



bulletin



Contact:

For distribution to relevant parties within your firm

Barbara Lohmann
Enforcement Counsel
604-331-4795
blohmann@ida.ca

BULLETIN #3617
March 29, 2007

Discipline

Discipline Penalties Imposed on Michael William Balanko; Violations of By-law 29.1, Regulation 1300.1 (q) and Regulation 1300.4

Person Disciplined A Hearing Panel appointed pursuant to IDA By-law 20 has imposed discipline penalties on Michael William Balanko (“Balanko”), at all material times a Registered Representative with the Vancouver BC office of First Associates (now Blackmont Capital) (“First Associates”), a Member of the IDA.

By-laws,
Regulations,
Policies Violated

Following a hearing held on November 8 and 10 and December 11 and 12, 2006 in Vancouver, BC, a Hearing Panel determined that:

1. Between January 2004 and November 2004, Balanko made unsuitable investment recommendations for the RRIF account of his client, CP, contrary to Regulation 1300.1 (q) and By-law 29.1 (Count 1);
2. From February 3 to 24, 2004, Balanko effected fifteen discretionary transactions in the accounts of his client, CP, without the prior written authorization of CP and without those accounts being specifically approved and accepted as discretionary by First Associates, contrary to Regulation 1300.4 (Count 2);
3. From September 2004 to November 2004, Balanko made unsuitable investment recommendations for the RRSP account of his client, JS, contrary to Regulation 1300.1 (q) and By-law 29.1 (Count 3);
4. From September 20, 2004 to November 9, 2004, Balanko

effected ten unauthorized transactions in the RRSP account of his client JS, contrary to By-law 29.1 (Count 4).

Penalty Assessed The penalty assessed against Michaels was a fine of \$10,000 in relation to Count 1, a fine of \$15,000 in relation to Count 2, a fine of \$10,000 in relation to Count 3 and a fine of \$25,000 in relation to Count 4 for a total fine of \$60,000. The Hearing Panel further prohibited Balanko from making an application to be an approved person for 2 years and ordered that Balanko pay disgorgement in the amount of \$2,500. Further, Balanko is required to successfully complete both the Canadian Securities Course and the Conduct and Practices Handbook Course (both administered by the Canadian Securities Institute) as a condition of any re-approval. The fine, disgorgement and costs herein must be paid in full as a condition of re-approval and any re-approval will be subject to 12 months strict supervision. Balanko was also ordered to pay \$25,000 towards the Association's costs of this matter.

Summary of Facts The hearing commenced on November 8, 2006 at which time Balanko made an adjournment application so that he could retain counsel. He had also not filed a written reply to the Notice of Hearing. The application was opposed by Association Staff. While the Hearing Panel was satisfied that Association Staff had done everything in its power to give appropriate notices to Balanko, it nevertheless decided to grant the application but that he bore the onus to prove his bona fides. The hearing was adjourned to November 10, 2006.

When the hearing was reconvened on November 10, 2006, Balanko advised the Hearing Panel that, while he had contacted two lawyers, he had not retained counsel. He requested a further adjournment of the hearing. Notwithstanding that Balanko had consciously ignored the Notice of Hearing and the Association's Rules, the Hearing Panel granted a short adjournment in order for Balanko to prepare his case, retain counsel or explore other options. The adjournment was granted on the condition that Balanko deliver to the Association a reply and a list of the names of the witnesses that he intended to call on or before November 20, 2006. The hearing was adjourned to December 11, 2006.

Balanko was not present when the hearing reconvened on December 11, 2006, nor had he provided a witness list to the Association. Further, the Association had received no notice that Balanko had retained counsel. Association Staff, at the Hearing Panel's request, unsuccessfully attempted to telephone Balanko shortly after the hearing commenced. Accordingly, Association Staff made application pursuant to Rules 13.5 (1) and (2) that the Panel accept, as proven, the facts and allegations in the Notice of Hearing. The Panel granted that application. However, shortly thereafter, Balanko arrived at the hearing and stated that he had been delayed due to

traffic, that his cell phone had been turned off and that he was ready to proceed. Accordingly, the Panel decided to vacate the decision that it had rendered pursuant to Rule 13.5 and proceeded with the hearing.

Balanko's client CP was retired and in his 70's at the material time. He had three accounts with Balanko. His pension was in his RRIF account (approximately \$123,000), he also had approximately \$60,000 in a joint account with his wife and he owned his own home. He did not have good investment knowledge and he relied on Balanko for investment advice. He had advised Balanko that he required income from his investments to support himself and his wife.

The New Client Application Form ("NCAF") dated July 2001 for CP's RRIF account recorded investment objectives of 80% interest and dividends, 20% long term and risk factors of 50% low and 50% medium. CP's was born in 1929. Liquid assets were recorded as \$350,000, fixed assets \$200,000 and annual income \$47,000 and \$7,000 (spouse).

On November 24, 2003 Balanko completed an NCAF update for CP's RRIF account which amended the investment objectives to 60% interest and dividends, 10% long term, 10% medium term, 10% short term and 10% venture. The risk level was amended to 30% low, 50% medium and 20% high. Balanko suggested these amendments and CP accepted them. He acknowledged that he had accepted more risk, but Balanko had done well for him and he trusted him over their fourteen year relationship.

CP was happy with Balanko until early 2004 when Balanko "fell to pieces". They would discuss matters between six and ten times per year. Sometimes Balanko would call to make investment recommendations, and sometimes CP would only see the changes in his accounts when he received his monthly statements.

Between January 2004 and November 2004 CP's RRIF account contents changed. The interest and dividend category declined from 72% to 42%, long term investments declined from 7.4 % to 2.1% and venture securities increased from 9.15% to 47.11%. With respect to risk factors, the low risk category declined from 27.5% to 5.18%, medium risk securities declined from 63.3% to 47.7% and high risk securities increased from 9.15% to 47.1%. All of the securities in the high risk category, with one exception, were priced at under \$1.

While CP acknowledged that sometimes Balanko made investment decisions for his accounts without consulting him, at no time did he provide written authority for Balanko to exercise discretion in his accounts. Further none of CP's accounts were accepted and/or approved as discretionary accounts by First Associates.

CP vacationed out of the country from February 3, 2004 and March 14, 2004. Prior to his departure, CP advised Balanko that he would be away and provided his contact numbers. However, CP had no contact at all with Balanko while he was away. Notwithstanding this, several transactions were effected in CP's accounts during his absence.

Total commissions earned by Balanko on the subject trades were \$1,832.76. The total net losses in CP's RRIF account for the period January 2004 – November 2004 were \$19,568.07.

Based on the foregoing, the Hearing Panel found that the recommendations made for CP's RRIF account were completely inappropriate and unsuitable (Count 1). Further, Balanko did not receive the required written approval from CP to exercise discretion in CP's accounts, nor were those accounts approved as discretionary by First Associates (Count 2).

JS was another of Balanko's clients. She has been a high school teacher for 32 years and Balanko had been her financial advisor for a number of years. She had an RRSP account valued at approximately \$43,000.

The NCAF for JS's RRSP account recorded the following: born in 1947, occupation: teacher, investment objectives 67% long term and 33% short term, risk factors 20% low and 80% medium, fixed assets \$460,000 and liquid assets \$36,000.

JS would only speak with Balanko once or twice a year. Her RRSP was her only investment account, she had very little knowledge of investing and considered herself to be a cautious investor.

She had been very satisfied with Balanko's investment advice. In August or September 2004, Balanko contacted her and recommended some "shifts" in her mutual fund investments. JS understood that she was staying in mutual funds. There was no discussion about individual stocks. She was very busy in the fall and finally reviewed her statements in November 2004. That is when she saw that some mutual funds had been sold and individual stocks had been purchased. She had never heard of the names of the securities that had purchased.

During the period from September 2004 to November 2004, in JS's RRSP account, the long term securities decreased from 48.9 % to 23.8% and the venture securities, which were 0% on the NCAF, increased from 22.8% to 72.3%. Low risk factor securities decreased from 28.2% to 3.8%, medium risk securities decreased from 48.9% to 23.8% and high risk securities increased from 22.8% to 72.4%.

The net losses over the relevant period in JS's account were

\$3,799.83 and total commissions earned by Balanko were \$702.13.

Accordingly, the Hearing Panel found the transactions in JS's RRSP account between September and November 2004 were not suitable (Count 3) and further that the trades effected during that same period had not been authorized by her (Count 4).

Balanko is not currently registered in the industry.

The Hearing Panel's complete reasons for decision in this matter will be posted to the Association's website www.ida.ca.

Kenneth A. Nason
Association Secretary