

Alberta Court of Appeal Upholds Finding of Negligence Against Investment Advisor

June 20, 2017

Background

The plaintiffs were unsophisticated investors who had opened several accounts, including a margin account, with the investment advisor's employer, and invested in high-risk securities at the recommendation of the investment advisor. The trial judge found that no explanation was provided to the plaintiffs as to the risks involved with opening a margin account, nor as to the high-risk nature of the securities purchased.

The trial judge found that there was no proper assessment of the plaintiffs' risk tolerance nor of the suitability of the broker's investment recommendations, which consisted of advice to the plaintiffs to invest nearly the entirety of their life savings into only two high risk securities. Both the investment advisor and his employer were found liable at trial.

Decision

In reviewing the trial decision, the Court of Appeal reviewed the law on the duty of care owed by investment advisors to their clients, affirming the paramountcy of the "Know Your Client" rule, and the elevated standard of care and duty to warn that applies to inexperienced or unsophisticated investors. The Court affirmed that investment advisors are obligated to take into account their clients' prior experience or knowledge regarding a particular type of investment, a lack of which is indicative of a risk associated with the investment in question. **The Court further confirmed that expert evidence is not always necessary in order to determine the standard of care, particularly where the impugned actions were egregious, as they were found to be in this case.**

The Court affirmed that the minimum standards of advising clients of risk and ensuring that their investments are both suitable and consistent with the client's objectives are implied terms of any contract between an investment advisor and client.

Adhering to the relevant standard of review, namely the deferential standard of palpable and overriding error, the Court of Appeal concluded that there was ample evidence upon which the trial judge could base a finding that both the broker and his employer were liable for negligence. **All grounds of appeal advanced by the investment advisor and his employer were rejected, including those based in limitations and contributory**

negligence. Both the trial finding of liability and the damage award were upheld by the Court of Appeal.

BLG acted for the respondents / cross-appellants before the Court of Appeal.

By

[Loni da Costa](#)

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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