



INVESTMENT DEALERS
ASSOCIATION OF CANADA

bulletin



ASSOCIATION CANADIENNE DES
COURTIERS EN VALEURS MOBILIÈRES

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For distribution to relevant parties within your firm

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Discipline

Discipline Penalties Imposed on Gaston English and Resolution Capital Inc.– Violations of By-laws 17.2, 17.2A and 29.1, Regulations 200.1, 1300.1 and 1300.2 and Policies No. 2 and No. 3

Person
disciplined

The Québec District Council of the Investment Dealers Association of Canada (the “Association”) has imposed discipline penalties on Resolution Capital Inc. (formerly Montreal Bonds Inc.), a Member firm of the Association, and Gaston English who, at all material times, was the President, Secretary, Chief Executive Officer, Sales Manager, Ultimate Designated Person and Registered Representative of Resolution Capital Inc.

By-laws,
Regulations and
Policies Violated

Following a disciplinary hearing lasting several days which was held from November 2002 to January 2003, and a hearing on penalties held on May 6, 2003, the Québec District Council decided that Gaston English and Resolution Capital Inc. had committed numerous violations of the By-laws, Regulations and Policies of the Association during the period from September 1996 to March 1998.

Gaston English was found guilty of 43 violations, namely:

- On the instructions of a third party, he executed a trade on behalf of an Indonesian resident before an account was opened in the name of that client (violation no. 4);
- By opening client accounts on behalf of five (5) Indonesian residents at the request of a third party and without having communicated with the clients, he failed to use due diligence to learn the essential facts relative to each client and to the acceptance of each account, (violations no. 1, 8, 14, 20 and 26); he failed to complete a new account form for each of them containing the minimum prescribed information (violations no. 2, 9, 15, 21, 27); he failed to obtain valid written powers of attorney authorizing a third party to give trading instructions for these accounts (violations no. 5, 11, 17, 23, 29) and by agreeing to sell a

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significant number of securities in these accounts, at the request of an insider of the issuer of the securities in question, he failed to use due diligence to ensure that the acceptance of these orders was within the bounds of good business practice (violations no. 6,12, 18, 24 and 30);

- He opened accounts in the names of two (2) corporate entities without having completed a new account form containing the minimum prescribed information and without having obtained a certified true copy of a resolution of each of the said corporations authorizing the opening of an account and he agreed to execute trades in the accounts, upon the instructions of a third party, without first having obtained a resolution from each of the corporations authorizing the third party to place orders on those accounts (violations no. 41, 42, 44, 46, 47 and 49);
- He opened an account in the name of a charitable foundation, on the instructions of a third party, without having obtained a certified true copy of a resolution of the directors of the foundation authorizing the opening of the account and a resolution enabling specifically designated persons to deal with the account (violations no. 51 and 52);
- By signing in his capacity as the person responsible for supervising the opening of accounts, he approved the opening of seven (7) client accounts for which he himself, as registered representative, had incorrectly completed the new account forms (violations no. 3, 10, 16, 22, 28, 43 and 48);
- He accepted instructions from a third party to transfer assets held in the accounts of two (2) clients into other accounts, without first having obtained a valid power of attorney for such purpose (violations no. 35 and 39);
- He failed to ensure that monthly statements of account containing all the prescribed information were produced for the accounts of several clients (violation no. 7);
- He opened accounts in the names of three (3) corporate entities having their place of business in the province of Alberta, two (2) individuals residing in the province of Alberta and five (5) individuals residing in Indonesia, although he did not hold any registration authorizing him to carry on activities in such jurisdictions (violation no. 56);
- At the request of an insider, he allowed securities to be deposited in the name of Resolution Capital Inc. at General Trust and partially withdrawn the same day to settle the sale of the said securities in the accounts of the insider's two sons held with the Member, he allowed an additional number of securities to be deposited therein and then withdrawn for delivery to the said insider and he allowed securities to be held therein on behalf of a foundation, without the corresponding entries being made in the Member's books and records (violations no. 57, 58 and 59).

Resolution Capital Inc. was found guilty of the following violations:

- It failed to use due diligence to learn the essential facts relative to accounts accepted for five (5) clients (violation no. 1), it allowed accounts for seven (7) clients to be opened without sufficient documentation (violation no. 2) and it failed to establish adequate procedures to supervise the opening of client accounts by allowing the opening of these accounts to be approved and ratified by the person who had opened these accounts in an inappropriate manner (violation no. 3);
- It failed to use due diligence to ensure that the acceptance of orders by Gaston English for the accounts of seven (7) clients was within the bounds of good business practice (violation no. 4) and to ensure that the handling of client business by Gaston English for ten (10) clients was within the bounds of ethical conduct, consistent with just and equitable principles of trade and not detrimental to the interests of the securities industry (violation no. 5);
- It failed to maintain at all times a proper system of books and records relating to client accounts and to trading activity within those accounts (violation no. 6);
- It engaged in business conduct which is unbecoming in that, at the request of an insider, it allowed securities to be held in the name of Resolution Capital Inc. at General Trust, without any counterparty being recorded in its books and, without the corresponding entries being made in the appropriate records, it then allowed part of the said securities to be withdrawn to settle the sale of the said securities in the accounts of the insider's two sons held with Resolution Capital Inc., it allowed securities to be received in that account and then withdrawn for delivery to a third party and it allowed the remaining securities to be held therein in the name of Resolution Capital Inc. (violations no. 7, 8 and 9);
- While it did not hold any registration as a dealer in such jurisdictions, it allowed its representative, who was also not authorized in such jurisdictions, to open accounts with the respondent in the names of three corporate clients having their places of business in the province of Alberta, two individuals residing in the province of Alberta and five individuals residing in Indonesia and to make trades in such accounts (violation no. 10);
- It allowed its representative, acting on the instructions of a third party, to execute a trade in the name of an Indonesian resident, without an account being open in that name (violation no. 12);
- It failed to produce, for the accounts of nine (9) clients, monthly statements of account containing all of the prescribed information and it completely failed to produce such statements for the account of a foundation (violations no. 13 and 14).

Penalties
Assessed

The discipline penalties assessed jointly against **Gaston English and Resolution Capital Inc.** consist of an aggregate fine of \$100,000, apportioned equally among the two respondents, namely \$50,000 each.

The following penalties were also assessed on:

Gaston English:

- the requirement to successfully re-write and pass the examination based on the Conduct and Practices Handbook Course as a condition for maintaining his registration as a registered representative of a Member firm;
- the requirement to successfully re-write the Partners, Directors and Senior Officers Qualifying Examination as a condition for continuing to perform any duties as the person responsible for approving and supervising accounts;

Resolution Capital Inc.:

- the obligation to comply with the following three requirements as a condition for Resolution Capital Inc. carrying on retail account activities, in order to ensure that it maintains adequate supervision and internal control procedures and practices and in order to prevent the occurrence of similar violations:
 - appoint a second person in charge of reviewing the opening of client accounts;
 - no person having opened an account in his or her capacity as a representative shall approve the opening of the account in his or her management capacity;
 - as regards internal controls, it shall ensure that monthly statements of account are issued for all client accounts, in accordance with the requirements prescribed by the Association's by-laws and regulations and by securities legislation.

Gaston English and Resolution Capital Inc. shall each be required to pay, in equal shares, a portion of the Association's costs in this matter, namely \$44,000.

In rendering its decision on the penalties, the District Council indicated that it had weighed various relevant factors in determining the penalties which it considered in light of the particular facts of this case.

In addition, it considered that a penalty assessed against one of the respondents would have an impact on the other, given that Resolution Capital Inc. is a corporation controlled by Gaston English. It also considered the impact of the fine on the financial situation of the Member. As regards the order to pay the costs, the District Council took the time elapsed into account.

The respondents took steps to have the decision of the Québec District Council reviewed by the Commission des valeurs mobilières du Québec.

Summary of
Facts

The accounts opened and the trades contemplated in the violations related to retail transactions, activity which the Member does not usually engage in given that it specializes, instead, in bond trading for an institutional clientele.

Gaston English agreed to open these retail accounts and execute retail transactions therein at the request of a former business colleague, David Walsh, who was then president of Bre-X Minerals Inc.

While the relevant facts all relate directly or indirectly to Bre-X, they occurred before the events which led to a scandal in the matter of Bre-X became known a few months later. The violations alleged against Gaston English and Resolution Capital Inc. are not founded on any allegation of participation by either of them in these events, nor on any allegation of participation by them in any market manipulation.

The facts alleged, upon which the violations alleged against Gaston English and Resolution Capital Inc. are based, can be summarized as follows:

On September 9, 1996, Gaston English opened an account in the name of Bre-X Minerals Inc. ("Bre-X") and another account in the name of Bresea Resources Ltd. ("Bresea") on the instructions of David Walsh, the president of these two corporations, without having obtained a true copy of a resolution of each of the corporations authorizing the opening of these accounts with Resolution Capital or a resolution designating an authorized person to give trading instructions in those accounts.

The new account forms for these accounts were filled out in a very incomplete manner by Gaston English who omitted several important items of information. That same day, he himself approved the opening of these accounts, as the senior officer responsible for supervising the opening of client accounts.

David Walsh also asked Gaston English to proceed with the sale of Bre-X shares on behalf of five Indonesian residents who were employees of Bre-X in Indonesia, pursuant to their exercise of options on those securities.

As of September 13, 1996, based upon these instructions, Gaston English proceeded with the sale of 25,000 Bre-X shares on behalf of one of the Indonesians for a total amount of \$646,399.88, before even having opened an account for that client.

On September 16, 1996, he opened an account in the name of each of the five Indonesians, some of whom were insiders of Bre-X, based solely on information obtained from David Walsh and without having had any communications with the clients.

As regards each of them, he filled out a new account form in a very incomplete manner by omitting several important items of information. In addition, he failed to indicate whether persons other than the clients had trading authorizations in their accounts, guaranteed the accounts or had a financial interest in the accounts and he failed to answer the questions relating to insider information. Moreover, he indicated their investment knowledge, their investment objectives and their risk tolerance, although he had not checked with the clients at all.

He himself approved the opening of these accounts, as the senior officer responsible for supervising the opening of client accounts.

Thereafter, on the instructions of David Walsh, Gaston English proceeded with the sale of 150,000 Bre-X shares in the accounts of four Indonesians for a total amount of \$3,713,849.40.

The statements of account issued during the relevant period for the Indonesians' accounts did not contain any reference to the transfer of funds which occurred in these accounts nor did they indicate how the proceeds of disposition of the Bre-X shares had been distributed.

On November 18, 1996, the controller for Bre-X Minerals and Bresea Resources Ltd. sent Montreal Trust an order to issue two Bresea Resources share certificates in the name of Resolution Capital Inc. (then Montreal Bonds Inc.) for a total of 1,663,670 shares, stating that these shares were being issued pursuant to the exercise of options by David Walsh's two sons.

Gaston English opened accounts in the names of David Walsh's two sons and between November 21 and 27, 1996 he proceeded to sell 328,670 Bre-X shares in those accounts for a total amount of \$4,468,198.40.

On November 28, 1996, the two Bresea share certificates registered in the name of Resolution Capital Inc (then Montreal Bonds Inc.) for a total of 1,663,670 shares were transmitted to it by Montreal Trust. These shares were deposited in an account opened with General Trust in the name of Resolution Capital Inc., without any consideration being recorded in its books.

That same day, 328,670 of those shares were withdrawn from the account in order to settle the sales made between November 21 and 27 in the accounts of the two sons held at Resolution Capital Inc., without the corresponding entries being made in the books and records of Resolution Capital Inc.

On the instructions of the controller of Bresea Resources, namely a third party with no trading authority over the accounts of David Walsh's two sons, Gaston English transferred sums amounting to \$2,266,750.00 from the accounts of the two sons to accounts opened with another broker in the name of Bresea and sums amounting to \$2,201,448.00 to accounts opened in their name with another broker.

The statements of account issued by Resolution Capital for the relevant period do not contain any entries for these transfers of funds in the accounts of the two sons.

On December 2, 1996, without any counterparty being recorded in the books of Resolution Capital Inc., 1,100,000 other shares of Bresea were deposited with General Trust in the name of Resolution Capital and then withdrawn a few days later in the form of bearer certificates for delivery to David Walsh through a messenger designated by him.

As of that date and until 1998, a balance of 1,335,000 Bresea shares was still being held at General Trust in the name of Resolution Capital Inc., without any counterparty being recorded in its books and without any entry indicating the identity of the clients for whom these securities were being held.

None of the monthly statements of account issued for the accounts of David Walsh's two sons during the relevant period mentioned that Bresea shares were being held on their behalf by Resolution Capital Inc. at General Trust.

On December 12, 1996, on the instructions of David Walsh, Gaston English agreed to execute trades in the accounts of Bre-X and Bresea, without having valid written authorizations for such purposes and without having indicated on the new account forms for the said accounts which persons had been duly authorized to give trading instructions for those accounts.

On or about December 27, 1996, on the instructions of David Walsh, Gaston English also opened an account in the name of a charitable foundation. He opened the account without having obtained a certified true copy of a resolution of the directors of the foundation authorizing the opening of the account with Resolution Capital Inc. and a valid power of attorney appointing an authorized person to give trading instructions for the account. Resolution Capital Inc. did not issue any statements of account for this account.

On April 2, 1998, an account was opened at General Trust in the name of the foundation and the 1,335,000 shares of Bresea which, until then, had been held at General Trust in the name of Resolution Capital Inc. were transferred to that account.

The books and records of Resolution Capital Inc. do not indicate at all when or how the ownership of the securities initially received pursuant to the exercise of options by David Walsh's two sons and deposited at General Trust in the name of Resolution Capital Inc. was transferred to the foundation.

Gaston English is currently registered as an employee of Resolution Capital Inc. and no longer engages in any retail activities.

Kenneth A. Nason
Association Secretary