INVESTMENT DEALERS ASSOCIATION OF CANADA

bulletin

ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

Contact:
Paul Smith
Enforcement Counsel
(604) 331-4764

For distribution to relevant parties within your firm

BULLETIN #3337
October 1, 2004

Discipline

Discipline Penalties Imposed on Steven Nizam Khan – Violation of By-law 29.1.

Person Disciplined

The Pacific District Council of the Investment Dealers Association of Canada (the "Association") has imposed discipline penalties on Steven Nizam Khan, at all material times the CEO of IPO Capital Corp. ("IPO"), a member of the Association and working at the firm's Vancouver Branch.

By-laws, Regulations, Policies Violated

On August 10, 2004, the Pacific District Council considered, reviewed and accepted a Settlement Agreement negotiated between Mr. Khan and Association Staff. Pursuant to the Settlement Agreement, Mr. Khan admitted that:

He acted contrary to Association By-law 29.1 between March 16, 1999 and June 3, 1999, by failing to prohibit one of IPO's registered representatives Alan Bruce Alexander Thomson ("Thomson") from selling Debtor Certificates of Value Software Corporation to IPO clients when he knew, or ought to have known, that Thomson, the only person doing due diligence on the Debtor Certificates, was not qualified to conduct proper due diligence with respect to the investment.

Penalty Assessed

The penalties assessed against Mr. Khan are:

(a) a fine in the amount of $8,000; and
(b) a condition of any re-approval by the Association that the fine and costs herein be paid.

Mr. Khan is also required to pay $2,000.00 towards the Association's costs of this matter.

Summary of Facts

Overview

This matter relates to the period from March 16, 1999 to June 3, 1999 (the "Relevant Period") when Mr. Khan was the Chairman and Chief Executive Officer ("CEO") of IPO, a Member firm with an office in Vancouver which has since given notice of its intention to resign its membership in the Association.

Alan Bruce Alexander Thomson ("Thomson") was a Registered Representative ("RR") at IPO and John Frederick Brighten ("Brighten") was IPO's Executive Vice-President, Branch Manager, Compliance Manager and Ultimate Designated Person ("UDP").

The Debtor Certificates

On March 16, 1999, the United States Bankruptcy Court for the District of Nevada (the "Bankruptcy Court") made an Order Authorizing the Incurring of Debt (the "Authorizing Order") by a Nevada corporation, Value Software Inc. ("Value") that was in a voluntary proceeding for reorganization under Chapter 11 of the Bankruptcy Code in the United States.

The Authorizing Order enabled Value to incur debt pursuant to Class A and Class B Debtor Certificates (the "Debtor Certificates") to fund operations and comply with terms of a merger with AutoFinance Companies of America Inc. ("AutoFinance") which formed the basis of Value's plan of reorganization (the "Plan").

The Bankruptcy Court further ordered that the Debtor Certificates be in a required form that stated, "Pursuant to the Order, the sums will be held in a segregated account at the Law Offices of Alan R. Smith."

Opportunity Presented to Thomson

James W. Wolff ("Wolff") was a promoter who resided in Florida. He was discharged from personal bankruptcy in 1997. Wolff was President and CEO of his own company First Internet Capital ("FI Capital") a Florida based Internet Marketing and Consulting company formed in 1997 to assist issuers in "going public". Among a number of other credentials, Wolff claimed to have previously been a financial advisor to Ferdinand Marcos and the family of the Shah of Iran as well as having been Ross Perot's banker.

Wolff knew Ron Tremblay ("Tremblay"), another RR at IPO, through previous unspecified business dealings.

In March, 1999, Tremblay received a letter from Wolff ("Wolff's Letter"), and presented it to Thomson as an opportunity for each of them to "get some business going." Wolff's Letter promoted investment in the Debtor Certificates. It represented the following:

> AutoFinance was a privately owned, Florida company that financed automotive instalment sales contracts. Value, was a "shell" company. It had no assets but was listed on the Over The Counter Bulletin Board ("OTCBB"). It was subject to Bankruptcy proceedings in the Bankruptcy Court.

AutoFinance had agreed to be acquired by Value by way of a reverse merger, in order to obtain Value's listing on the OTCBB. The surviving company would then change its name to AutoFinance.

FI Capital was hired to help the companies raise capital from public investors in the form of US $1,000,000 worth of Debtor Certificates. The money raised would to cover the costs of closing the transaction and provide additional start up capital.

All money raised and commissions would be held in an interest bearing segregated trust account until the Plan was confirmed by Value's shareholders and creditors, which said approval was expected on or before April 1, 1999 and which was said to be "100% assured."

The Debtor Certificates would bear interest until they could be exchanged for "free trading" shares of the new company.

Brokers who sold the Debtor Certificates earned a 10% commission.

Investors could "make 2, 4, 6, or 8 times (their) money in a few weeks."

"Anyone (US. Foreign, an Accredited or Non-Accredited)" could invest.

An original offering prospectus was prepared sometime in or about 1997 and was available for inspection, however, there was a "material change" since then.

What Khan Knew

While it was not part of Mr. Khan's general duties and responsibilities to oversee any particular investment, including Thomson's proposal concerning the Debtor Certificates, in the spring of 1999, Thomson was under supervision by IPO because of performance related issues. Sometime between March 23, 1999 and April 13, 1999, Thomson advised Mr. Khan, that he was marketing the Debtor Certificates to his clients. The proposal was then referred to IPO's Corporate Finance Manager, Paul Wiebe ("Wiebe"). Wiebe advised Mr. Khan that the Debtor Certificate financing was a "high-risk venture".

After discussing the proposal with Brighten, Mr. Khan advised Thomson that while IPO would not sponsor the Debtor Certificate private placement, he could sell it to IPO clients provided that they were sophisticated, aware of the risk involved, and willing to instruct IPO to forward funds on their behalf. Mr. Khan advised Thomson to consult with Wiebe to ensure IPO was properly compensated.

Mr. Khan and Brighten allowed Thomson to sell the Debtor Certificates in this type of non-brokered private placement. This non – broker sponsored deal arrangement was different from a broker-sponsored deal whereby the Member firm reviewed the project and decided to vet and sponsor the deal and therefore received an extra financing commission for its work.

In meetings and in a series of four memoranda, from April 13 - 27, 1999, Thomson kept Brighten and Mr. Khan advised of his performance generally. These reports included references to his marketing the Debtor Certificates to existing and prospective IPO clients.

In an April 13, 1999 memo to Mr. Khan, which was copied to Brighten, Thomson indicated that he was working with Tremblay and Wolff "to put together a due diligence package and develop a Subscription Agreement complete with Term Sheet" to facilitate sales of the Debtor Certificates, which he was marketing to his clients. Thomson also advised that the Debtor Certificates could be "marketed in any jurisdiction and without a securities license" and enclosed a sales forecast that indicated that potential subscribers would invest a total of $130,500.

After Mr. Khan and Brighten discussed the Debtor Certificates, Brighten, in a memo dated April 19, 2003, advised Thomson that IPO would "not be doing any due diligence or research of this project" and instructed Thomson to ensure IPO's name did "not appear in any of the materials used by Value/AutoFinance to present the deal." Brighten did, however, authorize Thomson to sell the Debtor Certificates to IPO clients by writing in the memo, "Your solicitations of expressions of interest should be based only on the material provided by the issuers and your subscribers must base their decisions on that material."

In an April 19, 1999 memorandum to Mr. Khan, which was copied to Brighten, Thomson updated his total sales forecast to $339,300 and advised that the sales would close on April 30, 1999.

In a subsequent memorandum to Mr. Khan which was copied to Brighten, also dated April 27, 1999, Thomson revised his total sales forecast to $670,800. Thomson also advised that, pursuant to Brighten's request, he spoke with Wiebe about using the "finder's fee approach to getting paid" which was the normal procedure for a brokerage firm's remuneration in a non-brokered private placement.

Sales to IPO Clients

Thomson solicited interest in the Debtor Certificates by presenting clients with a 6 page Fact Sheet (the "Fact Sheet") that was prepared by Wolff and included much of the same information originally presented in Wolff's letter. The Fact Sheet represented that:

> The Bankruptcy Court had approved the Plan.
>
> The Debtor Certificates were exempt from security laws and rules and could be sold and purchased by anyone.
>
> Prior to their conversion feature, the Debtor Certificates carried a two-year maturity with a 10% per annum rate of return.
>
> Value had not filed reports, with the "SEC", on a timely basis since 1996.
>
> Upon confirmation of the Plan, the Debtor Certificates could be converted into free-trading common shares.

> Until confirmation of the Plan, funds would be held in a segregated interest bearing account, earning interest at applicable market rates of interest.
>
> In the event that the Plan was not confirmed prior to April 30, 1999, the Debtor would repay the Debtor Certificate holders from the segregated funds.

Thomson solicited and raised US $172,000 from fourteen (14) IPO clients.

Clients purchased the Debtor Certificates by signing a Subscription Agreement that identified Florida lawyer Gerald D'Ambrosio ("D'Ambrosio") as the "Attorney-in-Fact" for both AutoFinance and Value and included wire instructions specifying that funds should be sent to him.

Between April 30, 1999 and May 31, 1999, Thomson drafted memoranda (the "Client Memoranda") that clients signed to authorize IPO to withdraw money from their accounts to pay for the Debtor Certificates. The Client Memoranda stated the money would be paid to D'Ambrosio, In-Trust.

Nine Client Memoranda were drafted on IPO letterhead that listed the regulatory bodies of which IPO was a Member, including the Association.

On May 31, 1999, Thomson instructed Brighten's Assistant, Shannon Obara ("Obara"), to wire the client's funds to:

> First Union National Bank of Florida
> Jacksonville, Florida
> ABA 06000021
> Gerald J. D'Ambrosio
> Attorney-Law Trust Account
> Account Number: 2656302865722

On June 1, 1999, IPO wired the client's funds, to D'Ambrosio at the above-noted account number.

The wire instructions on the Subscription Agreement; the instructions on the Client Memoranda; Thomson's instructions to Obara; and IPO's wire to D'Ambrosio were all contrary to the Authorizing Order from the Bankruptcy Court which stated, that the money was to "be held in a segregated account at the Law Offices of Alan R. Smith."

On June 2, 1999, Thomson's employment at IPO was terminated by IPO because he failed to meet internal sales targets and was actively soliciting offers of employment from other firms while employed by IPO.

On June 3, 1999, Brighten wrote Wolff requesting payment of commissions to IPO because he was concerned that commissions would be paid directly to Thomson who by then was no longer employed at IPO.

Thomson earned a 50% commission split while employed at IPO. As a result, Thomson and IPO would have each received US $8,600 in commissions on his sales through IPO. Ultimately no commissions were paid.

Plan Not Confirmed

Contrary to the guarantees contained in Wolff's Letter and the Fact Sheet, the Bankruptcy Court had not approved the Plan.

On or about June 29, 1999, the Bankruptcy Court asked for additional evidence of feasibility before confirming the Plan. AutoFinance provided bank statements (the "Bank Statements") that showed the company had a very substantial bank balance over the previous 12 months, usually in excess of $ 1 Million dollars.

Thomson had previously given the Bank Statements to investors who were looking for further information on the Debtor Certificates.

The United States Securities and Exchange Commission (the "SEC"), who had intervened in the case before the Bankruptcy Court, reviewed the Bank Statements and determined they had been falsified.

Value later discovered, in or about July 1999, that AutoFinance had essentially been closed for some time, had no money and that the entire AutoFinance business was a scam. As a result, Value withdrew the Plan at the next confirmation hearing in Bankruptcy Court on August 13, 1999.

After the Plan was withdrawn, the use to which the money raised by the Debtor Certificates was to be applied no longer existed. On August 13, 1999 the Bankruptcy Court ordered D'Ambrosio to hold the money raised in his trust account and not to do anything with it.

On or about September 30, 1999, the Bankruptcy Court ordered D'Ambrosio to turnover and account for all funds held in his trust account and under his control, evidenced by the Debtor Certificates. D'Ambrosio was unable to comply with the order of the Bankruptcy Court because he had previously disbursed the funds. It is unclear whether D'Ambrosio, who was the Registered Agent for Wolff's company FI Capital, deliberately orchestrated a scam and misappropriated the money. The money was not, however returned to the investors who purchased the Debtor Certificates from Thomson.

On or about March 20, 2000, Thomson filed a 'Complaint of Fraud' against D'Ambrosio with the Department of Lawyer Regulation of the Florida State Bar. The Florida State Bar filed a formal complaint against D'Ambrosio in the Supreme Court of Florida on August 2, 2001. D'Ambrosio filed a Conditional Admission and Consent to Sanction voluntarily resolving the matter.

On January 2, 2002, a Referee of the Supreme Court of Florida found D'Ambrosio acted intentionally and ordered him to provide each of the contributing investors the option, in writing, to continue with the investment or to receive a full refund of their contribution.

In or about the second half of 2002, more than three years after they initially subscribed to the Debtor Certificates, some of the investors received approximately 3/4 of the original amount they invested back from D'Ambrosio without interest. It is unclear

exactly how much money was repaid to the investors and whether all of the investors were reimbursed by D'Ambrosio.

No Due Diligence

Notwithstanding, any statement in Wolff's letter or the Fact Sheet, the Debtor Certificates were *securities* as defined by the *British Columbia Securities Act* (the "Act").

Neither AutoFinance nor Value was ever a reporting issuer in British Columbia.

Thomson did not conduct any reasonable or appropriate due diligence into the legality, validity, structure or risk involved with the Debtor Certificates. He assumed it was a good investment for his clients only because Tremblay endorsed Wolff who appeared to have an impressive resume. Thomson did not perform any checks on Wolff or verify any of his alleged credentials.

Mr. Khan and Brighten allowed Thomson to sell the Debtor Certificates to IPO clients with Thomson conducting his own due diligence when they knew, or ought to have known that Thomson had no experience with bankruptcy reorganizations or reverse takeovers and that he was not qualified to do either.

Discipline History and Current Registration

Mr. Khan has not been registered in any capacity since April 2003 and has not previously been subject to any disciplinary proceedings by the Association.

Kenneth A. Nason
Association Secretary