THE MANITOBA
SECURITIES
COMMISSION

January 31, 2018

IN THE MATTER OF: THE SECURITIES ACT

- and -

IN THE MATTER OF: ARTHUR LEON SCHELLENBERG

REASONS FOR DECISION
OF
THE MANITOBA SECURITIES COMMISSION

Panel:

Chair:	Mr. D.G. Murray
Member:	Ms. S.C. Rolland

Appearances:

S. Gingera	)	Counsel for Commission Staff
A.L. Schellenberg	)	On his own behalf

The Panel that heard the evidence on the merits phase of the hearing included Mr. James Hedley, now retired, who chaired the Panel. The Panel rendered its Decision on February 3, 2017. The penalty phase was heard on June 26, 2017 by the two remaining panel members. Despite being given notice of the hearing date Mr. Schellenberg did not attend. As such, the only evidence received as to penalty came from staff counsel.

In the Reasons for Decision on the merits phase dated February 3, 2017, the Panel, as it was then constituted, found that Mr. A.L. Schellenberg ("Schellenberg") acted in the capacity of "a securities advisor, investment counsel and/or advisor under the Act without being registered". The Panel found that he provided investment advice in connection with all of the named complainants and therefore he has an advisor's obligations under the Act in all but one case, as will be seen. There was also a finding that Schellenberg traded in securities without registration.

Acting as if he were a registrant, but without actually being registered, put Schellenberg offside of The Securities Act. As such, even though not registered, he put himself under the obligations and duties of a registrant vis a vis those he advised and on whose behalf he traded. He did not fulfill his duties to his clients either in recordkeeping (i.e. KYC and KYP requirements) or investing in suitable securities. Three of his clients, or groups of clients, lost considerable sums of money and they seek orders of financial compensation.

The Panel is satisfied in at least some of these cases there is a clear causal connection of commission or omission in Schellenberg's conduct and identifiable losses to his clients.

There are several sanctions staff are seeking, including:

a) denial of exemptions;
b) administrative penalty;
c) financial compensation orders for Bernadette Warkentin-Geras, Peter Ilchyna, Garnet and Beverley Williams and Aurelle and Richard Deleurme and Marie-Anne Loeppky;
d) costs.

Order for Financial Compensation

Bernadette Warkentin-Geras

The Panel has already found that Ms. Warkentin-Geras was abandoned by Schellenberg and that this was not a reasonable action on his part. Schellenberg had her transfer funds from other financial institutions to TD Waterhouse order execution only accounts and placed her in investments (income trusts) of which she had little or no understanding. With Schellenberg's help and direction she opened a margin trading account and a Retirement Savings Plan (RSP) into which she transferred all of her life savings. Schellenberg was operating these accounts on a discretionary basis. Her mutual funds transferred from BMO and Assante were sold by Schellenberg to purchase income trusts.

At the end of June in each of 2005 and 2006 Schellenberg sent Ms. Warkentin-Geras statements for investment advice. The statement in 2005 was based on the value of her accounts of $78,900.00 with a multiplier of .005 for $394.50 plus GST of 7% which brought the total to $422.12. This statement has been filed as Exhibit 61. The account dated July 1, 2006, Exhibit 62, was sent jointly to Ms. Warkentin-Geras and her common-law spouse Ken Kolisnyk and was charged at the rate of 2% on the combined value of their accounts which was $123,906.45. The total bill was $2,478.13. Given that her account value made up 82.78% of the combined value of the accounts the amount that would have been attributed to Ms. Warkentin-Geras as fees is $2,174.42 inclusive of GST.

Ms. Warkentin-Geras complained to Schellenberg about the amount of fees he was charging and suggested they were higher than she could afford. As a result of this, Schellenberg's point of view was that he was no longer representing her as an investment advisor after June, 2006. Ms. Warkentin-Geras' evidence is that Schellenberg did not verbalize this to her.

According to Ms. Warkentin-Geras' testimony, which is accepted by the Panel, Schellenberg did make some trades in her account later in 2006 as a result of a margin call which required him to liquidate certain of her assets and reduced the value of the account. Thereafter it appears that Schellenberg abandoned Ms. Warkentin-Geras.

Ms. Warkentin-Geras's accounts had grown in 2005 and 2006 as income trusts were generally doing well at that time. Schellenberg was aware that the federal government had announced it would be reviewing and likely amending the tax treatment of income trusts which would have in all likelihood a negative impact on their valuations. An announcement to this effect was made by the Minister of Finance for Canada on October 31, 2006. Schellenberg testified that he did in fact warn some of the people to whom he was providing investment advice that this was pending or had happened. He did not warn Ms. Warkentin-Geras.

As was found by the Panel in the initial Reasons for Decision, Schellenberg could have taken relatively simple steps to change Ms. Warkentin-Geras' investments prior to the expected devaluation (which did not happen immediately). Schellenberg could at least have warned her that there would likely be a decrease in value in this type of investment. He did not. Apparently he simply sold some of the income trusts in response to a margin call later in 2006 and then proceeded to ignore Ms. Warkentin-Geras.

Ms. Warkentin-Geras did not manage her accounts. She never changed the nature of the investments in her accounts. Other than making some deposits and withdrawals, the account was not traded. The fact that she paid some margin calls on her margin account by liquidating securities in her RSP indicates that she was not a knowledgeable investor and required advice in order to preserve her investments. She had however been put into order execution only accounts and received no advice after Schellenberg considered his obligations to her to be at an end.

By July, 2015 according to evidence provided by Mr. Len Terlinski her TD Waterhouse margin account had dwindled to $19,001.40 and her RSP account was

$16,130.00. Considering that her combined accounts as of June 30th, 2006 were over $100,000.00 this represents a significant loss.

While she did not actively manage her accounts and was not particularly insistent upon obtaining more input from Schellenberg she did try to maintain contact with him by telephone and by several emails sent directly to him seeking his assistance and advice. Schellenberg couldn't recall whether he actually saw these emails but there was no response to them. Had Schellenberg been a registered advisor to Ms. Warkentin-Geras and his firm was actively managing her money, his obligations would not allow him to simply ignore her and let her account sit unmanaged at a discount brokerage. He would have an obligation to her to ensure that she was clearly advised that he would no longer be working for her and that she should arrange for the transfer of her accounts to another advisor. Clearly she did not have the investment acumen to be managing her own accounts.

Certainly Ms. Warkentin-Geras allowed several years to elapse while her accounts were depleted through declining values and margin calls. This went on from 2006 until 2015. During this time, she continued to see Schellenberg for income tax services but had no meetings with him in connection with her investments. Nonetheless, her evidence, which is accepted, is that she believed Schellenberg was still her advisor. She testified that she was still seeking his advice on her dwindling investment account as late as 2014. This was done by a written note on her income tax return statement, requesting his further advice, which was sent back to Schellenberg along with the required payment.

The panel was referred to the 2000 Supreme Court of Canada Decision in Placements Armand Laflamme Inc. v. Jules Roy and Prudential-Bach Commodities Canada Ltd. In that case a registered securities broker took over the management of the investments of an inexperienced client's personal and corporate accounts. Although the client in question was inexperienced in investments he did appear to have considerable business acumen as he and his brother operated a window and door company worth several million dollars. As with Schellenberg, the stated goal was for the advisor to secure the retirement funds of the investor. The broker had a discretionary mandate over the portfolios. The broker entered into speculative investments and managed the account on margin of which the client was unaware. The account lost considerable value.

There was a passage of over two years between the time the client became aware of the poorly performing investments and the unauthorized activity of the broker during which the investments continued to experience declines before the client took action to close the account. On the question of the investor's delay in taking steps to mitigate damages, the Court held that a flexible approach is needed in determining what is a reasonable period of time for a client to take steps to mitigate. The level of experience and knowledge of investments of the client and the complexity of the situation must be taken into consideration when examining mitigation matters. The fact that this was a situation of trust between the investor and the advisor and that there was confusion in the resulting loss of trust made it difficult for the client to take charge of the situation in a timely manner. As such, in the circumstances, holding the securities which were declining in value was not a matter that could be considered the fault of the client. The Court found that an "average investor" faced with similar

circumstances would have been likewise indecisive when faced with possible options to rectify the situation. These options were never explained to the investor.

Ms. Warkentin-Geras was an unsophisticated investor who was placed in investments of which she had no knowledge and in a margin account requiring management of which she was incapable. She presented as a shy and retiring individual who was anything but assertive. The Panel accepts that she relied on Schellenberg's expertise and was confused about the management of her investments. Her options were not explained to her. Schellenberg exercised discretionary trading authority on her investments and as such had an obligation to act in her best interests (s. 154.2(2)). Mr. Schellenberg failed to live up to his obligation. The Panel does not hold Ms. Warkentin-Geras responsible for her inaction in failing to preserve her investments between June, 2006 and July, 2015. In fact, the Panel finds that Schellenberg, having abandoned her when he should not have, is responsible for these losses.

To the Panel the logical assessment of damages would be to deduct the balance in the accounts as of July, 2015 from the amount that was in the accounts as of June 30, 2006 in order to determine losses. However, staff is not seeking an order of financial compensation in this fashion. The accounts, although not managed by Ms. Warkentin-Geras, were accessed by her over the intervening years. There were redemptions in the RSP account (largely to cover margin calls in the non-registered account) and cash transfers out of the margin account which were unexplained in evidence. There were also deposits made during this period.

Mr. Terlinski prepared a document (Exhibit 27, attached) in which he characterized the losses to Ms. Warkentin-Geras as the difference between funds put into the TD accounts less amounts taken out. The Panel accepts this form of determination which shows a loss of $29,600.82 in the RSP account and a loss of $17,329.46 in the Canadian margin account. This totals $46,930.28 which the Panel finds is the amount of financial compensation due to Ms. Warkentin-Geras from Schellenberg for her losses. In addition, Schellenberg assessed fees against Ms. Warkentin-Geras to which he was not entitled. These fees, inclusive of taxes amount to $2,596.39 and it is also ordered that Schellenberg pay this amount to Ms. Warkentin-Geras.

Peter Ilchyna

The Panel also finds that Peter Ilchyna was directed by Schellenberg into investments which he little understood and as such were unsuitable for him. Although the Panel found that Mr. Ilchyna's evidence was not wholly reliable, the same can certainly be said for the evidence of Mr. Schellenberg. There are certain things which the Panel was able to determine from Mr. Ilchyna's evidence beginning with the fact that he is not computer savvy and definitely not a knowledgeable investor. In addition, his money was invested at discount brokerages in complex products he did not understand and as such were unsuitable for him. Mr. Ilchyna's level of investment knowledge is minimal at best. When giving evidence he testified he did not know what income trusts or options were.

There's no evidence as to the starting point value for the TD account of Mr. Ilchyna which was opened on the advice of and with the assistance of Schellenberg. This is not important as the Panel has clear evidence as to the value of Mr. Ilchyna's

account once it was transferred from TD to Disnat. On August 31, 2005 $65,621.06 was transferred in cash and kind from TD to Disnat. On September 21, 2005 an additional $35,000.00 in cash was placed in the accounts bringing the amount invested to over $100,000.00.

The funds at Disnat were invested in income trusts. Again, these were products that Mr. Ilchyna clearly did not understand nor would he have chosen them on his own. The evidence of Schellenberg confirms that he made some of the initial trades in the Disnat account and the Panel has no difficulty in finding on the balance of probabilities that Schellenberg chose the investments in the account for Mr. Ilchyna.

Apparently the account was not managed. Again, there is no evidence that Schellenberg advised Mr. Ilchyna in 2006 or anytime thereafter that due to the change in tax treatment, income trusts could expect to experience significant devaluation. By September 11, 2007 when the Disnat account was closed and the balance transferred to Trade Freedom the account was down to $22,322.96. It appears that after placing Mr. Ilchyna in a non-advice margin account, Schellenberg failed to oversee the account and it declined precipitously.

The funds were placed into put and call options at Trade Freedom. Mr. Ilchyna had absolutely no idea as to the nature of these investments and had no ability to manage the account. Although he denies it, the Panel is satisfied on the balance of probabilities that Schellenberg advised Mr. Ilchyna to invest in options at Trade Freedom. As set out in the initial Reasons for Decision in this matter, these were investments that Schellenberg was trading in for himself at the time. There is evidence that trades in the same products in Mr. Ilchyna's account and Schellenberg's account in 2007 were made using the same computer. The Panel finds that Schellenberg was responsible for the transfer of funds out of income trusts at Disnat and into options that required management at Trade Freedom. Schellenberg claims to have amicably parted ways with Mr. Ilchyna in the second week of September, 2007 just after the Trade Freedom account was opened. According to Schellenberg this discussion took place at a restaurant. Mr. Ilchyna recalls meeting at the restaurant at that time but does not recall being advised that he was on his own as far as his investments were concerned.

When Schellenberg was shown that certain of the Trade Freedom trades were the same as those executed in his own account he denied having made them on behalf of Mr. Ilchyna but did state unequivocally that those were trades that Mr. Ilchyna could not have made on his own. Schellenberg attempted, at that point, to suggest that someone else from his office may have been providing Mr. Ilchyna with advice at that time. The Panel rejects this.

As in the case of Ms. Warkentin-Geras we find that Schellenberg had an obligation to provide advice to Mr. Ilchyna and certainly had an obligation not to abandon him after putting him into investments he did not understand. Schellenberg had a duty to monitor these accounts and to ensure steps were taken so that Mr. Ilchyna would be obtaining competent advice on the type of investments suitable for him.

Relying on the 2000 Supreme Court of Canada Decision in Placements Armand Laflamme Inc. v. Jules Roy and Prudential-Bach Commodities Canada Ltd., the Panel does not fault Mr. Ilchyna for not taking steps to mitigate the losses in his

accounts up to 2012, both while declining significantly at Disnat and between 2007 and 2012 when he was left holding the bag on an account containing options at Trade Freedom. He was completely reliant on Schellenberg up to September, 2007. After September, 2007 Schellenberg abandoned him following which Mr. Ilchyna was completely at sea. Mr. Ilchyna was incapable of managing the options account and as such he did not. It seems he sat helplessly as the last of his investments disappeared. We find that his losses commencing from the Disnat account opening in August, 2005 until September, 2012, are the responsibility of Schellenberg.

The evidence of Mr. Terlinski as to the loss suffered by Mr. Ilchyna from the opening of the Disnat account until September 28, 2012 when the balance of the Trade Freedom account was just $22.54 is set out in Exhibit 11 (attached). It showed the sums placed with Disnat comprised of cash and securities transferred from TD had been over $100,000.00 and had dropped, through lack of management, by September 11, 2007 to $22,322.96. This is what was transferred to Trade Freedom and placed in options. The loss calculated by Mr. Terlinski, as set out in Exhibit 11 (attached), is $100,598.52. The Panel makes an order of financial compensation from Schellenberg to Mr. Ilchyna in this amount. In addition, it is ordered that Schellenberg repay to Mr. Ilchyna fees he improperly charged for investment advice (Exhibit 42) in the amount of $307.80.

The Deleurme Family

The investment accounts set up at Disnat, Trade Freedom and subsequently Interactive Brokers on behalf of the Deleurme family were set up as joint accounts in the names of Richard and Aurele Deleurme. Although their names did not appear as account holders at any point the evidence clearly shows that both Marie-Anne Loeppky and Schellenberg also contributed funds to the account prior to the transfer from Disnat to Trade Freedom. At all three brokerages it is clear that Schellenberg had trading authority on the account.

Apparently, for the first couple of years the account did very well and increased in value. Schellenberg acknowledged that in 2005 and part of 2006 he was actively trading on the account. There is also evidence that he was paid a fee for these services in 2005.

Schellenberg testified that from and after 2006 the account was managed by Richard and it wasn't until 2010, by which time the investment had dwindled to just under $8,000.00 that he was asked again to get actively involved. During that period, Schellenberg acknowledges that he likely made some trades on the account and that Richard made others. He said that he could likely point out the trades he made and those made by Richard. He was not invited to do that.

Richard denies taking responsibility for making any trades on the account on his own. As indicated in the initial Reasons for Decision the evidence of neither Schellenberg nor Richard Deleurme is considered reliable on its own. The Panel has to base their findings on the evidence that is available and the reasonable inferences that can be drawn from it.

Staff counsel submitted that each of Richard, Aurele and Marie-Anne Loeppky contributed funds to the account and they were seriously depleted by the time the

account was closed in 2013. His position is that by breaching the provisions of the Act in advising/trading without registration Schellenberg should be responsible for all losses in the investment account. The Panel does not accept the position that by acting as if he were registered that Schellenberg assumes responsibility for losses that are greater than those that would be applied to a registrant. Damages must be provable and there must be a causal connection to them by conduct of commission or omission on the part of Schellenberg.

In the cases of Ms. Warkentin-Geras and Mr. Ilchyna the Panel has found that there is a clear point from which damages can be assessed and a clear causal connection in the conduct of Schellenberg. It is not so clear in the case of the Deleurme family.

To start with, there is no agreement on the inflow and outflow of funds for this account. It is clear from the evidence that each of Richard and Aurele contributed $100,000.00 to the fund. Marie-Anne Loeppky contributed $30,000.00 and Schellenberg $25,000.00. Schellenberg claims to have also initially contributed an additional $100,000.00 which was subsequently repaid. Richard Deleurme disputes this. In addition, Richard testified that he contributed an extra $25,000.00 due to a margin call. Schellenberg disputes this and Mr. Terlinski testified that there is no documentation to verify this payment. It is clear, however, that subsequently in 2008, Richard withdrew $21,600.00 from the account when it was transferred between brokerages as a partial repayment of the claimed additional contribution. The Panel doesn't know if Richard actually made the additional contribution and was therefore entitled to these funds or whether, as a simple redemption, the money should have been shared proportionally among the account participants. Mr. Terlinski also testified to a further sum of $8,000.00 that cannot be accounted for. Finally, we have no knowledge of the application of the funds that were withdrawn, apparently by Richard, when the account was closed in 2013.

In addition, there is no evidence that the management of the account was improper or inadequate. Unlike the situations with Ms. Warkentin-Geras and Mr. Ilchyna there is no clear evidence that the investor was put into complicated investments and simply abandoned while the account steadily declined with no management or trading activity. The Deleurme accounts didn't follow this example. They were actively traded and the account value fluctuated both down and up. The fact that the account in 2007 was being "actively traded on a strategy" comes from the testimony of Mr. Terlinski.

By the time the account was transferred from Disnat to Trade Freedom the value had declined to just over $92,000.00. Presuming that it was Schellenberg who was employing the strategy to which Mr. Terlinski referred we are left with the question of whether, under the circumstances, this was an unsuitable strategy or whether it prevented the account from depleting to a greater extent. The Panel has no evidence other than that the account had experienced losses by August of 2007.

In September of 2007 the account at Trade Freedom showed an increase in value to $116,837.00 and by January, 2008 it had increased to $131,819.00. There was no evidence as to whether this increase was due to market trends or someone applying a successful trading strategy. We are unable to conclude by the available evidence that unsuitable advice or neglect by any advisor was apparent by January of 2008.

The Panel is comfortable in taking judicial notice of the fact that much of 2008 and into 2009 was a difficult time for investors and the markets experienced a significant decline. We received no clear evidence of the specifics of the considerable decline in the value of the Deleurme account after its transfer to International Brokers in 2008. Alarmed, Richard Deleurme took his concerns up with Schellenberg who apparently advised him that at the time the markets were doing very poorly. This would have been an accurate statement in November, 2008. The Panel wasn't directed to the actual value of the account in November, 2008, but by December, 2010 it had a value of just under $8,000.00.

It is most likely that Schellenberg had a connection to and exercised some trading activity over the account through most of its existence. The April 25, 2000 letter he sent to Marie-Anne Loeppky (Exhibit 76) suggests she withdraw from the account and allow him to continue to represent Richard and Aurele which lends credence to that assumption. But there is no certainty that only Schellenberg exercised trading control. It was Richard who ordered the closing of the account in 2013. Again, there is no evidence as to how the remaining funds were distributed at that time.

In addition to not having evidence to determine the exact amount of losses, the Panel also was unable to establish a clear causal link between any acts of commission or omission by Schellenberg and an identifiable loss. Over the years there is a clear negative change of financial position in the Deleurme account but we have no evidence of the type of advice or services Schellenberg may have been providing or failing to provide that resulted in the loss of the specific amount.

There is another problem with the Deleurme family claim for financial compensation. Schellenberg claims that he was not acting as an advisor per se, but as a partner in a joint venture. In such a case it would be anticipated that every partner would contribute whatever he or she could to the joint venture in order to ensure its success. Schellenberg's part could have been advising/directing the investments to the benefit of all. This is different than acting as a registered advisor only to others. If he was indeed acting as a participant in a joint venture the Deleurmes were not his clients but his partners.

While the evidence given by the Deleurmes and Schellenberg may be unreliable, there is clear evidence that Schellenberg was a contributor to this investment account. It is disputed that he contributed $100,000.00 that was subsequently repaid but there is no question that he did contribute $25,000.00 to the account. There was no explanation in evidence as to the nature of this payment other than Schellenberg's assertion that it was his contribution to a joint venture.

Schellenberg testified that he did not want Marie-Anne Loeppky to have an interest in the account because she didn't have the same level of business acumen as her father and brother. He claimed that her participation was foisted upon him by Aurele who arranged for Marie-Anne to make her $30,000.00 contribution when Schellenberg was out of the country. While Schellenberg's testimony alone is not persuasive it was not challenged. It seems to the Panel likely that someone simply advising others on investing would have a lesser concern about the business acumen of a client than would a partner in a joint venture with an interest in protecting his own stake.

Finally, Schellenberg's evidence is that in 2010 he suggested to the others that the investment account could be reinvigorated if everyone, including himself, contributed additional funds. According to Schellenberg the Deleurmes had demurred. Again this evidence in itself is not persuasive but neither was it challenged. It tends to suggest to the Panel that Schellenberg considered himself a partner in a joint venture.

Richard and Aurele Deleurme and Marie-Anne Loeppky suffered investment losses but that can happen through adverse market conditions in the absence of unsuitable advice or trading. Simply because he improperly conducted himself as if he were registered does not make Schellenberg automatically responsible for any and all adverse changes in financial position of those he may be advising. There must be a reasonable way to determine damages and a causal connection between the acts of commission or omission and the losses. Neither is clear to the Panel. In addition, it is also not clear to the Panel that in the instance of the Deleurme family Schellenberg was acting as an advisor as opposed to a partner who also invested and lost money. We are not in a position to make an order of financial compensation on behalf of Richard and Aurele Deleurme or Marie-Anne Loeppky.

Kunzelman

In the Decision on the merits, the Panel found that Schellenberg improperly acted as a securities advisor to Mr. Kunzelman to his detriment. While the Panel has included this in its overall deliberations Mr. Kunzelman is not seeking an order for financial compensation and none is made.

Williams

The Reasons for Decision in the merit phase of the hearing also indicate that Schellenberg improperly acted as if registered in his dealings with Mr. & Mrs. Williams. They were entitled to seek an order for financial compensation in the event they suffered losses and the losses showed causal connection to acts of omission or commission on the part of Schellenberg. There were, however, no losses suffered and the only claim Mr. & Mrs. Williams made is for the return of the fees they paid Schellenberg for investment advice he should not have provided. These sums are set out in three bills for "monitoring and assisting with your investment" for the years 2004 through 2006 (Exhibit 51) totaling $8,804.72 including taxes. Schellenberg was not registered to provide advice or trading services and should not have charged fees. Schellenberg was not entitled to receive the payments he received and the panel orders financial compensation to Mr. & Mrs. Williams in the sum of $8,804.72.

Denial of Access to Exemptions

It is clear that Schellenberg had operated for years with a side business of providing investment advice and making discretionary trades on behalf of others when he was not registered so to do. From the evidence received it seems apparent that the former "investment clients" who took part in these proceedings were not the only investors with whom Schellenberg dealt in this business. Staff's position is that Schellenberg had been advised to cease this business several times over a number of years. Schellenberg insists staff's position was neither reasonable nor properly explained with the result that he was not sure whether he was operating outside of the rules.

Regardless of whether Schellenberg actually appreciated whether or not he was operating offside The Securities Act and Regulations, the facts are clear that he was indeed running an advising/trading business for a number of years without registration. This is a breach of The Securities Act. As has been noted in the Reasons for Decision on the merits phase of the hearing, Mr. Schellenberg resisted when authority figures told him he should not be acting as he did. The Panel also found that the exemptions he was claiming did not apply to him.

Schellenberg claims to be trading only for himself now. As such, it will not be an imposition for the Panel to order under section 19(5) that the exemptions under the Act do not apply to him. Hopefully this will also make it clear to Schellenberg that he is not to advise or trade in securities on anyone else's behalf in the future.

An order is hereby made under section 19(5) without time limitation, denying access by Mr. Schellenberg to the exemptions under The Securities Act.

Administrative Penalty

Staff counsel outlined for the Panel the legal policy around administrative penalties and cited the several cases including Re: Cartaway Resources Corp. (SCC), Re: Limelight Entertainment Inc. (OSC), Doulis v. Liberty Consulting Ltd. (OSC) and In the Matter of Jack George Wladyka (MSC).

The Panel accepts that an administrative penalty ordered by a securities regulator should be forward looking and with a view to deter others from engaging in similar improper conduct as opposed to punitive in nature.

Staff counsel argued that imposing the maximum administrative penalty that can be assessed against an individual under the legislation, being $100,000.00, sends an appropriate message of deterrence to the marketplace.

The panel disagrees. In past cases where the maximum penalty has been assessed by this Commission (i.e. the Wladyka and Lewis cases) there was clear evidence of fraudulent conduct on the part of the individual involved and particularly in the case of Wladyka, outright conversion of funds. This is not the case here. Although he operated without registration, placed his clients in unsuitable investments and subsequently left some of them to their own devices, there is no suggestion of fraudulent activity or theft by Schellenberg. The Panel believes that Schellenberg really felt he could help these individuals due to his investment experience. He didn't go about it the right way. While reviewing his several defenses in the Reasons for Decision on the merits phase, though the Panel felt there was some basis for Schellenberg's confusion as to his status, in the final analysis he has to accept the consequences of his actions. As noted on page 55 of the Reasons for Decision on the merits phase:

> "In tax law there is a clear distinction between tax avoidance and tax evasion and sometimes the gray area must be ruled upon by judicial authorities. The same can be said about the obvious gray areas within securities regulation. Sometimes the difference between onside and offside is not clear and admittedly sometimes directions in the form of interpretations by staff can be

misleading. Even so, the individual who tests those waters and is found to be in violation of securities law or simply acting against the public interest must be prepared to accept the consequences of doing so."

The public interest demands that Schellenberg pay an administrative penalty on account of his actions as a deterrent factor for others who may be considering similar conduct, however, this is not a situation that calls for the maximum penalty. The Panel is of the opinion that a financial penalty of 25% of the maximum or $25,000.00 is more appropriate under the circumstances and it is so ordered.

Costs

Costs are to be assessed against Mr. Schellenberg as the findings have gone against him. As Mr. Schellenberg did not attend at the penalty phase of the hearing the Panel is left solely with the Bill of Costs prepared by staff counsel and entered as Exhibit 109. This Bill of Costs (attached), which the panel finds to be not unreasonable and is based primarily on the Regulations, is accepted. Costs are assessed against Schellenberg in the sum of $95,761.66.

"D.G. Murray"
D.G. Murray
Chair

"S.C. Rolland"
S.C. Rolland
Member

Peter Ilchyna cash flow

1. Aug 31, 2005 -transfer to Disnat from TD — **$16,051.06** (cash)
   Exhibit# **e**1229163

2. Aug 31, 2005 -transfer to Disnat from TD — **49,570.00** (in-kind)
   Exhibit# e1229164

3. Sep 21, 2005 -cash transfer to Disnat — **35,000.00**
   Exhibit# e1229168

4. Sep 11, 2007 – transfer to TradeFreedom from Disnat — 22,322.96 (in-kind)
   Exhibit# e1229267 (out) Exhibit# 1214652 (in)

5. Sep 28,2012 – account is still open, not active, balance is — **$22.54**
   Exhibit# 1229272

Transfers in, less current balance = - $100,598.52 (loss from opening of Disnat account)

Ex 11 Date Feb 25/16
Exam of TERLINSKI
Tom Bruce
Court Reporter

Ex 27 Date Feb 25/16
Exam of TARLINSKI
Tom Bruce
Court Reporter

Bernadette Warkentin-Geras cash flow

RRSP account

1. Feb 17 2004 – transfer in — **$ 7,236.52** (in kind)
   Exhibit# 150284-W1-320
2. Apr 05, 2005 – transfer in — **33,363.09** (in kind)
   Exhibit# 150284-W1-324
3. Jun 08, 2005 – transfer in — **3,461.54** (in kind)
   Exhibit# 150284-W1-327
4. 2004-2015 - contributions — **10,600.00**
5. 2004-2015 - redemptions — **- 8,930.00**
6. Jul 31, 2015 – balance — **16,130.33**
   Exhibit# 150284-W1-550

Total in and out, less July 15 balance = $29,600.82 (loss)

Canadian Margin account

1. Apr 27, 2004 – transfer in — **$ 868.02** (in kind)
   Exhibit# 150284-W1-010
2. 2004-2015 – deposits/cash transfers in — **46,948.05**
3. 2004-2015 – withdrawals/cash transfers out — **- 28,585.21**
4. Jul 31, 2015 – balance — **1,901.40**
   Exhibit# 150284-W1-639

Total in and out, less July 15 balance = $17,329.46 (loss)

Ex 109 Date June 26/17
Exam of SYLVAIN CASTONGUAY
Jeff Bruce
Court Reporter

Bill of Costs

A. Fees for Hearing as set out in Securities Regulation

Dates: December 11, 2013;
March 5, 2014, and June 23, 2014;
March 3, 2015, September 10, 2015, November 9, 2015, and December 23, 2015;
February 22, 2016, February 24 to 26, 2016, March 9, 2016, May 2 to 6, 2016, May 9 to 12, 2016, June 22 to 23, 2016, and July 6, 2016;
June 14, 2017

Commission Panel Fees:	42 half days x $600 =	$	27,000.00
Commission Staff:	21 full days x $400 =	$	9,000.00
B. Investigation Costs	27 days x $400 per day =	$	12,800.00
C. Legal Counsel Costs (Inclusive of all preparation time and responding to Respondent's motion for Stay of Proceedings)	45 days x $400 per day =	$	18,000.00

Court Reporter Fees:

Attendance (Invoices Attached)	$	5,275.00
Transcripts (Invoices Attached)	$	18,478.00

Witness Fees:

Sylvain Castonguay - Travel, hotel, meals (See Attached)	$	4,572.66
Witness Fees (See Attached)	$	636.00
TOTAL:	$	95,761.66