



Founded 1879

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

IN THE MATTER OF:

CHARGES AGAINST HOWARD F.
KORNBLUM, CA, A MEMBER OF THE
INSTITUTE, BEFORE THE DISCIPLINE
COMMITTEE

DISCIPLINE COMMITTEE - ICAO

HOWARD F. KORNBLUM

1 FILED MAY 28 2008
ADW

SETTLEMENT AGREEMENT

*made pursuant to Bylaw 510 (7.1) of the Bylaws of the
Institute of Chartered Accountants of Ontario*

Introduction

1. The Professional Conduct Committee, at their meeting of March 27, 2007, approved draft charges against Howard F. Kornblum, CA ("Kornblum") (Tab 1).
2. The charges pertain to professional work done by Kornblum with respect to the audit of financial statements of Buckingham Securities Corporation ("Buckingham") for the years ended March 31, 1999 (Tab 2) and March 31, 2000 (Tab 3).
3. The charges also pertain to professional work done by Kornblum with respect to the audit of Form 9 financial statements prepared by Buckingham, certified as "...true and correct..." by its President and Director and filed with the Ontario Securities Commission (Tab 4 & 5).
4. The Professional Conduct Committee and Kornblum (on his own behalf and not on behalf of Miller Bernstein & Partners LLP ("Miller Bernstein")) agree with the facts and conclusions set out in this settlement agreement for the purpose of this proceeding and this proceeding only, and further agree that this agreement of facts and conclusions is without prejudice to Kornblum and Miller Bernstein in any other proceedings of any kind, including, but without limiting the generality of the foregoing, any civil or other proceedings which have been or may be brought by any other

person, corporation, receiver/trustee, regulatory body or agency. For the purposes of this paragraph reference to Miller Bernstein also includes the partners and successors.

Background

5. Buckingham was incorporated pursuant to the laws of Ontario. Buckingham was registered under Ontario Securities law as a security dealer during the period from March 17, 1997 to July 6, 2001.
6. Kornblum is a partner with the accounting firm Miller Bernstein. In December 1996, Buckingham appointed Miller Bernstein as the firm's auditor. Kornblum was the engagement partner responsible for the audit.
7. Kornblum was engaged to make an examination of the annual financial statements and other regulatory filings of Buckingham, in accordance with generally accepted auditing standards, and to prepare a report on the financial affairs of Buckingham in accordance with professional accounting standards.
8. Kornblum signed and released the audit opinions attached to the audited financial statements of Buckingham for the years ended March 31, 1999 (Tab 2) and March 31, 2000 (Tab 3). The audit opinions were based on information provided by Buckingham and its President and Director and certified by them to be correct. Buckingham was the only securities dealer audited by Kornblum and the only securities dealer audited by Miller Bernstein up to this point and during the material period.

Charges 1 & 3**The Audit of the Financial Statements of Buckingham Securities Corporation for the Years Ended March 31, 1999 and March 31, 2000****The 1999 Audit of Buckingham Securities - Report Dated June 22, 1999 (Tab 2)**

9. Kornblum signed the auditors' report (Tab 2) and caused to be released the financial statements attached to that report.
10. Materiality was calculated by Kornblum to be in the amount of \$25,000 for 1999 and \$50,000 for 2000.

Charge 1 a) and b)

11. The audit working paper file contains a number of positive confirmation forms that had been signed by clients, but they do not indicate the amounts of the account to be confirmed. Examples are found at (Tab 6). Some of the confirmations indicated discrepancies or did not indicate if the statement was correct or incorrect. Kornblum failed to evaluate whether the confirmations provided a level of audit assurance required regarding the financial statement assertions being audited (*CICA Handbook Section 5303.25*).

Charge 1 c)

12. The cash and short-term deposit account includes a balance of \$26,885.59 for which there is no confirmation as at March 31, 1999. The working papers contain a photocopy of a Scotia Bank redeemable guaranteed investment certificate showing an issue date of February 1, 1999 with a maturity date of March 3, 1999 and value on maturity of \$26,885.59 (Tab 7). Confirmation of the amount was not obtained from Scotia Bank. Such confirmation was required in order to conform with the (*CICA Handbook Section 5303.01*).

Charge 1 d)

13. The only evidence in the working paper file with respect to subordinated debt in the amount of \$804,637 is a photocopy of an undated promissory note for \$20,000, which is stated to be subordinated, and a promissory note dated March 24, 1999 for \$300,000 USD (\$444,000 CAD), which is stated to be subordinated (Tab 8).
14. In order to comply with generally accepted audit standards and (*CICA Handbook Section 5303*) confirmation of the subordinated amounts should have been obtained from the creditors.

Charge 1 f)

15. Kornblum did not obtain written representations from management regarding illegal and possibly illegal acts as required by (*CICA Handbook Section 5136.21*) (Tab 9).

Charge 1 g)

16. Kornblum failed to ensure that the financial statements disclosed tax losses, timing differences and the tax benefit resulting from loss carry-forward as required by (*CICA Handbook Section 3470.54 and .56*)

Charge 1 h)

17. Kornblum failed to retain sufficient appropriate documentation to support the audit procedures carried out. More specifically, there is no documentation on file for procedures, which Kornblum had carried out with respect to *advances* - \$90,737. This was included in the item "Sundry receivables and prepaid expenses" shown on the balance sheet.
18. There was no audit evidence to support marketable securities at \$444,000, commissions \$870,082, processing fees revenue \$45,265 and interest income \$164,012.

19. There was a failure to document the audit work done with respect to foreign exchange revenue \$91,236, occupancy expense \$170,189, data processing services expense \$55,605 and telecommunications expense \$55,606.
20. In accordance with the audit plan Kornblum placed reliance on the service organization's auditors' report on control procedures. This reliance was misplaced in view of the fact that the opinion in that report relates only to the controls as at May 20, 1999 and it does not provide the audit evidence as to the existence of the controls throughout the year ended March 31, 1999 as required by (CICA Handbook Section 5310.).

The 2000 Audit of Buckingham Securities - Report Dated June 8, 2000

21. Kornblum signed the auditors' report (Tab 3) and caused to be released to Buckingham the financial statements attached to that report.

Charge 3 a) and b)

22. The audit working paper file contains a number of positive confirmation forms that had been signed by clients, but they do not indicate the amounts of the account to be confirmed. Examples are found at (Tab 10). Some of the confirmations indicated discrepancies or did not indicate if the statement was correct or incorrect. Kornblum failed to evaluate whether the confirmations provided a level of audit assurance required regarding the financial statement assertions being audited (CICA Handbook Section 5303.25).

Charge 3 c)

23. The only evidence in the working paper file with respect to subordinated debt in the amount of \$799,000 are five undated subordination agreements totalling \$799,000 (Tab 11).

24. In order to comply with generally accepted audit standards and (*CICA Handbook Section 5303*) confirmation of the subordinated amounts should have been obtained from the creditors.

Charge 3 d)

25. Kornblum failed to ensure disclosure of the cash paid for interest in the statement of cash flows as required by (*CICA Handbook Section 1540.34*). The interest expense amounts to \$688,108 and the cash paid for interest exceeded the materiality amount of \$50,000 and should have been disclosed.

Charge 3e)

26. The tax benefit of the loss carry forward was not shown in the statement of operations as required by (*CICA Handbook Section 3470.56*).

Charge 3 f)

27. Kornblum did not obtain written representations from management regarding illegal and possibly illegal acts as required by (*CICA Handbook Section 5136.21*) (Tab 12).

Charge 3 g)

28. Kornblum failed to obtain a response to the communication with the company law firm as required by (*CICA Handbook Section 6560.10*) (Tab 13).

Charge 3 h)

29. Kornblum failed to retain sufficient appropriate documentation to support the audit procedures carried out as required by (*CICA Handbook Section 5145.06*).
30. More specifically, there is no documentation on file for procedures which Kornblum had carried out with respect to *Accounts receivable* - \$50,319. This was included in "Due from clients" shown on the balance sheet.

31. There is no documentation on file for procedures, which Kornblum carried out with respect to advances - \$178,775. This was included in the item "Sundry receivables and prepaid expenses" shown on the balance sheet.
32. There was no documentation to support *Interest income* - \$1,064,656.
33. There was a failure to document the audit work done with respect to, *foreign exchange loss* - \$133,343, *securities trading loss* - \$160,829, *processing fees revenue* - \$161,420, *occupancy expense* \$168,313, *data processing services expense* \$90,717, *telecommunications expense* \$112,341 and *bad debts expense* - \$156,066.
34. In accordance with the audit plan Kornblum placed reliance on the service organization's auditors' report on control procedures. This reliance was misplaced in view of the fact that the opinion in that report relates only to the controls as at May 20, 1999 and it does not provide the audit evidence as to the existence of the controls throughout the year ended March 31, 2000 as required by (CICA Handbook Section 5310).

Charges 2 and 4

The 1999 and 2000 Form 9 Reports

35. Buckingham prepared Form 9 Reports for the financial years ending March 31, 1999 (Tab 4) and March 31, 2000 (Tab 5). Pursuant to Securities Act (Ontario) regulations, Buckingham was required to deliver to the Ontario Securities Commission ("OSC") within 90 days after the year-end of each financial year a report prepared in accordance with Form 9. The Form 9 reports record the capital position and requirements of the securities dealer, and confirm the segregation of all clients' free securities.
36. The Form 9 reports are required by the Securities Act (Ontario) to be audited by an auditor, appointed by the securities dealer, in accordance with generally accepted auditing standards.
37. Buckingham submitted the 1999 Form 9 report (Tab 4) to the OSC. As indicated above, the auditors' reports attached to Part I and to Part II of the 1999 Form 9 report were the responsibility of Kornblum as the engagement partner responsible for the audit (doc 049 & 58a).
38. Buckingham submitted the 2000 Form 9 report (Tab 5) to the OSC. As indicated above the auditor's reports attached to Part I and Part II of the 2000 Form 9 report were the responsibility of Kornblum as the engagement partner responsible for the audit (doc 110, 121).
39. Partners or Directors on behalf of Buckingham for the 1999 and 2000 Form 9 Reports certified that the financial statements and other information presented fairly the position of Buckingham and that information stated in the certificate of Partners or Directors was true and correct, including the statement that Buckingham promptly segregated all client's free securities. Kornblum did not obtain sufficient appropriate audit evidence to confirm these certifications as required by *(CICA Handbook section 5100.02(iii))*.

False or misleading statements

40. Buckingham, for the fiscal years ending March 31, 1999 and March 31, 2000, made statements in the 1999 and 2000 Form 9 reports referred to above, that, in a material respect, were misleading or untrue or did not state facts that were required to be stated, or that was necessary to make the statements not misleading.

I) The 1999 Form 9 Reports (Tab 4)

41. With respect to the 1999 Form 9 financial statements, the following inaccurate statements were made by Buckingham:
- a. The 1999 Statement of Assets and Liabilities and Capital stated that the amount of Buckingham's total liabilities (excluding subordinated loans) was \$4,402,608, when such amount was more than two times that amount;
 - b. The 1999 Statement of Net Free Capital stated that Buckingham had excess net free capital, before taking account of capital requirements, in the amount of \$521,766, when Buckingham had a deficiency of net free capital in the millions of dollars;
 - c. The 1999 Statement of Adjusted Liabilities stated that the amount of Buckingham's adjusted liabilities was \$3,527,784, when the amount was more than three times that amount;
 - d. The 1999 Statement of Minimum Free Capital stated that Buckingham had excess net free capital, after deducting capital requirements, in the amount of \$179,544, when Buckingham had a deficiency of net free capital in the millions of dollars;
 - e. The 1999 Certificate of Partners or Directors stated that Buckingham properly segregated all clients' free securities, when Buckingham was not segregating clients' free securities in its books and records;

II) - The 2000 Form 9 Reports (Tab 5)

42. With respect to the 2000 Form 9 financial statements, the following inaccurate statements were made by Buckingham:
- a. The 2000 Statement of Assets and Liabilities and Capital stated that the amount of Buckingham's total liabilities (excluding subordinated loans) was \$11,085,049, when such amount was more than three times that amount;

- b. The 2000 Statement of Net Free Capital stated that Buckingham had excess net free capital, before taking account of capital requirements, in the amount of \$738,675, when Buckingham had a deficiency of net free capital in the millions of dollars;
 - c. The 2000 Statement of Adjusted Liabilities stated that the amount of Buckingham's adjusted liabilities was \$6,914,102, when the amount was more than four times that amount;
 - d. The 2000 Statement of Minimum Free Capital stated that Buckingham had excess net free capital, after deducting capital requirements, in the amount of \$144,778, when Buckingham had a deficiency of net free capital in the millions of dollars;
 - e. The 2000 Certificate of Partners or Directors stated that Buckingham properly segregated all clients' free securities, when Buckingham was not segregating clients' free securities.
43. Kornblum did not obtain sufficient appropriate audit evidence to determine the segregation of client assets and did not formulate appropriate procedures to review margin accounts held by clients of Buckingham to support the opinions expressed in the audit opinions contained in the 1999 and 2000 Form 9 Reports.
44. Kornblum failed to obtain sufficient appropriate audit evidence to support the financial information in the statements and schedules contained in the Form 9 Reports for 1999 and 2000.

Terms of Settlement

45. Kornblum and the Professional Conduct Committee agree to the following Terms of Settlement:
- a) Kornblum will be reprimanded by the Chair of the Discipline Committee in writing;
 - b) Kornblum will make a payment by way of fine in the amount of \$30,000;
 - c) Kornblum will pay one half of the costs of the investigation undertaken by the Professional Conduct Committee in the amount of \$23,000;
 - d) There will be full publicity in CheckMark Magazine of this Settlement;
 - e) Notice will be given to the Ontario Securities Commission, the Public Accountants' Council and to the CICA of this Settlement;
 - f) Kornblum will take, within eighteen months, three professional development courses related to audit standards;
 - g) Kornblum undertakes not to act as engagement partner on the audit of any public company until such time as he has completed the professional development courses referred to above and has met the requirements of the Canadian Public Accountability Board and any similar body which regulates or approves those accountants or auditors who audit public companies;
 - h) Kornblum will be allowed three months from the time the Discipline Committee accepts this Settlement Agreement to pay the costs and fines referred to herein.
46. Should the Discipline Committee accept this Settlement Agreement, Kornblum agrees to waive his right to a full hearing, judicial review or appeal of the matter subject to the settlement agreement. The charges approved by the Professional Conduct Committee and dated March 27, 2007 shall be forever stayed.
47. If, for any reason, this Settlement Agreement is not approved by the Discipline Committee, then;
- a) This Settlement Agreement and its terms, including all Settlement Negotiations between the Professional Conduct Committee and Kornblum leading up to its

presentation to the Discipline Committee, shall be without prejudice to the Professional Conduct Committee and Kornblum;

- b) The Professional Conduct Committee and Kornblum shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations set out in the charges, or negotiating a new Settlement Agreement, unaffected by this Settlement Agreement or the Settlement Negotiations;
- c) The terms of this Settlement Agreement are without prejudice to Kornblum and to Miller Bernstein in any other proceedings of any kind including but without limiting the generality of the foregoing, any civil or other proceedings by any other person, corporation, receiver/trustee, regulatory body or agency and will not be referred to in any subsequent proceeding, or disclosed, except with the written consent of the Professional Conduct Committee, Kornblum and Miller Bernstein or as may be required by law. For purposes of this Settlement Agreement, reference to Miller Bernstein also includes Miller Bernstein's successors.

Disclosure of Settlement Agreement

- 48. This Settlement Agreement and its terms will be treated as confidential by the Professional Conduct Committee and Kornblum, until approved by the Discipline Committee, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Discipline Committee, except with the written consent of the Professional Conduct Committee and Kornblum, or, as may be required by law.
- 49. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Discipline Committee while the provisions of paragraph 4 will continue.

All of which is agreed to for the purpose of this proceeding alone this 3rd day of March 2008.



~~DIRK JOUSTRA, FCA~~

Renzo Francescutti

CHAIR, PROFESSIONAL CONDUCT COMMITTEE

Deputy



HOWARD F. KORNBLUM, CA

on his own behalf