

December 30, 1999

IN THE MATTER OF: THE SECURITIES ACT

- and -

IN THE MATTER OF: MICHAEL SIDIROPOULOS

**REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION**

ACTING CHAIRMAN: Mr. E. O. E. Bergman

BOARD MEMBERS: Mr. M. S. Fages
Mr. K. S. Kristjanson

APPEARANCES:

Ms K.G.R. Laycock) Counsel for the Commission

No one appeared for the Respondent, Michael SIDIROPOULOS

1. Background

A Notice of Hearing and Statement of Allegations was issued by staff of the Manitoba Securities Commission (the "Commission") dated June 21, 1999.

The Notice of Hearing and Statement of Allegations were served on Michael Sidiropoulos on June 24, 1999 as established by the Affidavit of Service of July 15, 1999.

Neither Mr. Sidiropoulos nor anyone on his behalf appeared at the hearing convened before the panel on October 20, 1999.

Mr. Sidiropoulos provided a letter to staff of the Commission dated October 19, 1999 (Exhibit 8) which set out the position of Mr. Sidiropoulos with respect to certain of the allegations contained in the Notice of Hearing and Statement of Allegations. In order to permit the panel to review the contents of the letter, the panel requested the letter be filed as an exhibit to the hearing. Upon further consideration of the matter and after a review of the submissions made by staff of the Commission, the panel finds that the letter cannot be treated as evidence in the hearing. The letter is not sworn testimony and staff had no opportunity to cross-examine Mr. Sidiropoulos on the contents.

The panel did consider the letter as a written submission made by Mr. Sidiropoulos forming part of the arguments presented to the panel at the conclusion of the hearing.

In the event the panel is in error in not finding that the contents of the letter should form part of the record of evidence at the hearing, the panel has reviewed the contents of the letter. Where the contents of the letter conflict with evidence provided by witnesses at the hearing the panel has concluded that the evidence of the witnesses at the hearing should be accepted. Each of the witnesses who appeared at the hearing was credible, consistent with each other and consistent with the documentary evidence provided to the panel on all facts material to the panel's decision.

Based upon the evidence of service and the letter from Mr. Sidiropoulos, the panel is satisfied that Mr. Sidiropoulos received notice of the hearing and that the matter could proceed in his absence.

2. ALLEGATIONS

The Notice of Hearing and Statement of Allegations alleged the following:

- a) Sidiropoulos recommended investments and strategies and provided investment advice to McCaffrey that, in all of the circumstances including investment knowledge, experience and objectives, age and financial position, were unsuitable, such recommendations, strategies and advice to have included undue concentration, lack, of diversification, short-term aggressive trading, excessive trading, and excessive margining;
- b) Sidiropoulos failed to provide adequate disclosure to McCaffrey with respect to the risks associated with the trading methods he employed;
- c) In making his recommendations as to investments and strategies, Sidiropoulos failed to act in the best interests of his client McCaffrey;
- d) Sidiropoulos churned the 2 accounts of McCaffrey;
- e) Sidiropoulos conducted unauthorized trades in the accounts of McCaffrey;
- f) Sidiropoulos acted in contravention of subsection 69(2) in providing projections to McCaffrey as to the future value of her investments and in advising McCaffrey as to the future price of stock, namely Micron;

and that due to these allegations, Sidiropoulos should not be entitled to use any of the exemptions set out in the Act and should not participate in the exempt markets in Manitoba in the future.

3. EVIDENCE

Mr. Sidiropoulos was first registered under The Securities Act as a salesman on or about June 10, 1994 with Burns Fry Limited. His registration continued until he was terminated by Nesbitt Burns Inc. (the successor company to Burns Fry Limited) on July 17, 1998. Except when

otherwise required to understand the facts, these reasons will refer to Burns Fry Limited and the successor companies as "Burns Fry".

Mr. Sidiropoulos's registration was suspended by the Commission on July 30, 1998 and it expired on April 7, 1999.

Staff of the Commission called the following witnesses to give evidence at the hearing:

1. Marc Boily -- Commission Investigator
2. Beverly Anne McCaffrey -- former client of Sidiropoulos
3. Allan Dunnett -- Branch Manager, Nesbitt Thompson
4. Anthony Ross Davidson -- Chartered Accountant

In 1993 Mrs. McCaffrey was employed as a real estate agent. She was in her mid-fifties, single and had no dependents. Her income from real estate commissions in 1993 was \$74,221.56 and in 1994 was \$74,419.28.

Immediately prior to transferring her account to Mr. Sidiropoulos, Mrs. McCaffrey had an account at GreenLine. As of June 29, 1994 the GreenLine account was comprised of five different stocks:

Market value	\$45,212.50
Cash	<u>707.50</u>
Total	<u>\$45,910.81</u>

Mrs. McCaffrey became acquainted with Mr. Sidiropoulos when she sold his condominium. Mr. Sidiropoulos was employed by Burns Fry at the time and he became Mrs. McCaffrey's investment advisor in June 1994. The new account form dated June 30, 1994 used to open the account for Mrs. McCaffrey at Burns Fry contained the following statements:

Investment Objectives --	
Mutual Fund	25%
Long Term Growth	50%
Short Term Trading	25%
Net Worth	\$200,000 to \$500,000

At the same time a margin agreement was completed. Although Mrs. McCaffrey opened both a Canadian dollar and United States dollar account these reasons refer to both collectively as the "account".

Mrs. McCaffrey stated in her evidence that her investment objectives were to have a few stocks that would grow over time. This objective is consistent with her former account at GreenLine and was confirmed by a letter from Mr. Sidiropoulos dated June 29, 1994 welcoming Mrs.

McCaffrey as a client stating "we are committed to a portfolio approach to investing, stressing high quality securities, safety of capital and above average income and growth potential".

The account at Burns Fry was managed by Mr. Sidiropoulos through to June 30, 1995. With the exception of some trades in September 1995 that are referred to below, Mr. Sidiropoulos did have discussions with Mrs. McCaffrey with respect to trades in her account. However, it is clear from Mrs. McCaffrey's evidence and her past investment experience that she relied on the advice given by Mr. Sidiropoulos as to what would be suitable investments for her.

Mrs. McCaffrey's account balances on June 30, 1995 were:

Mrs. McCaffrey's account balances on June 30, 1995 were:	
Investments (equities)	\$86,713.75
Cash (based on margin)	<45,048.55>
Mutual funds	<u>422.18</u>
Net Value	<u>\$42,087.38</u>

Mrs. McCaffrey testified that in July 1995 Mr. Sidiropoulos "was in a non-stop persuasion mode as to why she should bring her assets over to him". He prepared several charts (Exhibit 23) and a graph (schedule 24) showing a monthly return of 4%. She said he wanted more money and wanted her to transfer retirement funds from Scotia McLeod and wanted to go into his trading program.

Mrs. McCaffrey transferred the following accounts to Burns Fry in July 1995:

Laurentian Invest	\$ 3,527.
T.D. Mutual	1,745.
Scotia McLeod - RSP	26,333.
- other investments	<u>77,978.</u>
	109,578.
Scotia McLeod (U.S. \$)	
(50,683 @ 1.37 CDN)	<u>69,436.</u>
	179,014.
Transfer on June 29, 1994	<u>45,920.</u>
Total funds transferred to Burns Fry	<u>\$224,934.</u>

A new client account form was prepared on August 29, 1995 with a complete change in investment objectives:

	<u>June 30, 1994</u>	<u>August 29, 1995</u>
Mutual fund	25%	0
Long term growth	50%	0
Short term trading	25%	0

Aggressive trading	0	100%
RRSP:		
-- moderate growth		50%
-- aggressive trading		50%

Mr. Sidiropoulos completed the form. Mrs. McCaffrey signed the form on the advice and instructions of Mr. Sidiropoulos.

The account statements from Burns Fry show aggressive trading after August, 1995. During the period July 1994 to end of January 1996, the annualized turnover was 17.8 times.

Mrs. McCaffrey stated that in September 1995 specific transactions had been conducted by Mr. Sidiropoulos without receiving her permission in advance of the transaction. She testified that Mr. Sidiropoulos told her to "stay out of it, don't tell me what to do, stop interfering".

In December 1995, Mrs. McCaffrey's accounts reduced in value as listed below:

Canadian dollar account	\$ 91,991.
U.S. \$ account	7,106.
RRSP	43,450.

When Mrs. McCaffrey questioned Mr. Sidiropoulos about the reduction in the value of the accounts, he tried to persuade her that he had the ability to repair her losses. Mrs. McCaffrey testified that Mr. Sidiropoulos said he did a stupid thing, that he reduced her account to two stocks and ran her to the edge of the margin and was never going to do that again.

Mrs. McCaffrey testified that during January 1996 there were purchases of Corel, Unisys and maybe one or two other stocks made without her knowledge or consent. Mrs. McCaffrey testified that when she asked Mr. Sidiropoulos what these stocks were, he said, "...he couldn't talk to me as I was too upset".

Mr. Sidiropoulos was no longer handling Mrs. McCaffrey's account as of January 1996. Following Mr. Sidiropoulos's removal from the account, Mrs. McCaffrey had a discussion about her account with Allan Scott Dunnett. Mr. Dunnett was the branch manager of Burns Fry.

Mr. Dunnett's duties included daily compliance which included reviewing the daily transactions of all clients in the branch, including transactions involving clients of Mr. Sidiropoulos. He also conducted a monthly review of all accounts that had over \$1,000 in commissions or revenue during the month.

Mr. Dunnett testified he had questions with respect to Mrs. McCaffrey's account. He issued a memo on October 17, 1995 (Exhibit 31) to Mr. Sidiropoulos requesting information on his client's income, net worth and investment objectives. The next memo on this account was issued by Mr. Dunnett to Mr. Sidiropoulos on December 12, 1995 (Exhibit 32) which was a request for

comment on the amount of commission generated with respect to the amount of assets in the account.

Mr. Dunnett testified he was concerned with this account as the number of transactions taking place in the account were large and the account had a high amount of commissions being generated relative to the assets in the account. Mr. Dunnett was also concerned with respect to the suitability of the transactions. Mr. Dunnett received a complaint from Mrs. McCaffrey's lawyer dated January 18, 1996 (Exhibit 30). Mr. Dunnett wrote a letter dated February 6, 1996 to Mr. Sidiropoulos advising that a number of Mr. Sidiropoulos's clients had complaints and all transactions would be closely supervised and each transaction must be initialed by Mr. Dunnett (Exhibit 34).

Mr. Dunnett also reviewed the projections on investment returns (Exhibits 23 and 24) provided by Mr. Sidiropoulos to Mrs. McCaffrey. Mr. Dunnett testified it would not be appropriate for Mr. Sidiropoulos to provide projections of investment returns as set out in Exhibits 23 and 24. Mr. Dunnett testified the statements were unrealistic, not balanced and they improperly implied there was a guaranteed rate of return.

Anthony Ross Davidson, C.A. was called by staff to give evidence. Mr. Davidson has a B.A. (Economics) from the University of Western Ontario, is qualified as a Chartered Accountant, and has successfully completed the Canadian Securities Course, Registered Representatives Examination and the Canada Options Course. He has direct industry experience, provides counseling services in securities industry matters and has been qualified as an expert witness in securities matters in Ontario Court (General Division). The panel had no hesitation in qualifying Mr. Davidson as an expert witness. Mr. Davidson's findings were submitted in a report dated June 8, 1999 (Exhibit 37). The panel has accepted the analysis contained in the report in its entirety.

Mr. Davidson was asked to review the account during the time Mrs. McCaffrey was dealing with Mr. Sidiropoulos to determine whether the types of trades as well as the volume of trading was within acceptable industry standards:

1. Investment Objectives:

Mr. Davidson testified that, given the change of investment objectives to "100% aggressive" in August 1995, it is reasonable to expect that the account would have a higher level of trading activity than was the case when the investment objectives of June 1994 are considered. However, Mr. Davidson testified that the level of trading in Mrs. McCaffrey's account exceeded what would be expected in an account with an objective of 100% aggressive. Mr. Davidson could see no justification for the excessive level of trading he saw in the account.

2. Control of Account

Mr. Davidson also concluded that it appeared Mr. Sidiropoulos exercised a large degree of control over Mrs. McCaffrey's account.

3. Regard for Client's Interest

Mrs. McCaffrey's RRSP account was transferred to Burns Fry in September 1995. The account

consisted of government bonds, mutual funds, Canada Savings Bonds, and shares. Mr. Sidiropoulos converted these assets to a 100% common share portfolio. Mrs. McCaffrey's non-RRSP account was invested in almost entirely in common stock. There was no diversification into either mutual funds or fixed term investments. In the opinion of Mr. Davidson, the failure of Mr. Sidiropoulos to recommend and provide for a reasonable level of diversification in Mrs. McCaffrey's account indicates a lack of regard for the client's interest.

4. Use of Margin

In September and October 1995, margin loans were present in Mrs. McCaffrey's account which greatly exceeded the account's net equity.

	<u>September 1995</u>	<u>October 1995</u>
CDN \$ Account		
Net equity	\$ 100,166	\$ 78,476
Margin (loan)	(137,310)	(154,121)
US \$ Account:		
Net equity	65,693	56,143
Margin (loan)	(161,944)	(173,881)

In the opinion of Mr. Davidson, Mr. Sidiropoulos demonstrated a willful and reckless disregard for Mrs. McCaffrey's best interests and acceptable industry standards by permitting this level of borrowing in Mrs. McCaffrey's account. The combination of a lack of diversification and excessive borrowing exposed Mrs. McCaffrey to an increased level of risk that was in excess of what would be expected for a client in Mrs. McCaffrey's situation.

5. Account Turnover

There is no regulation that sets out what is an acceptable rate of turnover in a client's account. Mr. Davidson testified that an accepted "rule of thumb" used by the investment industry for an average account is that a turnover of "2 times equity" likely does not represent over-trading, "4 times equity" might represent over-trading, and "6 times equity" is likely over-trading. Mr. Davidson calculated the annualized turnover rate in Mrs. McCaffrey's account during the period July 1994 to January 1996 as being 17.8 times equity.

In the opinion of Mr. Davidson, the trading in Mrs. McCaffrey's account during the period under review was almost 3 times what would be considered over-trading.

6. Commissions

Mr. Sidiropoulos's total gross commissions from all of his clients from January 1995 to January 1996 was \$87,478. Mrs. McCaffrey's account paid Mr. Sidiropoulos gross commissions during that period of \$47,435, or 54.2% of his total commissions for that year.

In the opinion of Mr. Davidson, Mrs. McCaffrey's accounts were the source of a significant portion of the total commissions generated by Mr. Sidiropoulos during the period in question.

7. Account Performance

Mrs. McCaffrey's accounts lost a total of \$125,611 (Canadian funds) during the period July 1994

to January 1996. The total invested capital was \$178,406 leaving an account balance of \$52,795 at January 1996.

8. Conclusion

Mr. Davidson found that the capital in Mrs. McCaffrey's account represented a substantial part of her assets and was subjected to an excessive level of risk. The account was also excessively margined. The level of trading in the account was excessive and constituted churning. The combination of these factors unacceptably increased the level of risk to Mrs. McCaffrey and demonstrates willful and reckless disregard for Mrs. McCaffrey's interest by Mr. Sidiropoulos.

Panel Decision

The evidence given by Mrs. McCaffrey which was supported by the evidence of Mr. Davidson and in some instances by Mr. Dunnett supports a finding by the panel that the allegations set out in (a) to (f) of the Statement of Allegations have been proven.

The panel accepts and adopts the analysis and conclusions contained in the report of Mr. Davidson.

The panel finds that Mrs. McCaffrey relied on the advice and direction of Mr. Sidiropoulos. Mrs. McCaffrey's investment experience and circumstances required her investment advisor to provide diversification in her portfolio and to avoid such a heavy reliance on returns based solely on aggressive investment objectives. The panel also finds that Mr. Sidiropoulos failed to advise Mrs. McCaffrey of the risks associated with the trading methods he used and failed to act in the best interests of his client.

With respect to the projections provided by Mr. Sidiropoulos to Mrs. McCaffrey (Exhibits 23 and 24), the panel finds that these projections could reasonably have been interpreted by Mrs. McCaffrey as providing a future value of her investment. As the investments in Mrs. McCaffrey's account were in no way guaranteed, Mr. Sidiropoulos violated section 69(2) of The Securities Act. Alternatively, these projections constitute inappropriate investment advice.

The panel also finds that the trading strategies used by Mr. Sidiropoulos in Mrs. McCaffrey's account were not appropriate. The factors considered by the panel included the circumstances of the client, the failure to diversify the portfolio and overly aggressive trading. The panel also concludes that the level of margin in Mrs. McCaffrey's account was excessive and created an unreasonable and excessive level of risk to Mrs. McCaffrey.

With respect to the allegation of churning of Mrs. McCaffrey's accounts by Mr. Sidiropoulos, the panel accepts the criteria applied by Mr. Davidson to determine whether there has been over trading in an account. It is clear that an annual turnover rate of 17.8 times equity is well in excess of 6 times equity that can lead to the conclusion there is likely over-trading in an account. The panel also notes that the trades in questions were initiated by Mr. Sidiropoulos and that the commissions generated in Mrs. McCaffrey's account formed 54.2% of Mr. Sidiropoulos's commissions for 1995. Given these facts, the panel finds that the trading activity in Mrs. McCaffrey's account was conducted to generate commission income and not to further legitimate

investment objectives. The panel therefore finds that there has been churning in Mrs. McCaffrey's account through the actions of Mr. Sidiropoulos and that allegation "d" has been proven.

The panel also finds that Mr. Sidiropoulos conducted unauthorized trades in Mrs. McCaffrey's and that allegation "e" has been proven.

The Commission has come to the conclusion that Michael Sidiropoulos should not be entitled to use any of the exemptions contained in sections 19(1), 19(2) and 19(3) of The Securities Act and therefor should not be entitled in the exempt markets in Manitoba in the future. Mr. Sidiropoulos is assessed costs relating to the hearing in the amount of \$20,000.

December 30, 1999

"E. O. E. Bergman"
Acting Chairman

"M. S. Fages"
Member

"K. S. Kristjanson"
Member