

THE SECURITIES ACT
Subsections 8(1) and 148.1(1)

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Order No. 4665
February 1, 2005

IRIS MARGARET MCKAY

WHEREAS:

(A) On July 7, 2004, The Manitoba Securities Commission ("Commission") issued a Notice of Hearing ("Notice") giving notice of its intention to hold a hearing to consider, inter alia, whether or not it was in the public interest to grant an order pursuant to subsection 8(1) of The Securities Act ("Act") and an order pursuant to subsection 148.1(1) of the Act with respect to Iris Margaret McKay ("MCKAY");

(B) On September 20, 2004, the Commission issued an Amended Notice of Hearing adding Dundee Private Investors Inc. ("DUNDEE") as a respondent and adding requests for relief under subsection 148.2 of the Act for financial loss compensation as against MCKAY and DUNDEE ("Proceedings");

(C) The full hearing of the Proceedings was scheduled to be held on February 1st through to February 3rd, 2005 inclusive;

(D) On January 27, 2005, a Notice of Discontinuance was issued, discontinuing the Proceedings as against DUNDEE and discontinuing the request for relief under subsection 148.2 of the Act as against MCKAY;

(E) Staff of the Commission and MCKAY entered into a Settlement Agreement (a copy of which is attached as Schedule "A") dated January 28, 2005 ("Settlement Agreement"), which proposed settlement of the remainder of the Proceedings, subject to the approval of the Commission;

(F) MCKAY has consented to the issuance of this Order and has waived her right to a full hearing;

(G) On January 28, 2005 the Commission held a hearing ("Settlement Hearing") to consider whether or not to approve the Settlement Agreement;

(H) At the Settlement Hearing the Commission approved the Settlement Agreement and was of the opinion that it is in the public interest to make this order.

IT IS ORDERED:

1. THAT the Settlement Agreement, Schedule "A", be and the same is hereby approved.

2. THAT pursuant to subsection 8(1) of the Act, a written reprimand be placed on MCKAY's registration file with the Commission relating to the matters set out in the Settlement Agreement.

3. THAT pursuant to subsection 148.1(1) of the Act, MCKAY pay an administrative penalty of \$1,000.00, to be paid within seven (7) days of the date of this Order.

4. THAT MCKAY's conduct and practices as a salesman registered under the Act be closely supervised by an individual acceptable to and upon such terms as are deemed appropriate by the Director, Registrations of the Commission for a period of six (6) months from the date of this Order.

5. THAT MCKAY enroll in and successfully complete the Canadian Securities Institute Conduct & Practices Handbook course within nine (9) months of the date of this Order.

BY ORDER OF THE COMMISSION

Director

Settlement Agreement

Iris Margaret McKay

and

The Staff of The Manitoba Securities Commission

The Manitoba Securities Commission
1130 - 405 Broadway
Winnipeg, Manitoba
R3C 3L6

SETTLEMENT AGREEMENT

A. Introduction

A1. On July 7, 2004, The Manitoba Securities Commission ("Commission") issued a notice of hearing ("NOH") and Statement of Allegations ("SOA") naming Iris Margaret McKay ("McKAY") as respondent.

A2. Subsequent to the NOH and the SOA, on September 20, 2004, the Commission issued an Amended Notice of Hearing ("ANOH") and Amended Statement of Allegations ("ASOA")

adding Dundee Private Investors Inc. ("DUNDEE") as a respondent and giving notice of its intention to hold a hearing under The Securities Act ("Act") to consider:

1. whether or not it is in the public interest to order, pursuant to subsection 8(1) of the Act, that the registration of McKAY as a salesman under the Act be suspended, cancelled, or subject to terms or conditions and/or that McKAY be reprimanded;
2. whether or not it is in the public interest to order, pursuant to subsection 148.1(1) of the Act, that McKAY pay an administrative penalty;
3. whether or not pursuant to subsection 148.2 of the Act, that McKAY be ordered to pay compensation for financial loss;
4. whether or not pursuant to subsection 148.2 of the Act, that DUNDEE be ordered to pay compensation for financial loss;
5. whether or not it is in the public interest to order that McKAY pay the costs of the investigation and the hearing;
6. such further and other matters and the making of such further and other orders as the Commission may deem appropriate.

A3. Discussions have been held between the respondents and staff of the Commission ("Staff") in an effort to settle the matters set out in the ANOH and ASOA dated September 20, 2004 ("Proceedings"). A settlement ("Settlement") has been reached based on the terms and conditions set forth in this agreement ("Settlement Agreement").

A4. Pursuant to the Settlement, Staff agrees to recommend to the Commission that the Proceedings initiated against the respondents be resolved and disposed of in accordance with the terms and conditions of this Settlement Agreement as set forth below. The respondents consent to the Settlement and to the making of the consent order referred to in paragraph D. below, on the terms and conditions set forth in this Settlement Agreement.

B. Statement of Facts

B1. McKAY was first registered as a salesperson under the Act on August 18, 1997 and thereafter has been registered as follows:

- (a) from August 18, 1997 to April 8, 2002 with Regal Capital Planners Ltd. ("Regal");
- (b) from April 9, 2002 to June 1, 2004 with Cartier Partners Financial Services Inc. ("Cartier");
- (c) from June 1, 2004 to present with DUNDEE.

B2. The registration of McKAY under the current Certificate will expire on December 31, 2005, unless renewed.

B3. At all material times, Regal was registered under the Act as a Broker-Dealer Restricted to Mutual Funds and Labour Sponsored Funds. Regal together with other entities amalgamated on October 1, 2001 to become Cartier.

B4. At all material times, Cartier was registered under the Act as a Broker-Dealer Restricted to Mutual Funds and GIC's. By virtue of a reorganization completed on June 1, 2004, Cartier acquired the assets and liabilities of DUNDEE, with the remaining corporate entity being Cartier, followed by, also on June 1, 2004, a name change from Cartier to DUNDEE.

B5. At all material times, DUNDEE was registered under the Act as a Broker-Dealer Restricted to Mutual Funds and GIC's.

B6. In or about 1996, the husband of Ms. Evans passed away. Ms. Evans was in her late 30's, with two children, ages 5 and 8.

B7. At the time of her husband's demise, the family had a small RRSP, their home, a van worth approximately \$8,000, and a bank account of \$800.

B8. Following the demise of her husband, Ms. Evans's monthly income consisted of \$700 widow's pension and \$300 pension benefits from her husband's employment.

B9. McKAY had sold to Mr. Evans a life insurance policy naming Ms. Evans as beneficiary. As a result of that life insurance policy, Ms. Evans received a death benefit of \$250,000. In addition, Ms. Evans received a benefits package of \$70,000.00, representing two years of her husband's salary through a plan held by her husband's employer. Ms. Evans also received the proceeds of mortgage insurance to discharge the mortgage registered against the family home.

B10. In 1996, Ms. Evans had a grade 9 education. She had virtually no previous investment experience. Prior to her husband's death, she was a stay-at-home mom, had worked briefly outside of the home answering phones, and did child care in her home. Prior to her marriage and children, Ms. Evans had worked as a waitress.

B11. Ms. Evans sought advice from McKAY as to how to invest her monies so as to be financially able to look after her children.

B12. In 1996, McKAY recommended the following:

(a) purchase of a 10 year Life Annuity for \$100,000, to provide an income of approximately \$1,100 per month for a 10 year period ("Annuity");

(b) placement of the balance of the insurance proceeds of approximately \$150,000 into long-term growth investments through the purchase of segregated funds ("Segregated Funds").

B13. Ms. Evans followed the advice and recommendations of McKAY. As a result of the financial plan instituted by McKAY, Ms. Evans has been able to refrain from working since the death of her husband.

B14. The Annuity and the Segregated Funds were not the subject of the Proceedings.

B15. In 2000, McKAY provided to Ms. Evans a book on investing which included the topic of leveraging. As a result, Ms. Evans initiated discussions with McKAY regarding leveraged investments. The strategy discussed was that Ms. Evans would borrow money against her home, to be used for investment purposes.

B16. Specifically, the borrowed monies would be used to purchase mutual funds.

B17. McKAY advised Ms. Evans that the monthly payments of interest paid on the borrowed monies are deductible for income tax purposes.

B18. McKAY further advised Ms. Evans that in time her investment would double.

B19. Ms. Evans followed the recommendation of McKAY.

B20. To implement the recommended strategy, McKAY accompanied Ms. Evans to a branch of a financial institution.

B21. In late January of 2000, based upon the recommendation of McKAY, Ms. Evans borrowed \$66,000 from the financial institution ("Borrowed Proceeds"). The Borrowed Proceeds were obtained through a line of credit secured by a first mortgage registered against her home, which was valued in order to determine the amount of the Borrowed Proceeds.

B22. In or about late February of 2000, the Borrowed Proceeds were forwarded to REGAL and invested in \$65,800 worth of mutual funds, as follows:

Mutual Fund	Amount Invested
(i) AGF International Value DSC 682	\$13,160.00
(ii) AIM Global Theme Class DSC 591	\$13,160.00
(iii) CI Global Boomernomics Sector DSC 780	\$13,160.00
(iv) Synergy Global Style Mgmt Class DSC 430	\$13,160.00
(v) Trimark Select Growth DSC 1561	\$13,160.00

B23. The documentation completed by McKAY for the mutual fund purchase did not identify the purchase as leveraged, nor was a Disclosure Statement for leveraged purchases completed.

B24. At all material times, Ms. Evans relied upon McKAY's knowledge and expertise.

B25. In 2002, Ms. Evans discovered that the value of the mutual funds purchased with the Borrowed Proceeds had dropped. Ms. Evans was concerned and contacted McKAY for an

explanation. McKAY reassured Ms. Evans and advised her to stay with the leveraged mutual funds.

B26. Ms. Evans remained concerned with her mutual funds dropping in value.

B27. McKAY proposed solutions to get Ms. Evans out of the leveraged program.

B28. In or about the fall of 2002, McKAY offered to personally buy Ms. Evans's mutual funds.

B29. Various discussions and draft agreements ensued.

B30. Amongst the suggestions was a proposal made by McKAY, in or about September of 2002, whereby McKAY, herself, would take over the loan, and make the loan payments, and Ms. Evans would give the mutual funds to McKAY. McKAY prepared a draft agreement to this effect.

B31. McKAY also proposed that the loan, or mortgage, remain in Ms. Evans's name, that the mutual funds be transferred, and that McKAY would make the mortgage payments for Ms. Evans. To that end, in the time period of September to December of 2002, McKAY gave personal cheques to Ms. Evans, for the purpose of paying Ms. Evans's mortgage payments on the Borrowed Proceeds, such that payments towards Ms. Evans's mortgage were made by McKAY.

B32. In October and November of 2002, further draft agreements were prepared by McKAY's legal counsel whereby a promissory note in the amount of \$66,000 would be provided to Ms. Evans, payments would be made to Ms. Evans such that her mortgage would be paid off by the end of July 2003 or, as later suggested by McKAY, within five years. The mutual funds were to be transferred at the commencement of the arrangement to the holder of the promissory note.

B33. Ultimately, an agreement to transfer the mutual funds was not concluded.

B34. Since January of 2000, Ms. Evans has made payments of interest on the line of credit as a result of the Borrowed Proceeds.

B35. For the period of 2000 – 2003 inclusive, the interest expense resulting from the payments made by Ms. Evans on the Borrowed Proceeds contributed to benefits or credits being received by Ms. Evans, the total amount of which was a portion of the amount of interest payments actually made during the four year period. The benefits or credits predominantly occurred in respect of the 2000 taxation year, and were possible due to the inclusion of taxable capital gains in her income.

B36. Ms. Evans and McKAY and DUNDEE have reached a resolution to each of their satisfaction with respect to the claim for financial loss. Ms. Evans is represented by legal counsel. A Notice of Discontinuance in respect of that portion of the Proceedings requesting an order that McKAY and DUNDEE pay compensation to Ms. Evans pursuant to subsection 148.2 of the Act will be filed by staff.

C. Acknowledgements

C1. McKAY acknowledges and agrees that she acted contrary to the public interest in that:

(a) as to leveraging to purchase mutual funds, she provided investment advice and recommended a strategy that in all of the circumstances of her client Ms. Evans was unsuitable;

(b) she failed to avoid personal financial dealings with her client Ms. Evans.

D. Terms of Settlement

D1. In order to effect a resolution of the issues raised by the ANOH, Staff and the respondents have entered into this Settlement Agreement. Upon this basis, Staff seek an order ("Consent Order") from the Commission pursuant to subsections 8(1) and 148.1(1) of the Act that:

(a) the Settlement Agreement be approved;

(b) pursuant to subsection 8(1) of the Act, a written reprimand be placed on McKAY's registration file with the Commission relating to the matters set out in this Settlement Agreement;

(c) pursuant to subsection 148.1(1) of the Act, McKAY pay an administrative penalty of \$1,000.00, to be paid within 7 days of the date of the Order;

(d) McKAY's conduct and practices as a salesman registered under the Act be closely supervised by an individual acceptable to and upon such terms as are deemed appropriate by the Director, Registrations of the Commission for a period of six months from the date of the Order;

(e) McKAY enroll in and successfully complete the Canadian Securities Institute Conduct & Practices Handbook course within nine (9) months of the date of the Order.

E. Procedure for Approval of Settlement

E1. The approval of this Settlement Agreement and the making of the Consent Order set out in this Settlement Agreement shall be sought at a public hearing pursuant to the ANOH.

E2. Staff and the respondents agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted to the Commission in connection with the Proceedings and the respondents each for themselves hereby waive their right to a full hearing and appeal of this matter.

E3. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the Consent Order referred to in paragraph D. above is not made by the Commission, Staff

will be entitled to proceed with the hearing commenced by the ANOH unaffected by this Settlement Agreement or the settlement discussions. If this Settlement Agreement is not approved or the Consent Order set out in paragraph D. above is not made by the Commission, the terms of this Settlement Agreement will not be raised in the Proceedings or in any other proceeding.

E4. Staff and the respondents agree that if this Settlement Agreement is approved by the Commission and the Consent Order made upon the terms set out in this Settlement Agreement, this Settlement Agreement will be a public document.

E5. The respondents agree each for themselves that they will not raise in any proceeding this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as a basis for an attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other challenge that may be available.

E6. If this Settlement Agreement is approved by the Commission and the Consent Order is made upon the terms set out in this Settlement Agreement, neither Staff nor the respondent will make any statement inconsistent with this Settlement Agreement.

DATED at Winnipeg, Manitoba, this day of , 2005.

Witness

Iris Margaret McKay

DATED at Winnipeg, Manitoba, this 27th day of January, 2005.

Staff of the Manitoba Securities Commission
per:
Director, Legal and Enforcement