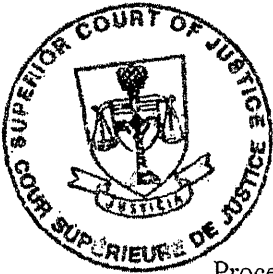


ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE)
)
 JUSTICE BELOBABA) WEDNESDAY, THE 12TH
) DAY OF JULY, 2017
 BETWEEN :

BARRY LAVENDER
)
) Moving Party

- and -



MILLER BERNSTEIN LLP
)
) Responding Party

Proceeding under the Class Proceedings Act, 1992

JUDGMENT ON COMMON ISSUES

THIS MOTION, made by the representative plaintiff Barry Lavender on behalf of the Class (defined below), for summary judgment on common issues (a) through (e) (the “Common Issues”) certified by order of Justice Cullity dated July 20, 2010 (the “Certification Order”, attached hereto as **Schedule “A”**), was heard June 27 and 29, 2017, at Osgoode Hall, 130 Queen St W, Toronto, ON M5H 2N5,

ON READING the pleadings, the procedural endorsements and orders in this matter, including the Certification Order, the affidavit evidence including exhibits filed by the parties on the motion, the transcripts of the cross-examinations, the transcripts from the examinations for discovery, the documents marked as exhibits on the cross-examinations and examinations for discovery, the facta filed by the parties, the further written submissions regarding damages requested by Belobaba J. on June 27, 2017 and subsequently delivered by the parties, and the legal authorities delivered by the parties’ in support of their written submissions,

AND ON HEARING the oral submissions of the parties' counsel on June 27, 2017 and June 29, 2017,

AND ON BEING ADVISED that the Class intends to bring a further motion for summary judgment on Common Issue e(1) and e(2) as set out at paragraph 8 of the Certification Order,

AND FOR REASONS RELEASED THIS DAY and by the endorsement dated August 18, 2017 with respect to costs in this matter (the "**Costs Endorsement**"):

1. **THIS COURT ORDERS** that the following definitions apply to this Judgment:
 - a. "Buckingham" means Buckingham Securities Corporation;
 - b. "Defendant" means Miller Bernstein LLP; and
 - c. "Class" has the meaning ascribed to it in the Certification Order.
2. **THIS COURT ORDERS AND DECLARES** that the nature of the claims asserted on behalf of the Class are in negligence.
3. **THIS COURT ORDERS AND DECLARES** that the Common Issues are answered as follows:
 - a. Did the *Securities Act*, R.S.O. 1990, c. S.5 and the regulations thereunder (the "OSA") require Buckingham to segregate the cash and securities of its clients from its own cash and securities?

Yes.
 - b. Did Buckingham fail to segregate its clients' cash and securities in violation of the OSA and, if so, when did Buckingham fail to do so?

Yes. Buckingham failed to segregate its clients' cash and securities at all times during its operations.
 - c. Did the Defendant owe a duty of care to the Class and/or one or more of the Subclasses and what is the nature and extent of that duty?

Yes. The Defendant owed a duty of care to the Class to conduct an audit of Buckingham's Form 9 reports with the skill and care of a competent practitioner.

- d. If the answer to (c) is yes, did the Defendant breach that duty of care to the Class and/or one or more of the Subclasses, either negligently or recklessly?

Yes.

- e. If the answer to (d) is yes, was the Defendant's breach of that duty a cause of damages to all of the Class and/or all of one or more of the Subclasses?

Yes.

- (1) If the answer to (e) is yes, can such damages be determined on a class wide basis in respect of the class and/or one or more of the Subclasses?

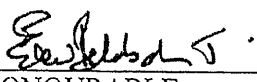
No.

- (2) If the answer to (e)(1) is yes, how should the damages to be payable by the Defendant be calculated?

Given the answer to (e)(1), there is no need to answer (e)(2).

4. **THIS COURT ORDERS** that the Defendant shall pay the costs of this motion to Siskinds LLP on behalf of the Class within 30 days of the Costs Endorsement in the amount of \$775,000, all inclusive.
5. **THIS COURT ORDERS** that the costs of this motion bear interest at the rate of 2.0 per cent per year commencing on the date of the Costs Endorsement.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:



THE HONOURABLE
MR. JUSTICE BELOBABA

SEP 10 2017

PER / PAR: 

SCHEDULE A

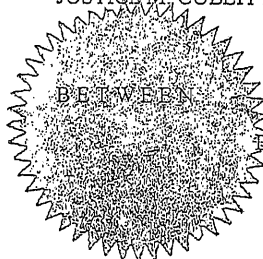
Court File No. 05-cv-300430CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE
JUSTICE M. CULLITY

)
)

THURSDAY, THE 20th DAY
OF JULY, 2010



BARRY LAVENDER and HOWARD FERGUSON

Plaintiffs

- and -

MILLER BERNSTEIN LLP

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs, Barry Lavender and Howard Ferguson, for an Order certifying the within action (the "Action") as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the "CPA"), was heard June 10, 2010 at Osgoode Hall, 130 Queen St. W., Toronto, Ontario.

ON READING the materials filed, including the consent Agreement to Settle Certification dated April 29, 2010, and on hearing the submissions of counsel for the parties to this proceeding:

1. THIS COURT ORDERS that, for the purposes of this Order, the following definitions apply:
 - (a) "Buckingham" means Buckingham Securities Corporation;
 - (b) "Defendant" means Miller Bernstein LLP;

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(c) "Excluded Persons" means: (i) the Defendant; (ii) any partner or employee of The Defendant, and any member of the immediate family of any such partner or employee; (iii) any person who served as an officer or director of Buckingham at any time, and any member of the immediate family of any such officer or director; (iv) Buckinghamshire Holdings Inc., GS Investments Inc., HSS Investments Inc., Deekay Investments Inc., Scriblerus Holding Corporation, George Seidel, Harold Seidel, Norman Frydrych, Lloyd Bruce, Deborah Krofchick, David Seidel, 1195154 Ontario Ltd., David Lieberman, 7928 Investments Ltd., David Bromberg, AKH Investments Ltd. and Rose Brinder (collectively, the "Insiders"), together with any other beneficial shareholders of Buckingham, and members of their immediate families; (v) any entity in respect of which any of the persons identified in (i) to (iv) above has a direct or indirect controlling interest; (vi) any person who ultimately controls an entity that is an Excluded Person; and (vii) the legal representatives, heirs, successors and assignees of any Excluded Person; and

2. **THIS COURT ORDERS** that, pursuant to section 5 of the *CPA*, this action is certified as a class proceeding.

3. **THIS COURT ORDERS** that the nature of the claims asserted on behalf of the Class are negligence, negligent performance of professional services and knowing assistance of breach of contract. The Class seeks damages in the amount of \$15 million in connection with the claims asserted.

4. **THIS COURT ORDERS** that the class is defined as follows:

Each and every person, wherever resident, except the Excluded Persons, who created or maintained an investment account with Buckingham at any time after March 17, 1997 through July 26, 2001 (the "Class Period") and who maintained such an investment account on July 6, 2001, including, without limiting the foregoing, those persons who filed claims in the receivership of Buckingham (the "Class").

5. **THIS COURT ORDERS** that there will be two subclasses, defined as follows:

Each member of the Class who corresponded directly with the Defendant and, as part of such correspondence, communicated discrepancies in their respective investment accounts with Buckingham ("Subclass 1").

Each member of the Class who corresponded directly with the Defendant and, as part of such correspondence, did not indicate whether their respective investment accounts with Buckingham were correct or incorrect ("Subclass 2").

5. **THIS COURT ORDERS** that the Plaintiffs, Barry Lavender and Howard Ferguson, are appointed as Representative Plaintiffs for the Class.
6. *due* **THIS COURT ORDERS** that the Plaintiffs may bring a motion to propose one or more representative plaintiffs for either or both subclasses and that the Defendant may bring a motion to ~~propose or~~ require one or more representative plaintiffs for either or both subclasses.
7. **THIS COURT ORDERS** that Siskinds LLP ("Class Counsel") is appointed as class counsel.
8. **THIS COURT ORDERS** that the common issues are:
 - (a) Did the Securities Act, R.S.O. 1990, c. S.5 and the regulations thereunder (the "OSA") require Buckingham to segregate the cash and securities of its clients from its own cash and securities?
 - (b) Did Buckingham fail to segregate its clients' cash and securities in violation of the OSA and, if so, when did Buckingham fail to do so?
 - (c) Did the Defendant owe a duty of care to the Class and/or one or more of the subclasses and what is the nature and extent of that duty?
 - (d) If the answer to (c) is yes, did the Defendant breach that duty of care to the Class and/or one or more of the sub-classes, either negligently or recklessly?
 - (e) If the answer to (d) is yes, was the Defendant's breach of that duty a cause of damages to all of the Class and/or all of one or more of the sub-classes?
 - (1) If the answer to (e) is yes, can such damages be determined on a class wide basis in respect of the class and/or one or more of the sub-classes?
 - (2) If the answer to (e)(1) is yes, how should the damages to be payable by the Defendant be calculated?
 - (f) Does Ontario law recognize a tort of knowing assistance of breach of contract and, if so, what are the elements of that tort?

(1) If the answer to (f) is yes, have the elements of that tort been met by all of the Class and/or all of one or more of the sub-classes?

no R. 23.1

Mad.

THIS COURT ORDERS that the Plaintiffs provide notice to the Class, at ~~their~~ expense, ^{from approved by the Court and in the} in the following manner:

- (a) Notice shall be sent to each class member known to BDO Dunwoody Limited, in its capacity as Court-Appointed Receiver and Manager of Buckingham pursuant to the Order of Madame Justice Swinton dated July 26, 2001;
 - (b) Notice shall be posted by Class Counsel on their website at the address <http://classaction.ca/content/actions/millerbernstein.asp>;
 - (c) Notice shall be provided by Class Counsel to any person who requests it;
 - (d) Notice shall be available orally by recorded message at Class Counsel's toll-free line;
 - (e) Notice shall be posted on the website at <http://www.bdo.ca/buckingham>; and
 - (f) Class Counsel shall issue a press release of the form attached as Schedule "A."
10. THIS COURT ORDERS that persons may opt out of the Class in writing to Class Counsel within 90 days of the completion of notice as described in paragraph 9.
 11. THIS COURT ORDERS that no costs are payable in connection with the certification motion.
 12. THIS COURT ORDERS that the Defendant shall file and serve a Statement of Defence on or before August 15, 2010.
 13. THIS COURT ORDERS that the parties shall agree to a discovery plan as contemplated by Rule 29.1 of the *Rules of Civil Procedure* on or before September 6, 2010. If the parties cannot so agree, they shall make a motion to this Court for directions on or before September 10, 2010.

14. **THIS COURT ORDERS** that no other proceeding relating to this action may be commenced without leave of the Court save and except for any third party proceedings commenced by the Defendant.


THE HONOURABLE
JUSTICE M. CULLITY

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

AUG 13 2010

PER / PAR: 

BARRY LAVENDER and HOWARD FERGUSON
Plaintiffs

MILLER BERNSTEIN LLP
and
Defendant

Court File No: 05-cv-300430CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER
(CERTIFICATION)

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Class Counsel
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LAVENDER MILLER BERNSTEIN LLP
Plaintiff and Defendant

Court File No.: 05-CV-300430CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT ON COMMON ISSUES

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