

Re Credifinance Securities

IN THE MATTER OF:

THE DEALER MEMBER RULES OF
THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

THE BY-LAWS OF THE INVESTMENT DEALERS ASSOCIATION OF CANADA

AND

CREDIFINANCE SECURITIES LIMITED

2010 IIROC 16

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District Council)

Heard: March 3, 2010
Decision: April 13, 2010
(51 paras.)

Hearing Panel:

Honourable Robert S. Montgomery, Q.C., Chair
Donald H. Page, Member
Donald W. (Sandy) Grant, Member

Appearance:

Natalija Popovic, Kathryn Andrews, Jim Douglas and Kara Beitel, Counsel for the Association
Michael Meredith, Counsel for the Respondents

DECISION AND REASONS

¶ 1 The hearing in this matter was convened on March 3, 2010 pursuant to a Notice of Hearing, which was served on all parties and the parties responded through their counsel.

¶ 2 The purpose of the hearing is to determine whether Georges Benarroch (“Benarroch”), Linda Kent (“Kent”), Marjorie Ann Glover (“Glover”) and Credifinance Securities Limited (“Credifinance”) (collectively, the “Respondents”) have committed the following contraventions that are alleged by Staff of IIROC, on behalf of the IDA (Staff):

COUNT 1

Benarroch and Kent, while Registered Representatives with Credifinance, and particularly from in or about January 2003 to in or about March 2006, failed to properly perform their gatekeeper responsibilities in connection with trading in Credifinance client accounts in the shares of Magnum D’Or Resources Inc. (“Magnum”) and Osprey Gold Corp. (“Osprey”) and improperly engaged in financial and business transactions with Credifinance clients in relation to the distribution and sale of shares of Magnum and Osprey, which conduct was unbecoming registrants and detrimental to the public

interest, contrary to By-law 29.1 of the IDA.

COUNT 2

Benarroch, while a Registered Representative with Credifinance, and particularly between September 2005 and April 2007, provided untrue or misleading evidence to Staff of the IDA, which conduct was contrary to By-law 19.5 of the IDA.

COUNT 3

Glover, while a Registered Representative and Chief Compliance Officer with Credifinance, and particularly from in or about January 2003 to in or about March 2006, failed to exercise due diligence and failed to adequately supervise the conduct of Benarroch and Kent in respect of their dealings with Credifinance clients, and in particular their dealings in shares in Magnum and Osprey, which conduct was a failure in her role as gatekeeper and was unbecoming a registrant and detrimental to the public interest, contrary to By-law 29.1 of the IDA.

COUNT 4

Credifinance, while a Member of the IDA, and particularly from in or about January 2003 to in or about March 2006, failed in its role as a gatekeeper in that it failed to supervise the conduct of Benarroch and Kent and failed to supervise the transactions in Benarroch's and Kent's clients' accounts, which conduct was unbecoming a Member and detrimental to the public interest, contrary to By-law 29.1 of the IDA.

¶ 3 Credifinance became a Member of the IDA in March 1991. Throughout the relevant time, Benarroch, Kent and Glover were Registered Representatives employed at Credifinance.

¶ 4 Benarroch is the Director, Chairman, Chief Executive Officer ("CEO") and Ultimate Designated Person of Credifinance. He has been the Director, Chairman and CEO since September 1991. He has also been a Registered Representative at Credifinance since the firm's inception. Prior to his employment at Credifinance, Benarroch was the director, president, CEO and an industry advisor of another brokerage firm commencing in 1984.

¶ 5 Glover is the Chief Compliance Officer ("CCO") and Alternate Designated Person at Credifinance. She has held the position of CCO since in or about September 1997 and the position of ADP since in or about November 2001. Prior to joining Credifinance, Glover was registered at another brokerage firm commencing in 1984.

¶ 6 Kent is a Registered Representative ("RR") at Credifinance. Prior to joining Credifinance, Kent was employed as an RR at various investment firms dating back to 1980. Kent joined Credifinance in or around January 2000.

¶ 7 Magnum is a mining company incorporated in Nevada with its head office in Toronto. In or around March 2003, Reno Calabrigo ("Calabrigo"), a client of Kent's and a business associate of Benarroch's, became the President of Magnum.

¶ 8 Osprey is a Nevada company located in Orangeville, Ontario. In or around April 2004, Kent approached Gordon Leliever ("Leliever"), her uncle and then President of Osprey, and suggested that Credifinance assist Osprey with a U.S. \$5 million financing. Benarroch and Kent became directors of Osprey in or about September 2004 and August 2004, respectively. In or around November 2004, Benarroch was appointed President of Osprey, and Kent was appointed Corporate Secretary and Treasurer.

¶ 9 Benarroch used a number of corporate entities (collectively, the "Benarroch Entities") that were owned by, controlled by or otherwise associated with him and/or his family to facilitate and profit from the distribution and sale of Magnum and Osprey shares. The following Benarroch Entities were used to engage in Magnum and Osprey transactions on Benarroch's behalf:

- (i) FRD Trust is an entity with longstanding ties to Benarroch's family and which he directly or indirectly controls. FRD Trust was a Credifinance client during the material time. According to

Benarroch, it owns various Benarroch family properties and pays the mortgages and insurance premiums on these residential properties. Benarroch and/or his heirs beneficially own FRD Trust.

- (ii) Credifinance is an Ontario company that was owned by Credifinance Capital Inc. (“CFCI”) until it was amalgamated with CFCI in November 2005. CFCI was owned by Credifinance Capital Corp., which is owned by FRD Trust. As such, Benarroch indirectly owns or controls Credifinance, as well as being its Chairman, President, CEO and a director.
- (iii) CFCI was an Ontario company as described above. Benarroch indirectly owned or controlled CFCI through the structure described above, as well as being its President and a director.
- (iv) Financiera Hispano-Suiza (“FHS”) is a company incorporated in Panama that was owned by Benarroch and/or members of Benarroch’s family during the material time period. FHS paid for Benarroch’s staff, as well as various personal expenses. During the material time, Benarroch held a special power of attorney for FHS that gave him control of its accounts. FHS was a Credifinance client until early 2004.
- (v) LIFMAC S.A. (“LIFMAC”) is a company incorporated in Panama that was owned by Benarroch and/or FRD Trust. LIFMAC was a Credifinance client until early 2004. In 2004, LIFMAC changed its name to Simy Holdings Inc. (“Simy Holdings”). Benarroch is the President of Simy Holdings and during the material time controlled its investments. FRD Trust beneficially owns Simy Holdings.
- (vi) Capital Securities & Credit Corp. (“CSCC”) is a company incorporated in Panama that has, at various times, been owned by Benarroch and/or members of his family. Although CSCC was apparently controlled by a friend and business associate of Benarroch, Gerard Serfati (“Serfati”), during the material time Benarroch held a special power of attorney that gave him control of CSCC’s brokerage accounts. CSCC was a Credifinance client until early 2004.

¶ 10 Credifinance and Glover permitted FRD Trust, FHS, LIFMAC and CSCC to open and operate accounts at Credifinance, and permitted Benarroch to act as RR for those accounts, despite his actual or apparent control over those entities and the fact that he and/or his family had a beneficial interest in each of the entities. Only FRD Trust’s account was properly marked as a pro account.

¶ 11 All of the Benarroch Entities were the recipients of shares in one or both of Magnum and Osprey and/or were recipients of proceeds from the sale of shares in one or both of Magnum and Osprey. These funds flowed to the Benarroch Entities from the accounts of various Credifinance clients. Neither Credifinance nor Glover made any inquiries or conducted any investigation into the transactions between the Benarroch Entities and Credifinance’s clients.

¶ 12 All the conduct complained about falls within, and is contrary to, By-law 29.1 of the IDA, which provides:

Members and each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member (i) shall observe high standards of ethics and conduct in the transaction of their business, (ii) shall not engage in any business conduct or practice which is unbecoming or detrimental to the public interest, and (iii) shall be of such character and business repute and have such experience and training as is consistent with the standards described in clauses (i) and (ii) or as may be prescribed by the Board of Directors.

For the purposes of disciplinary proceedings pursuant to the By-laws, each Member shall be responsible for all acts and omissions of each partner, director, officer, sales manager, branch manager, assistant or co-branch manager, registered representative, investment representative and employee of a Member; and each of the foregoing individuals shall comply with all By-laws,

Regulations and Policies required to be complied with by the Member.

¶ 13 An Agreed Statement of Facts was filed at the hearing in which the following admissions appeared: Benarroch and Kent, while Registered Representatives with Credifinance, and particularly from in or about January 2003 to in or about March 2006, failed to properly perform their gatekeeper responsibilities in connection with trading in Credifinance client accounts in the shares of Magnum D'Or Resources Inc. ("Magnum") and Osprey Gold Corp. ("Osprey") and improperly engaged in financial and business transactions with Credifinance clients in relation to the distribution and sale of shares of Magnum and Osprey, which conduct was unbecoming registrants and detrimental to the public interest, contrary to By-law 29.1 of the IDA.

Glover, while a Registered Representative and Chief Compliance Officer with Credifinance, and particularly from in or about January 2003 to in or about March 2006, failed to exercise due diligence and failed to adequately supervise the conduct of Benarroch and Kent in respect of their dealings with Credifinance clients, and in particular their dealings in shares in Magnum and Osprey, which conduct was a failure in her role as gatekeeper and was unbecoming a registrant and detrimental to the public interest, contrary to By-law 29.1 of the IDA.

Credifinance, while a Member of the IDA, and particularly from in or about January 2003 to in or about March 2006, failed in its role as a gatekeeper in that it failed to supervise the conduct of Benarroch and Kent and failed to supervise the transactions in Benarroch's and Kent's clients' accounts, which conduct was unbecoming a Member and detrimental to the public interest, contrary to By-law 29.1 of the IDA.

¶ 14 No *viva voce* evidence was tendered. It is, therefore, necessary to include large extracts from the Agreed Statement of Facts.

Overview of Activity Complained Of

¶ 15 Benarroch, Kent and Glover permitted and facilitated suspicious transactions in client accounts at Credifinance without making diligent inquiries to ensure the legitimacy of the transactions in circumstances where such inquiries were required in order for Benarroch, Kent and Glover to properly discharge their respective obligations as RR's and CCO.

¶ 16 Moreover, Benarroch and Kent personally participated in suspicious transactions with Credifinance clients for their personal benefit or, in the case of Benarroch, for the benefit of the Benarroch Entities. In permitting these transactions and/or failing to question them, Glover and Credifinance failed to adequately supervise the activities of Benarroch and Kent.

Transactions in Magnum D'Or Resources

¶ 17 During his tenure as CEO of Magnum, Calabrigo received millions of Magnum shares, many of which were deposited into his account at Credifinance. These shares were either sold from Calabrigo's account into the market and/or journaled to the accounts of other Credifinance clients. Outside of transactions in Magnum shares, there was little trading activity in Calabrigo's account during the material time.

¶ 18 Tom Tedesco ("Tedesco"), another client of Kent, also received a significant number of Magnum shares, many of which were journaled to the account of CSCC. Transactions in Magnum shares represented the primary trading activity in Tedesco's account during the material time.

¶ 19 Neither Glover nor Kent questioned Calabrigo or Tedesco as to the origin of the many millions of Magnum shares flowing through their accounts, or as to why the shares were being journaled to other Credifinance clients (almost exclusively Benarroch's and Kent's clients) for no apparent consideration. Furthermore, there is no evidence that Credifinance or Glover questioned Kent about any of the transactions in either Calabrigo's or Tedesco's accounts.

¶ 20 Moreover, and transparent to Credifinance, Glover and Kent, Magnum shares and/or proceeds from the sale of Magnum shares were frequently transferred from Credifinance clients to Benarroch and/or one or more

of the Benarroch Entities for no apparent reason. These shares and funds were received either directly from Calabrigo or indirectly through the brokerage account of CSCC (purportedly owned by Serfati) and a bank account in Serfati's name at the National Bank of Canada (the "Serfati bank account"). Neither Credifinance nor Glover questioned Benarroch about or conducted any investigation into why Magnum shares and/or proceeds from the sale of Magnum shares were being transferred from Credifinance clients to the Benarroch Entities.

¶ 21 Kent was also the recipient of Magnum shares and/or proceeds from the sale of Magnum shares. Although Glover was advised by Kent that the funds she received represented a loan from Serfati, there is no evidence that she or Credifinance conducted any investigation to verify that information, nor did she or Credifinance question the propriety of Kent borrowing money from a Credifinance client.

¶ 22 We have omitted the charts that show the particulars of the shares and funds that flowed to Benarroch, to the Benarroch Entities and to Kent. These journal entries are, in some cases, stated to be for consulting fees but without any detail to justify them. This is another example of a failure to perform their gatekeeper role.

¶ 23 Of the 9,994,000 Magnum shares that were deposited to CSCC's account between September and November 2003, 8,850,000 shares were journaled to third parties for no apparent consideration. The remaining Magnum shares were sold into the market. There was very little other trading activity in the CSCC account during the material time.

¶ 24 Other than a cheque in the amount of \$11,761.49 that Benarroch directed be paid to a law firm, the proceeds from the sale of Magnum shares from the CSCC account were distributed. The Magnum proceeds that were transferred to Serfati were deposited into the Serfati bank account. Benarroch controlled the Serfati bank account in that he held numerous blank cheques signed by Serfati.

¶ 25 Benarroch and Kent improperly engaged in personal business dealings and transactions with Credifinance clients, including Calabrigo, Tedesco, Serfati, and CSCC, pursuant to which they received compensation. As a result of these transactions Benarroch and the Benarroch Entities received a benefit of U.S. \$103,061.40, Cdn. \$20,500 and approximately 2,009,000 Magnum shares worth approximately \$200,000 (valued at the end of the month the shares were received), while Kent received Cdn. \$7,381.34 and 85,000 Magnum shares worth approximately \$4,600 (valued at the end of the month the shares were received).

¶ 26 Credifinance and Glover failed to oversee the activity in the accounts of Credifinance's clients, including Calabrigo and CSCC. Neither Credifinance nor Glover made any diligent inquiries to determine what services were being rendered for the "consulting fees", or whether there was any legitimate purpose behind the transfer of Magnum shares. Glover's failure was despite her knowledge that Magnum shares were being transferred from a Credifinance client to the Benarroch Entities and that funds from CSCC's account at Credifinance were being transferred to the Serfati bank account and subsequently, at the direction of Benarroch, to the Benarroch Entities and Kent. At no time did Credifinance or Glover contact Serfati to ensure that the funds from the Serfati bank account were being distributed pursuant to his instructions, nor did Credifinance or Glover question Benarroch holding blank signed cheques for a client's bank account.

¶ 27 Moreover, Glover was aware that Benarroch held a special power of attorney for CSCC and was therefore authorized to control its brokerage accounts. Neither Credifinance nor Glover took any steps to confirm that Benarroch was not controlling CSCC's account at Credifinance. At no time did either Credifinance or Glover contact Serfati to confirm his instructions in respect of the CSCC account at Credifinance.

Transactions in Osprey Gold Corp.

¶ 28 In early May 2004, a letter of intent was entered into amongst Osprey and Credifinance. The letter of intent was executed by Leliever, Osprey's Vice President Douglas Budden ("Budden"), Osprey's Secretary Betty North ("North"), Osprey's then CFO Doug Young ("Young") and Benarroch, and provided that:

- (a) Osprey would issue 3 million shares pursuant to the S-8 prospectus exemption to Serfati for

consulting work;

- (b) North's company, Boardwalk International ("Boardwalk"), would sell 4 million restricted shares of Osprey to Credifinance for \$1,000;
- (c) Credifinance would remit to Osprey U.S. \$250,000 raised from other investors;
- (d) Boardwalk would give 69,890,000 Osprey shares to Credifinance as collateral (which shares were to be returned by May 28, 2004 if the terms of the letter of intent were satisfied); and
- (e) Credifinance would arrange for a private placement of Osprey shares.

¶ 29 Serfati was issued 4 million Osprey S-8 shares in May 2004, presumably pursuant to the terms of the letter of intent, and an additional 15 million Osprey S-8 shares in September 2004. Serfati purportedly entered into a Services Agreement with Osprey to provide it with various services in exchange for the 15 million Osprey S-8 shares. No services agreement was entered into for the 4 million Osprey S-8 shares received by Serfati in May 2004.

¶ 30 According to Benarroch, Serfati's only purported services to Osprey in exchange for receiving 19 million S-8 shares was to introduce it to foreign investors. In large measure, Serfati intended to introduce foreign investors to Osprey through a road show that ultimately did not take place. There is no evidence that Serfati in fact provided any services to Osprey.

¶ 31 The Osprey S-8 shares were deposited into Serfati's account at Credifinance, for which Benarroch was the registered representative. Transactions in Osprey shares represented the primary trading activity in Serfati's account during the material time.

¶ 32 All of the cheques issued to Serfati from his Credifinance account, which represented the proceeds from the sale of Osprey shares, were deposited into the Serfati bank account.

¶ 33 After funds from Serfati's Credifinance account were deposited to the Serfati bank account, they were, in most cases, redirected to Benarroch, the Benarroch Entities or Kent. In many instances, Glover completed cheques drawn against the Serfati bank account in accordance with instructions she received from Benarroch. The table below shows the flow of funds from the Serfati bank account.

¶ 34 Benarroch and Kent engaged in personal business dealings and transactions with Serfati, a Credifinance client, pursuant to which they received compensation. As a result of these transactions Benarroch and the Benarroch Entities received a benefit of U.S. \$95,000 and Cdn. \$122,600, while Kent received a benefit of Cdn. \$169,480.09.

¶ 35 Neither Credifinance nor Glover contacted Serfati to confirm Benarroch's instructions prior to Glover completing the cheques as instructed by Benarroch, despite the fact that Serfati was a Credifinance client and the cheques were being made payable to Benarroch, the Benarroch Entities and/or Kent. There is no evidence that either Credifinance or Glover inquired as to why Benarroch and the Benarroch Entities were receiving money from Serfati.

¶ 36 As noted with respect to proceeds from the sale of Magnum shares, Glover was advised that the funds received by Kent represented a loan from Serfati. However, neither Glover nor Credifinance took any steps to verify this information, nor did they question the propriety of Kent borrowing money from a client of Credifinance.

¶ 37 Of the 15 million Osprey S-8 shares received by Serfati in September 2004 pursuant to the terms of the Services Agreement, 11 million were transferred to an account in the name of CSCC at Whitehall Parker Securities ("Whitehall") in San Francisco. Benarroch opened this account by executing account opening documentation in or around September 2003. He also provided Whitehall with a Special Power of Attorney granting him the authority to, among other things, open and operate securities trading accounts on behalf of CSCC.

¶ 38 As Osprey S-8 shares were received into CSCC's account, Benarroch directed that they be sold and the

proceeds delivered to Simy Holdings, one of the Benarroch Entities. Between April 2005 and November 2005, CSCC sold over 7 million Osprey S-8 shares into the market for total proceeds of U.S. \$213,730, all of which was sent to Simy Holdings on the direction of Benarroch. There were no other transactions in the CSCC account at Whitehall during this period.

¶ 39 Although Glover was aware that Benarroch controlled the CSCC account at Whitehall, neither she nor Credifinance exercised any oversight over the operation of the account.

Supervisory Failures

¶ 40 The activity in the accounts of Calabrigo, Tedesco, CSCC and Serfati, together with the related activity of Benarroch and Kent, should have caused Credifinance and Glover to question the propriety of the transactions in the accounts. Credifinance and Glover failed to raise any questions concerning the propriety of the transactions in the accounts or concerning the actions of Benarroch and Kent generally.

¶ 41 Credifinance and Glover accepted instructions to transfer Magnum and Osprey shares, and proceeds from the sale of Magnum and Osprey shares, between accounts with no apparent explanation. Credifinance and Glover failed to make any diligent inquiries about such third party transfers in circumstances where reasonably diligent supervisors would have questioned the transactions and, unless reasonable explanations were provided and documented, refused to permit the transactions to take place in the accounts held at Credifinance.

¶ 42 The Cardinal Rule of the securities industry is *Know Your Client*. The first part of this rule is, "Every Member shall use due diligence to learn essential facts relative to every client and to every order or account accepted." This is the heart of the supervisory function.

¶ 43 There is no evidence that Glover, as Chief Compliance Officer, made any inquiries, let alone exercised due diligence. The dealing of Benarroch with the two Panamian companies were not at arm's length. Millions of shares of the issuing companies were physically received, delivered or journaled amongst the accounts with no inquiries and no explanations given for the highly unusual activity. It appears as if these may have been illegal distributions of securities, but we hasten to say that there is no sufficient evidence for us to reach that conclusion.

¶ 44 Securities were distributed with no explanation or compliance or consideration. If the so-called consulting fees were some form of consideration, they are flawed as they consist of a simple journal entry with no explanation. There were no diligent inquiries.

¶ 45 We find the conduct of all parties to be self-serving and a contumacious disregard of their duties to their industry and the public at large over a protracted period of time. Accordingly, we believe harsh penalties are merited.

Decision

¶ 46 (1) Georges Benarroch is suspended for life and is assessed a fine of \$250,000.00 and shall further disgorge all profits on these transactions.

¶ 47 (2) Linda Kent is suspended for ten (10) years and is assessed a fine of \$50,000.00 and shall further disgorge all profits on these transactions.

¶ 48 (3) Marjorie Ann Glover is suspended for five (5) years and is assessed a fine of \$50,000.00.

¶ 49 (4) Credifinance Securities Limited is fined \$50,000.00 and is expelled forever.

Costs

¶ 50 The costs requested by the Association have been drastically reduced. We have no hesitation in fixing the costs at \$100,000.00.

¶ 51 The costs shall be levied against the four parties jointly and severally.

Dated at Toronto, this 13th day of April 2010.

Honourable Robert S. Montgomery, Q.C., Chair

Donald H. Page, Member

Donald W. (Sandy) Grant, Member

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