

Class-action lawsuit to proceed against Canaccord

Tuesday, May 29, 2001
Page: C6 / FRONT
Section: Business
Byline: David Baines
Source: Vancouver Sun
Illustrations: Photo: Gary Stanhiser

Victims of a stock fraud perpetrated by former Seventh Day Adventist pastor Gary Stanhiser have had their lawsuit against Canaccord Capital Corp. and one of its brokers certified as a class action.

That means that 388 persons who deposited funds with the Vancouver brokerage firm and broker John Johnston for investment in Stanhiser's scheme will be able to piggyback on the lawsuit. It is believed to be the first lawsuit against a brokerage firm to be certified as a class action in B.C.

“Given the nature of the scheme and the number of persons who invested in it, there is obviously a great area of commonality of interest and of issues that lend themselves in the interests of efficient justice to be resolved in a class proceeding,” B.C. Supreme Court Judge Raymond Paris said in a decision Monday.

“There is no evidence that there is a significant number of the members of the class who have a valid interest in individually controlling the prosecution of separate actions.”

From 1995 to 1997, Stanhiser recruited investors to lend millions of dollars to his offshore companies. The funds were supposed to be used to buy large blocks of shares in junior companies on their behalf.

In most cases, investors did not receive any shares and were unable to recover their money. In all, they lost more than \$11 million.

Under B.C. securities law, people who invest less than \$97,000 must be provided a prospectus or an offering memorandum (an abbreviated prospectus which is filed with but not reviewed by the commission). People who invest less than \$25,000 must be provided with a prospectus.

In this case, people invested as little as \$5,000, but received neither 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.

The B.C. Securities Commission held a hearing and found that Stanhiser had defrauded investors and banned him from the B.C. stock market for life and fined him \$100,000. (The penalties were meaningless as Stanhiser lives in California and has not paid a cent.)

Canaccord signed a settlement agreement with the commission stating that it did not knowingly participate in Stanhiser's scheme, but admitting 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. (None of that money accrued to investors.)

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

He admitted 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 conceded that he assisted in the distribution of shares and warrants. He also admitted he failed to advise investors they were investing in an illegal scheme or determine the suitability of the investment for his clients.

He agreed to pay a \$20,000 penalty, \$5,000 in costs and disgorge \$77,000 in commissions. (Again, none of that money accrued to investors.)

Lawyer David Church, who is representing Stanhiser's victims in the class action, dismissed the penalty as “a slap on the wrist.”

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 securities rules are followed.

He said Johnston failed on all counts.

Church launched a lawsuit under the B.C. Class Proceedings Act against Canaccord and Johnson on behalf of two representative plaintiffs, William Gerber of B.C. and Jon Oksenholt of Oregon.

In certifying the case as a class action, Judge Paris noted that investors had brought three similar actions in Washington state and California, but all were dismissed on jurisdictional grounds.

He also noted that two other actions were tried in small claims court in B.C., but dismissed after trial.

dbaines@pacpress.southam.ca