

Penalty against Stanhiser too light, lawyer says

By DAVID BAINES

A Vancouver lawyer says a \$25,000 penalty levied against a broker who acted as a conduit for an illegal investment scheme perpetrated by former Seventh Day Adventist pastor Gary Stanhiser is too light.

"It's a slap on the wrist based on the size of the scheme, the amounts involved and the obvious breaches of the act that were perpetrated," David Church said in an interview.

"The guy's supposed to be an experienced broker, there's millions lost on this scheme and he doesn't even get a suspension."

Church recently filed a lawsuit against the broker, John Johnston, and his firm, Canaccord Capital

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More than \$11 million lost by 300 investors

Corp., alleging they knew or ought to have known they were aiding an illegal scheme.

The lawsuit was filed under the Class Proceedings Act, and seeks to represent all Canaccord clients who lost money in the scheme.

From 1995 to 1997, Stanhiser recruited about 300 investors to lend millions of dollars to his offshore companies.

Those companies were supposed to use the money to buy large blocks of shares in junior companies on their behalf. In many cases, investors did not receive any shares. In some cases, they received shares, but the value of those shares quickly plummeted.

In all, they lost more than \$11 million.

In March, the B.C. Securities Commission banned Stanhiser from the B.C. stock market for life and fined him \$100,000. Stanhiser, who resides in California, did not attend the hearing and, to date, has not paid a cent.

Canaccord signed a settlement agreement stating that it did not knowingly participate in Stanhiser's scheme, but admitted it failed to properly supervise its employees or question the transactions being made by Stanhiser and his companies.

It agreed to pay a \$300,000 penalty, \$45,000 in costs and disgorge \$83,000 in fees and commissions.

Johnston also signed an agreement acknowledging that he opened accounts and acted as investment advisor for about 140 clients, and for Stanhiser and his companies.

Then he accepted deposits from his clients and, upon their instructions, transferred the proceeds to Stanhiser's companies where they were pooled and used to buy stock.

He also personally invested in the scheme and assisted in the distribution of shares and warrants.

Under B.C. securities law, people who invest less than \$97,000 must be provided a prospectus or, at the very least, an offering memorandum (an abbreviated prospectus which is filed with, but not reviewed by, the commission).

In most cases, investors invested less than \$97,000, but were not provided with either a prospectus or offering memorandum.

Securities laws also stipulate that issuers — in this case, Stanhiser and his companies — must be registered to sell stock. However, they were not registered in any capacity.

Johnston said he "failed to understand that the scheme was illegal" and therefore "failed to advise the individual investors that they were investing in an illegal scheme" or "to determine



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JOHN JOHNSTON: "Failed to understand scheme was illegal."

the suitability of the proposed purchase of securities by those clients."

As a mitigating circumstance, the commission noted that Johnston did not attempt to conceal the scheme from his employer. Also, he did not actively promote the sale of shares to his clients.

(Unstated is the fact that Johnston addressed sales seminars held by Stanhiser and hosted one at Canaccord's office.)

Johnston agreed to pay a \$20,000 penalty, \$5,000 in costs and disgorge \$77,000 in commissions.

Church noted that the commissions are not returned to investors, but rather accrue to the Investor Education Fund run by the B.C. Securities Commission.

He said the \$25,000 in penalties and costs are not sufficient to deter brokers from getting involved in such schemes: "Regulatory penalties don't work if they are merely a cost of doing business."

He said Johnston is an experienced broker — he is a 19-year veteran — and should have realized the scheme was illegal.

He said brokers are required to act as gatekeepers to screen out illegal deals, to know their client and the investment that the client is making, and to ensure that proper forms are filed with the securities commission disclosing the investments.

He said these rules are fundamental to the securities industry, but Johnston failed on all counts.

Commission executive director Steve Wilson, who signed the settlements on behalf of the commission, said there was "no concrete evidence" that Canaccord or Johnston knowingly participated in an illegal scheme.

"Clearly they were conduits, that's what we nailed them for. They should have known better."

dbaines@pacpress.southam.ca

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