In considering the sanctions imposed under the Settlement Agreement, I note that these sanctions far exceed the sanctions previously imposed by this Commission, and are at the high end of the range of sanctions imposed by other securities commissions against individual respondents. However, in my view, they are within the acceptable parameters considering the seriousness of the admitted conduct, Mr. Allen's market experience, and the financial benefits he received as a result of this conduct.. With regard to prior cases, I

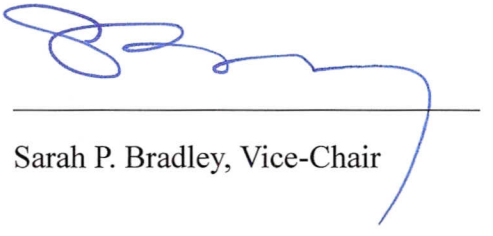
am aware of no other cases with reasonably comparable circumstances that provide useful guidance in this matter.

I was also influenced in considering the Settlement Agreement by whether the sanctions imposed would deter other investment advisors, registrants and dealers from engaging in similar conduct, and I have concluded that the sanctions provided for are sufficient to achieve the Commission's objectives of both specific and general deterrence.

There are certain other benefits that also arise as a result of my approval of this Settlement Agreement, which are in the public interest.. In addition to the deterrent effect I have already discussed, approval of settlement agreement also avoids the substantial costs of a contested hearing with respect to Mr. Allen's conduct, and the settlement also removes any uncertainty as to what the outcome of any such proceeding would have been.

In conclusion, after considering the terms of the Settlement Agreement and the submissions made by enforcement staff, I am satisfied that the terms of the Settlement Agreement and the sanctions imposed by that agreement are appropriate and within acceptable parameters given the admitted conduct of Mr. Allen. Accordingly, I approve of the Settlement Agreement as being in the public interest..

Dated at Halifax, Nova Scotia this 29th day of June, 2011..



Sarah P. Bradley, Vice-Chair