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Bitter pill for NatBank brokerage

Cough up $750,000, judge orders. Doctor sues after losing on Canada Savings Bonds

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A Superior Court judge has ordered National Bank Financial to pay more than $750,000 in damages and costs to a local investor who managed to lose money with Canada Savings Bonds, because of a manoeuvre suggested to him by his investment advisers.

Gilles Dussault, a medical doctor, was advised in 1994 by George and France Roy of Lévesque Beaubien Geoffrion Inc. to sell "short" $2 million worth of savings bonds borrowed from the firm.

The idea was that with interest rates headed up, he could repurchase them cheaper within a few months and pocket the difference as a capital gain. France Roy had told him another client made $76,000 in two weeks doing the same thing.

But the bonds, which paid eight-per-cent interest and were due to mature in 2023, went up instead of down.

With Dussault unsure about what to do and getting no clear directive from the firm, his loss kept growing over the next two-and-a-half years, at which point it liquidated his portfolio to cover what he owed in 1996.

In his suit against the firm, Dussault argued the original short sale was contrary to his investment objectives and financial interests. National Bank Financial claimed he was fully advised of the speculative nature of the transaction and gave his informed consent, and the risk would have been minimal if he'd closed the position promptly.

But evidence at the trial in May 2007 showed Dussault had been a cautious investor not prone to speculation, with limited investment knowledge and full confidence in George Roy, his adviser since 1983. (France Roy joined her father at the brokerage in 1992).

"Put simply, the firm did not seek to protect Dr. Dussault's interests where the risk being run was all his," Judge Mark Peacock wrote in a 29-page judgment dated yesterday.

He likened Dussault to "a man alone in a rowboat in a storm in the mid-Atlantic. The firm had always been his guiding light in the past and now that the waves were towering over him, the beacon was gone."

Judge Peacock called the transaction "incompatible" with Dussault's investment objectives and said the Roys failed to advise him of the substantial risk and "failed to provide clear advice as to when to repurchase and close his position."

"The level of sophistication required to understand this transaction was beyond Dr. Dussault's investment understanding, and the firm and its employees failed to monitor this transaction in such a way as to protect Dr. Dussault's interests," the judge wrote.

"What he (Dussault) understood from Ms. France Roy was not that he was exposed to a risk of losing money, but rather that instead of earning the money to purchase a new Mercedes - which is what he told her was his reason for seeking a capital gain - he understood he might in fact make only enough money to purchase a Lada, the economy Russian sub-compact vehicle available at the time.

"France Roy confirmed she used this automobile analogy with Dr. Dussault."

As the Roys' employer, National Bank Financial was legally responsible for the breaches they committed, Judge Peacock said, and he ordered the firm to pay the doctor $382,785 - the loss he'd accumulated as of Dec. 6, 1995, when he finally got a clear instruction from George Roy to close his position - plus interest and costs.

Quebec City lawyer Serge Létourneau, who represented Dussault, said the sum now amounts to more than $750,000.

Létourneau said the judgment clearly spells out the necessity for investment representatives to correctly assess and monitor the risk tolerance of their clients, especially if - like Dussault - they could succumb to "investor paralysis" when faced with losses.

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