



THE MANITOBA
SECURITIES
COMMISSION

IN THE MATTER OF: THE SECURITIES ACT

-and-

IN THE MATTER OF: ARTHUR LEON SCHELLENBERG

AMENDED

**STATEMENT OF ALLEGATIONS OF STAFF OF
THE MANITOBA SECURITIES COMMISSION**

STAFF OF THE MANITOBA SECURITIES COMMISSION (the "Commission")
ALLEGE THAT:

A. REGISTRATION

1. Arthur "Leon" Schellenberg ("Schellenberg") is a resident in the City of Winnipeg, in the Province of Manitoba.
2. Schellenberg is not and has never been registered under *The Securities Act* (the "Act") in any capacity.

B. DETAILS

General

1. At all material times, Schellenberg was a chartered accountant engaged in a public practice in the Province of Manitoba.
2. Schellenberg represented to certain of his clients (the "Clients") that he could get them a better rate of return than their current investment adviser.
3. The Clients, on Schellenberg's instructions, opened accounts (the "Accounts") at various brokerages or deposited money into the Accounts for Schellenberg to manage.
4. Prior to opening the Accounts, Schellenberg completed a New Client Account Form ("NCAF") for the Clients except for the client B.W-G. who, on Schellenberg's instructions, attended at and completed a NCAF at TD Waterhouse.
5. The NCAFs completed by Schellenberg indicated that each client had extensive trading experience in securities, options and futures contracts. The Clients indicated to Commission staff that this was not the case and they did not have such trading experience.
6. There was no discussion of suitability between the Clients and Schellenberg.

7. The Clients gave Schellenberg online access to their Accounts so Schellenberg could execute trades in their Accounts.
8. Schellenberg made all the investment decisions for trades in the Clients' Accounts.
9. The Clients did not question the legality of Schellenberg providing investment advice and executing trades for the Clients. They trusted Schellenberg through his position as their accountant.
10. Generally, until approximately 2007 the Accounts held energy trust units. After changes to the tax treatment of these products, trust units were sold at a significant loss and Schellenberg began trading options and other securities in the Accounts except for B.W-G.'s account which continued to hold energy trust units.
11. The Account balances fluctuated significantly and the trading in the Accounts utilized a high level of margin which substantially increased the level of risk in the Accounts.

Client - P.I.

12. Schellenberg was P. I.'s tax accountant for several years.
13. In or about August/September, 2005, with Schellenberg's assistance, P.I. transferred \$100,621.05 in cash and securities to an account opened at Desjardins Securities ("DISNAT"). P.I. gave Schellenberg access to this account so Schellenberg could trade securities in the account.
14. The account at DISNAT permitted margin, short and options trading.
15. P.I. had advised Schellenberg he had a low tolerance for risk.
16. The holdings in P.I.'s DISNAT account were subsequently transferred to Scotiabank Trade Freedom ("Trade Freedom") in September, 2007.
17. Schellenberg actively traded securities in P.I.'s accounts from 2004 to 2008. Due to losses from Schellenberg's trading, the assets in P.I.'s account decreased substantially leading to a balance of \$169.00 as of December 31, 2008.
18. The last account statement provided by SCOTIA iTRADE to P.I. had a cash balance of \$22.54 at September 28, 2012.
19. No monies were withdrawn from P.I.'s accounts and/or returned to him.

20. Schellenberg was responsible for all trading of securities in P.I.'s accounts
21. Schellenberg was to be paid a percentage of any profit made on P.I.'s investments as a fee for services.

Clients - G.W. and B.W.

22. In or about 2000, G.W. and his wife B.W. were introduced to Schellenberg to do their taxes. In or about July, 2001, with the assistance of Schellenberg, G.W. opened an account at TD Waterhouse and transferred mutual funds in the amount of \$75,051.36 to this account.
23. G.W. advised Schellenberg, he wanted low risk investments as he may need money quickly for his farm.
24. G.W. gave Schellenberg authority to trade in his account at TD Waterhouse.
25. In or about April, 2003 with the assistance of Schellenberg, an account was opened at CIBC Investor's Edge ("CIBC") in the name of G.W. and B.W. Schellenberg had trading authority over this account.
26. Between April, 2003 and June, 2003, \$92,046.00 in cash and securities were transferred into G.W. and B.W.'s account at CIBC.
27. In or about November, 2008, G.W. and B.W., with the assistance of Schellenberg, opened an account at Interactive Brokers of Canada Inc. ("IBC"). Schellenberg had trading authority over this account and advised G.W. and B.W. to move their account to IBC.
28. In or about December, 2008, \$94,509.24 in securities and cash were transferred into G.W. and B.W.'s account at IBC.
29. Throughout the period 2001 to 2010, Schellenberg actively traded in stocks, energy trusts, warrants and options on margin in the accounts of G.W. and B.W.
30. During the time G.W. and B.W. had an account at IBC, G.W. and B.W. they received several margin calls.
31. When G.W. received margin calls from IBC, he would contact Schellenberg. Schellenberg advised him he was either too busy to deal with the margin call or that IBC would sell securities to meet the margin calls.

32. In December, 2010, G.W. gave instructions to IBC to sell all the securities in G.W. and B.W.'s IBC account and this account was subsequently closed.
33. When G.W. and B.W. closed the account at IBC, they had made a profit of \$4,762.00 during the period Schellenberg had authority to trade in their accounts. However, G.W. and B.W. had paid \$8,804.72 to Schellenberg for advising fees.
34. Except for selling some securities to meet margin calls, Schellenberg was responsible for all trading of securities in G.W. and B.W.'s accounts.

Client - B.K.

35. In about February 2005, B.K. with the assistance of Schellenberg, opened an account at DISNAT and subsequently transferred \$152,768.28 of cash and securities into the DISNAT account.
36. B.K. gave Schellenberg authority to trade in his account at DISNAT.
37. All trading of securities in B.K.'s account was done by Schellenberg which included trading in shares and options.
38. From time to time, B.K. would receive margin calls from DISNAT. B.K. would either deposit money to meet the margin calls or have securities sold to meet the margin calls.
39. In and about December 2008, trading activity in B.K.'s DISNAT account stopped. Schellenberg stopped trading in the account without informing B.K.
40. B.K. subsequently changed his password to his DISNAT account so Schellenberg could no longer have access to this account.
41. The balance in B.K.'s account as of December 8, 2010 was \$81,226.48.
42. Schellenberg was to be paid a fee for services of 1% of the total value of B.K.'s account if it earned over 12% in any year.

Clients - R.D., A.D., and M.L.

43. In or about May, 2004, R.D. and A.D., with the assistance of Schellenberg, opened a joint account at DISNAT that permitted margin, short and options trading.

44. In May, 2004, R.D. and A.D. both deposited \$50,000.00 into the DISNAT account. In November, 2004, R.D. and A.D. both deposited a further \$50,000.00 in the DISNAT account.
45. R.D. and A.D. gave Schellenberg authority to trade securities in their DISNAT account.
46. In June, 2005, M.L. (sister of R.D. and daughter of A.D.) issued a cheque for \$30,000.00 to Schellenberg. These monies were deposited into R.D and A.D.'s DISNAT account and were to be managed by Schellenberg with the expectation Schellenberg would manage the \$30,000.00 on M.L.'s behalf together with the other monies in R.D. and A.D.'s DISNAT account.
47. In June, 2005, M.L.'s \$30,000.00 was deposited into R.D. and A.D.'s DISNAT account by Schellenberg.
48. The holdings in R.D. and A.D.'s DISNAT account, on the advice of Schellenberg, was transferred to Trade Freedom in September 2007 and subsequently transferred to IBC in January, 2008.
49. R.D. and A.D. were required to deposit \$12,500.00 each prior to August, 2007 for margin calls. In January, 2008, R.D. and A.D. each withdrew \$10,800.00 from the IBC account.
50. After incurring losses in R.D. and A.D.'s accounts, Schellenberg prior to August, 2007, deposited \$25,000.00 in their account to better enable the growth potential of this account.
51. Schellenberg actively traded securities in R.D. and A.D.'s accounts between 2004 and 2013. As a result of losses incurred through Schellenberg's trading, the net assets of R.D. and A.D.'s account decreased substantially.
52. As of April 30, 2013 the balance in R.D. and A.D.'s account was \$15,154.68.
53. In July, 2005, R.D. and A.D. paid Schellenberg \$3,509.86 for investment fees charged by Schellenberg. Schellenberg was to be paid a fee for services when the account was profitable.
54. In May, 2013, R.D. and A.D. instructed IBC to discontinue Schellenberg's ability to trade in their account and subsequently withdrew the majority of the remaining cash in the account leaving a balance of \$3.01. (USD).
55. All trading of securities in R.D. and A.D.'s accounts was executed by or on the advice of Schellenberg.

Client – B.W-G.

56. Schellenberg was B.W-G.'s accountant for several years.
57. In February 2004, Schellenberg told B.W-G. that he could manage her investments for a better rate of return than her advisor at the time.
58. In February 2004, B.W-G., on Schellenberg's instructions, attended at TD Waterhouse and opened a RRSP and a margin trading account. On Schellenberg's instructions, B.W-G. subsequently transferred mutual funds into these accounts.
59. B.W-G. gave Schellenberg her user I.D. and password so he could trade securities in her accounts.
60. Schellenberg liquidated all mutual funds transferred to B.W-G.'s TD Waterhouse accounts and purchased Income Trust units, all in the energy sector.
61. B.W-G. did not have experience investing in income trusts.
62. Except for selling some securities to meet margin calls, Schellenberg was responsible for the trading of securities in B.W-G.'s accounts.
63. B.W-G. suffered losses in the accounts totaling \$46,930.28 as of July 2015.
64. B.W-G. received several margin calls in the non-registered account at TD Waterhouse which were satisfied by selling securities or depositing cash into this account.
65. B.W-G. paid two invoices totaling \$2,596.54 that Schellenberg sent her for "monitoring and assisting" with B.W-G.'s investments. B.W-G. had agreed to pay Schellenberg fees for managing her investments in those years where B.W-G. made a return of greater than 12% in her accounts.

C. COMPENSATION FOR FINANCIAL LOSS

The Director, Legal and Enforcement ("Director") of the Commission has received applications for claims against Schellenberg for compensation for financial loss in favour of B.W-G., P.I., R.D., A.D., G.W. and B.W., and M.L. The Director requests that the Commission order financial loss compensation to the claimants in an amount to be determined at or prior to the hearing.

D. ALLEGATIONS

1. Staff of the Commission allege that Schellenberg:

- (a) traded in securities without having been registered under the Act;
- (b) acted as a securities adviser, investment counsel and/or adviser under the Act without being registered;
- (c) acted in a manner contrary to the public interest;

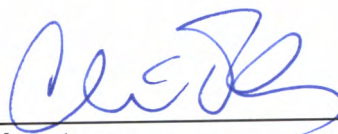
and due to these allegations, it is in the public interest that Schellenberg not be entitled to use any of the exemptions in the Act and should not be entitled to participate in the exempt markets in the future. Staff further submit, due to these allegations, Schellenberg should be ordered to pay an administrative penalty pursuant to section 148.1 of the Act and be ordered to pay B.W-G., R.D., A.D., M.L., and P.I., G.W. and B.W. compensation for financial loss pursuant to section 148.2 of the Act.

- 2. Such further and other matters as counsel may advise that the Commission may permit.

DATED at the City of Winnipeg, in Manitoba this 18th of November, 2013.

Amended this 5th day of November, 2015

Amended this 7th day of December, 2015



Director

TO: ARTHUR LEON SCHELLENBERG