



bulletin



Contact:
Jeffrey Kehoe
Enforcement Counsel,
Enforcement Division
(416) 943-6996

For distribution to relevant parties within your firm

BULLETIN # 2858
July 3, 2001

Discipline

Discipline – Penalties Imposed on Nelson Allen and Robin Moriarty – By-Law 29.1, By-Law 19.5 and Regulation 1300.1(c)

Person
Disciplined

The Ontario District Council of the Investment Dealers Association of Canada has imposed discipline penalties on **Nelson Allen and Robin Moriarty**, at the relevant times Registered Representatives with Essex Capital Management, a Member of the Association.

By-laws,
Regulations,
Policies Violated

By oral decision on June 26, 2001 the District Council found Mr. Allen and Ms. Moriarty guilty of all charges against them, as follows:

Against Mr. Allen:

1. Failed to observe high standards of ethics and conduct in the transaction of his business, engaged in conduct unbecoming to the public interest and was not of good character or business repute, contrary to By-Law 29.1;
 - in misappropriating client funds;
 - in removing client funds from their Essex accounts without authorization (2 counts);
 - in using client funds without authorization to repay an indebtedness to another client, and
 - in failing to deposit funds of two clients to the accounts indicated by the clients, and redirecting the funds to other uses.
2. Refused to attend and give information to the Association with respect to its investigation into his activities and the activities of Essex, as required by By-law 19.5.
3. Failed to ensure two investments recommended to two clients were appropriate for the clients as required by Regulation 1300.1(c).

Against Ms. Moriarty:

1. Failed to observe high standards of ethics and conduct in the transaction of her business, engaged in conduct unbecoming to the public interest and was not of good character or business repute, contrary to By-Law 29.1:
 - in misappropriating client funds (2 counts), and
 - in misrepresenting the nature of an investment to her client.
2. Refused to attend and give information to the Association with respect to its investigation into her activities and the activities of Essex, as required by By-law 19.5.
3. Failed to ensure two investments recommended to two clients were appropriate for the clients as required by Regulation 1300.1(c).

Penalty Assessed The discipline penalties assessed against Mr. Allen are a fine of \$525,000 and a permanent prohibition against receiving approval of the Association in any capacity. He must also pay a portion of the Association's costs of this proceeding in the amount of \$ 40,000.00.

The discipline penalties assessed against Ms. Moriarty are a fine of \$160,000 and a seven-year prohibition against receiving approval of the Association in any capacity. She must also pay a portion of the Association's costs of this proceeding in the amount of \$ 12,000.00.

Summary of Facts

Mr. Allen was the founder of Essex Capital Management and a related unregistered company, Nelbar Financial. Ms. Moriarty was an employee of both Essex and Nelbar Financial. Nelbar Financial was a cover for a pyramid scheme whereby investors were sold what they were told were short term, interest-bearing deposits, called Corporate Investment Certificates, or CICs. Redemptions were funded by subsequent depositors' "investments". Both Mr. Allen and Ms. Moriarty recommended the CIC product to their clients as a safe and low-risk investment, covered by insurance, secured by bank guarantee and asset liens and subject to regulatory oversight. In this manner, they misrepresented the true nature of the investment, and made recommendations, which were not suitable.

In order to pay out one CIC redemption, Allen removed, without authorization, \$30,000 from the Essex account of one client, and \$9500 from another. These sums were journalled into Nelbar's account at Essex and subsequently journalled into the Essex account of the redeeming depositor. Allen also deposited a client cheque for \$60,000 intended for a CIC investment directly to the redeeming depositor's Essex account, and deposited yet another client cheque for \$70,000 directly to the redeeming depositor's Essex account.

In March 1999, the Financial Services Commission of Ontario froze the assets of Essex and Nelbar, and the Association suspended Essex's membership. The pyramid scheme collapsed, and several investors were left with outstanding CIC deposits. One of Mr. Allen's clients purchased a CIC for USD\$273,419.94, on Mr. Allen's recommendation. His deposit remains outstanding.

Allen encouraged another client to mortgage her house and invest the equity in a CIC. She invested \$273,000 of her mortgage proceeds. He also recommended that she use her personal lines of credit to purchase a CIC. She invested \$75,000, the full value of her lines of credit. Shortly before the activities of Essex and Nelbar were frozen by the regulators, he recommended to the same client that she invest a further \$11,000 in Nelbar, accompanying her to the bank to facilitate the withdrawal. After the suspension of Essex's membership, Allen advised the same client that he would be able to secure repayment of the pension funds of her husband, an Essex client, if she paid a further \$45,000. All these deposits remain outstanding.

One of Ms. Moriarty's clients purchased a CIC for \$30,000, on Ms. Moriarty's recommendation. Her deposit remains outstanding.

One of Mr. Allen's clients became eligible to receive \$499,103 in locked-in pension funds. This client, who was near retirement, had very poor investment knowledge and was a trusting family friend. Mr. Allen recommended he roll his pension funds into a locked-in RRSP account at Essex. Mr. Allen quickly set up a share structure for another company he owned, The Essex Group of Companies. The Essex Group was a holding company for Essex Capital Management and four other nascent or non-existent companies. Without authorization, Mr. Allen invested the entire pension monies in The Essex Group, and, on the same day and the following day, transferred all the funds from The Essex Group's account at Essex, into Nelbar's account at Essex. The money has not been recovered.

Ms. Moriarty recommended to a client that she invest in First Interactive Computer College. The client, a single, self-employed woman with conservative investment objectives, purchased \$28,000 worth of convertible preference shares into her RRSP. The shares were offered through private placement and were a speculative investment. The investment was not suitable for the client.

Kenneth A. Nason
Association Secretary