IN THE MATTER OF DISCIPLINARY PROCEEDINGS INITIATED
BY THE INVESTMENT DEALERS ASSOCIATION OF CANADA

RE: THOMAS CLARKE

HEARD: January 24, 2007

District Council: The Hon. Joseph W. O’Brien, Chair
Ms. Brigitte Geisler, Member
Mr. Duncan Webb, Member

Appearances: Diana Iannetta,
IDA Enforcement Counsel

Joel Wiesenfeld, Counsel for the
Respondent.

DECISION and REASONS

This Panel accepts the Joint Settlement Agreement recommendations of counsel which were as follows:
The Respondent agrees to the following terms of settlement:

1. The Respondent will be prohibited from approval to act in any registered capacity with a member of the Association for a period of one year, beginning March 1, 2007;

2. Following the one year suspension period, the Respondent will be permitted to resume his employment at Caldwell Securities Inc. in a registered capacity;

3. Following the one year suspension period, the Respondent will be subject to the following restrictions and conditions on his registration:
   
   (i) All trading must have the prior approval of a Director of the Member;
   (ii) Clarke shall only enter the premises of the Member when he is accompanied by another employee of the Member;
   (iii) The CEO of the Member or his designate will monitor the securities in Clarke’s client accounts on a daily and monthly basis;
   (iv) Any client account generating in excess of $1500 per month in commissions will be reviewed by the CEO of the Member or his designate;
   (v) Clarke will only sell packaged products, Investment Management Services, or mutual funds; and
   (vi) Unsolicited orders from clients must have prior approval of the Member.

4. The CEO of the Member or his designate will file a report on a monthly basis with the Association in an agreed upon form which confirms the Member’s compliance with the Restrictions. That report will also confirm whether Clarke, to the Member’s knowledge, is conducting himself in accordance with the Restrictions.

5. Clarke agrees that in the event that he does not conduct himself in accordance with the restrictions that govern his registration and in accordance with good business practices as determined by the CEO of the Member, or his designate, or the Association, he will immediately surrender his registration as a registered representative and will not reapply to be a registered representative.

6. The restrictions and conditions on registration set out in subparagraphs 3 to 5 above will continue to apply for the duration of the Respondent’s registration with the Association;
7. A fine in the amount of $55,000.00; and,

8. Costs in the amount of $10,000.00.

Unless otherwise stated, any monetary penalties and costs imposed upon the Respondent are payable immediately upon the effective date of the Settlement Agreement.

**Background:**

The background of the charges against the Respondent may be summarized as follows:

The Respondent had been a Registered Representative since 1986. The problems leading to this hearing occurred while he was with Caldwell Securities Ltd. He had been with that company from March 1991.

Since the problems were discovered in May 2005, the Respondent has continued in the employ of Caldwell under strict supervision with very significant restrictions including obtaining director’s approval and monitoring of all trades, surrendering his office key, no unaccompanied entry to Caldwell premises, limitations on product which he can sell and prior approval to all unsolicited orders.

During the material time from July 2002 to May 2005, the Respondent had approximately 80 to 100 clients.

The Joint Settlement recommendations included an agreement on factual matters which showed problems relating to misconduct which commenced sometime in 2002. The offences may be summarized as follows:

**Aggravating Factors:**

The Respondent made a total of over 200 unauthorized discretionary trades during the period in question.
His problems commenced with a discretionary sale in which he failed to follow specific trade details and it “got offside”. He then attempted to “trade his way out of it”. The attempt failed. That lead to further problems and he made unauthorized sales to provide cash to finance, and cover up, financial problems which developed from his activities.

When clients discovered problems in their statements, he advised them the statements were mistaken and would be corrected. He later told them there were computer problems. He then attempted to conceal the problems by creating false hold-mail letters and forged written hold-mail authorizations from clients.

When questioned by Caldwell’s compliance department, he made misleading statements to the head of that department. He agrees that he knew that person trusted him and used that trust to deceive her, regarding hold-mail authorizations.

When clients continued their complaints relating to their statements, he told them there were further computer problems and then altered and sent out, false statements to clients.

It is admitted the false account statements and forged authorizations were to conceal unauthorized trades and to conceal the resulting losses.

**Mitigating Factors:**

The Panel agrees with statements made by enforcement counsel at this hearing, that the facts in this matter are similar to many proceedings in which a permanent ban has been imposed on Respondents.

In our deliberations we considered the issue of a permanent ban and accepted enforcement counsel’s submissions that the agreed penalty was sufficient.

The mitigating factors were also important in our consideration on that point. We consider them below.
Apart from this proceeding, there is no other disciplinary record.

It is agreed the Respondent was under extreme personal stress at home and at work. He had been undergoing psychological therapy.

He has admitted the facts and his misconduct outlined above. He has fully co-operated in attempting to resolve financial problems arising from his conduct, both with Caldwell, and with Investment Dealer’s Staff. Caldwell has entered into settlement arrangements with the involved clients. It is believed the total losses will be in the range of $500,000.00. The Respondent has contributed the sum of $368,000.00 toward those settlements. He substantially liquidated his financial holdings and mortgaged his interest in his matrimonial residence to do so.

Since May 2005 when these problems were discovered, he has continued to make financial contributions to Caldwell during the period of his supervised employment.

Mr. Thomas Caldwell, Chairman of Caldwell Securities Ltd., has taken a keen personal interest in the Respondent. Mr. Caldwell appeared voluntarily at this hearing and expressed his interest and support together with his willingness to personally monitor and work with the Respondent in the future. The Panel was impressed with that evidence.

The Panel appreciates the stringent conditions set out in subparagraphs 3 to 5 of the Terms of Settlement set out above.

We agree with comments made by the Panel in Re: Morrison [2004] I.D.A.C.D. No, 63 (Bulletin No.3374, December 23, 2004, at para. 61), that strict and close supervision places a severe onus on both Respondent and his employer. Here, that supervision is to continue during future registration and is a significant element in the punishment imposed. In the Re Morrison decision, the Panel noted the importance of a period of suspension as befitting the violations that were committed. The violations in this matter were even more serious and would normally have attracted a longer period of suspension, however, the mitigating factors and the terms of continued registration had a significant influence on our decision.
We accept submissions made by counsel and are satisfied that the penalty proposed in this matter is appropriate, having regard to all of the circumstances.

DATED at Toronto, this      day of February, 2007.

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The Hon. Joseph W. O’Brien, Chair

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Ms. Brigitte Geisler, Member

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Mr. Duncan Webb, Member