IN THE MATTER OF

THE CANADIAN VENTURE EXCHANGE (the "Exchange")

BY-LAW 5 - DISCIPLINE

AND

CRAIG STEVEN CHARLTON, RESPONDENT

HEARING COMMITTEE:	Alison H. Narod Chris Oosthuizen Jean-Paul Bachellerie
COUNSEL:	Patrick Robitialle Appearing For the Exchange
	Steven Charlton Appearing for Himself
DATE OF HEARING:	July 24, 2001

DECISION

The Respondent, Mr. Charlton, appeared at a hearing before the undersigned panel on July 24, 2001, at which time he admitted to a number of infractions of the By-Laws and Rules of the Vancouver Stock Exchange ("VSE"). In particular, he admitted the following facts and infractions set out in a Notice of Hearing dated June 18, 2000:

> WHEREAS the Respondent was at all relevant times, within the jurisdiction of the Vancouver Stock Exchange ("VSE"), and that jurisdiction has been assumed by the Canadian Venture Exchange Inc. ("CDNX"), effective November 29, 1999;
>
> WHEREAS it is alleged that infractions as defined by VSE By-Law 5.01 have been committed as per the following facts:
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> 1. From January 25, 1994 through August 18, 1999, Charlton was employed as an Investment Adviser with Haywood Securities Inc. ("Haywood") in Vancouver, British Columbia.
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> 2. In March 1996, Charlton entered into an agreement with a client whereby the client subscribed, as a nominee for Charlton, to a private placement for

units (consisting of shares and warrants) of VSE-listed Conquistador Mines Ltd. (the "Private Placement").

3. Charlton paid the entire cost of the client's participation in the Private Placement and gave the client a portion of the units available in the Private Placement as consideration for the client acting as his nominee.

4. In April 1996, the Private Placement shares, with a twelve-month hold period, were received into the client account. Between December 1997 and January 1999, the Private Placement shares were sold for a loss of approximately $15,000.

5. In using a client account as a nominee account for his personal participation in the Private Placement and in order to hide his personal affairs, Charlton contravened Vancouver Stock Exchange (VSE) By-Law 5.01.

6. In May 1996, Charlton entered into further agreement with the same client whereby the client, on Charlton's recommendation, would purchase shares in his account. Charlton and the client agreed that any subsequent profits would be split between the client and Charlton, and that Charlton would cover any losses in the account that resulted from the agreement.

7. Pursuant to this agreement, in May 1996, 5,000 shares of VSE-listed Belmont Resources Inc. ("Belmont") were purchased into the client account. The Belmont shares were subsequently sold for a nominal profit.

8. By entering into an agreement with a client to share profits in the client account and in agreeing that the client would not suffer any losses in the account, Charlton violated VSE Rule F.2.22(1).

Accordingly, in view of Mr. Charlton's admissions, the remaining issue is penalty. Counsel for the Exchange argues that the allegations in this matter are serious and, as a result, significant sanctions must be imposed. In particular, the Exchange is concerned with Mr. Charlton's conduct in using the client account as a nominee account in order to hide his personal participation in a private placement.

Counsel notes that, during the course of the investigation, Mr. Charlton admitted to the Exchange's investigator that he knew his conduct in using his client as a nominee was wrong. Additionally, he admitted that his reasons for his actions were:

(a) that his participation in the private placement was prohibited by an internal restriction imposed on employees by his employer, Haywood Securities Inc., which limited "Pro" participation to 15% and, as that threshold level had been filled, Mr. Charlton was prohibited from personally participating in the private placement; and

(b) that he wished to hide his affairs from his estranged spouse.

The Exchange says that by structuring his affairs so as to hide his participation in the private placement, Mr. Charlton put his personal interests before both the interests of his client and employer. This shows an element of deceit and of preferring one's personal interest over those of the employer and its clients. Therefore, his conduct is particularly serious.

The Exchange says that registered representatives perform a gatekeeper function and hold a position of trust *vis-à-vis* their clients and their member firm. Accordingly, significant sanctions must be imposed on Mr. Charlton as a specific deterrent to Mr. Charlton, personally, and a general deterrent to other like-minded individuals who may be employed in the securities industry.

In this regard, the Exchange refers to a VSE Notice to Members No. 96/97 dated October 23, 1997 regarding the subject of "The Role of RR's and Members as Industry Gatekeepers".

That Notice states, in part:

> "… [T]he role of the Member and its employees in upholding the integrity of the market place (the role of "Gatekeeper") continues to be of major importance."

and:

> …[T]he RR's must also act in the best interest of their employers and through them the whole Securities Industry. From this it follows that if the RR becomes aware, through knowledge of the client or otherwise, that the intention or effect of the trading by a client would be in breach of the Securities Act, or impugn the integrity of the market place, then it is incumbent on the RR in the capacity of "Gatekeeper" within the Securities Industry, to draw the matter to the attention of Management of the firm and Member shall draw this to the attention of the Exchange. Further, wilful blindness on the part of RR's may equally be construed as failure to meet their responsibilities."

The Exchange says that Mr. Charlton's actions were in direct contravention of the standards of the industry and, in particular, his obligations as a Gatekeeper. He intentionally structured his participation in the private placement to avoid the prohibition as set by his member firm. Such conduct impugns the integrity of the Securities Industry as a whole and has a potential to harm his employer and his clients.

The Exchange says that the appropriate principles to apply in making penalty determinations are aptly set out in the decision of a VSE disciplinary panel, *Re Van Santen*, March 24, 1997. There, the panel stated, at pages 3-4:

> "The primary objective of imposing penalties in a case such as this is to protect the public. In that connection, a number of factors should be considered. In a passage quoted in the decision of another VSE Panel (*Re Biles*, April 18, 1996) from "The Regulation of Professions in Canada" by James T. Casey, page 14-4, the author states:

> "A number of factors are taken into account in determining how the public might best be protected, including specific deterrence of the member from engaging in further misconduct, general deterrence of other members of the profession, rehabilitation of the offender, punishment of the offender, isolation of the offender, the denunciation by society of the conduct, the need to maintain the public's confidence in the integrity of a profession's ability to properly supervise the conduct of its members and ensuring that the penalty imposed is not disparate with the penalties imposed in other cases."
>
> Most of those factors are relevant in dealing with the penalty to be imposed on a registered representative."

In the instant case, the Exchange submits that the following "range of sanctions," although significant, would be appropriate in the present case:

1. a fine in the amount of $25,000;

2. withdrawal of Exchange Approval for a period of six months from the date of the decision regarding sanction;

3. that should Mr. Charlton return to the industry, he do so under strict supervision for a period of 12 months from the date of his return to the industry;

4. that should Mr. Charlton return to the industry, he be required to re-write the Conduct and Practices Handbook examination; and

5. payment by Mr. Charlton of a contribution towards the costs of the investigation of up to $2,500.

The Exchange refers the Panel to a number of precedents which it says indicate that the sanctions proposed are within the range of sanctions which have been issued by other panels and regulators in similar circumstances.

The first case referred to is a decision in *The Investment Dealers Association and Claude Desjardins*, [1999] I.D.A.C.D. No. 12, Bulletin Number 2586, May 26, 1999. Mr. Desjardins was a Branch Manager. In an 11 month period, he allotted shares of a new issue to himself without first offering them for sale to clients. He opened an account at an outside firm on behalf of a family member and purchased shares of the same issuer into that account. He did not advise his own firm of the opening of the account with the other firm. The sale of those shares netted profits of over $53,000.

The Quebec District Council of the Investment Dealers Association ("IDA") imposed the following sanctions:

1. a fine in the amount of $25,000;

2. disgorgement of profits in the amount of $53,917.88;

3. a requirement that he successfully re-write the Conduct and Practices Handbook examination;

4. a requirement that he submit to strict supervision for a period of six months;

5. a requirement that he pay costs of investigation in the amount of $4,000.

The Exchange says the facts of the *Desjardins* case are very similar to Mr. Charlton's position insofar as a registered representative misused his position to prefer his personal interest to those of his clients and his firm. Such conduct cannot be condoned and must be dealt with seriously in a disciplinary process such as this.

The Panel was provided with a VSE Notice to Members No. 30/97 dated March 31, 1997 concerning a settlement involving Philip James Walsh. The Exchange submits that this case is a precedent for imposing a fine on a registered representative for making a promise to clients that they will not suffer a loss. In that case, within a period of a couple of weeks, Mr. Walsh executed two trades in an account for a member of his family. He guaranteed that the account would not suffer a loss. The trades also had the effect of re-ageing a cash account debit so as to evade settlement requirements. Mr. Walsh thereby violated Exchange Rule F.2.22.1(a) and By-Law 5.01(2).

The second of the two trades resulted in a loss to the family account. To satisfy that loss, Walsh took deliveries of shares of the same issuer from his "personal account" and deposited them to the family account. By so doing, he concealed the transaction from his employer, thereby violating Exchange By-Law 5.01(2).

The Notice indicates that By-Law 5.01(2) states in part that an infraction means any conduct which is unbecoming or inconsistent with just and equitable principles of trade or detrimental to the interests of the Exchange or the public.

It also says that Rule F.2.22.1(a) states in part that approved persons shall not lead any client to believe that they would not suffer a loss as a result of opening an account or as a result of any dealings in connection with that account.

Mr. Walsh agreed to the imposition of the following penalties for violation of By-Laws 5.01(2) and Rule F.2.22.1(a):

1. payment of a fine in the amount of $5,000;

2. disgorgement of inappropriate commissions in the amount of $1,397; and

3. an assessment of investigative costs in the amount of $2,000.

Accordingly, the Panel agrees that the Walsh case is precedent for imposing a fine of $5,000 for a promise to a client that it will not suffer loss and concealing trades from a registered registrant's employer.

The third case supplied by the Exchange is referred to in VSE Notice to Members No. 131/98 regarding a settlement involving Gary Robert Purdon. According to the Notice, during a period of almost three years, Mr. Purdon exercised discretion in an account of a client who was a relative. A total of 456 trades in approximately 35 Exchange-listed companies were executed in that account. Mr. Purdon exercised discretion in the majority of the trades in that account. The client had not given Mr. Purdon written authorization to exercise discretion over the account and Mr. Purdon's employer had not accepted the account as discretionary. Mr. Purdon thereby violated Exchange Rule F.3.02, which states in part that no investment advisor of a Member Firm shall exercise any discretionary power with respect to a client's account unless the client has given prior written authorization and the account has been accepted as a discretionary account by the Member Firm.

Additionally, over a period of almost two years, Mr. Purdon conducted Off-VCT trades in the client account. He conducted four such trades in the shares of four Exchange-listed companies. His participation in the Off-VCT trades violated Exchange Rule C.1.08, which states, in part, that no approved person shall trade or participate in any trade in any listed security, whether acting as principal or agent, unless the trade is made on VCT during the trading session.

Finally, over a period of almost three years, Mr. Purdon, with his client's knowledge, operated the client account as an undisclosed nominee account for the purpose of receiving delivery of the Off-VCT trades. Cheques with a total value of approximately $51,200 were issued to Mr. Purdon from the account. Mr. Purdon did not advise his employer or have on file the required documentation to establish that he was a co-beneficial owner of the account as it related to receipt of these trades. He thereby violated Exchange By-Law 5.01(2) and Rule F.1.04. By-Law 5.01(2) states in part that "Infraction" means any conduct, proceeding or method of business, which is unbecoming or inconsistent with just and equitable principles of trade or detrimental to the interests of the public.

Rule F.1.04 states in part that no Member shall carry an account in the name of a person other than that of the client except that an account may be designated by a nominee name provided the Member maintains sufficient identification in writing to establish the beneficial owner of the account or the party or parties financially responsible for the account.

The sanction imposed on Mr. Purdon was:

1. payment of a fine in the amount of $35,000;

2. disgorgement of inappropriate profits in the amount of $20,000;

3. withdrawal of Exchange Approval for a period of one year;

4. a requirement to re-write and pass the examination based on the Conduct and Practices Handbook for Securities Industry Professionals prior to re-entering the industry;

5. should Purdon return to the industry, a requirement to be on strict supervision for a period of six months; and

6. an assessment of investigative costs in the amount of $3,000.

The Exchange acknowledges that the global fine of $35,000 in the Purdon case is higher than the fine sought in the instant case.

The Exchange says that the most comparable of the precedents it has submitted is the *Desjardins* case. It notes that the penalties sought here are less severe than those imposed in the Purdon case and more severe than the Walsh case.

The Exchange says the most serious aspect of the instant case is Mr. Charlton's hiding of his use of the nominee account. It says that the global fine of $25,000 that it proposes includes a fine of $20,000 for that infraction and $5,000 for the promise of no losses.

With respect to the issue of payment of costs, the Exchange submits that a contribution by Mr. Charlton towards the cost of investigation of up to $2,500 would be appropriate. The Exchange estimates that the costs of the hearing room and reporter is approximately $500. The costs of the Panel attending the hearing for two appearances is approximately $500. It says that the balance of its costs are attributable to the investigator's time. It says its numbers are reasonable and likely undervalue the investigator's time. It points out that the B.C. Securities Commission can charge $100 per hour for its investigators' time. The Exchange's investigators perform substantially the same function as the BCSC investigators. Counsel has provided evidence that the Exchange's investigator has spent 50 hours on this matter.

With respect to why it seeks a requirement of strict supervision for 12 months when the precedents it supplied imposed, at most, a requirement of six months, the Exchange says that Mr. Charlton has been out of the industry for close to two years. If he is required to re-write his examination, the period of strict supervision will ensure that he conducts himself appropriately when he returns to the industry.

Mr. Charlton had little to say in response to the proposed sanctions. He points out that he does not dispute any of the charges. He does not intend to return to the industry. He intends to pay any fine set for him, as long as he is provided with time to pay. He says he is presently unemployed, but will soon commence a job outside the industry.

With respect to the monetary elements of the sanctions, he says they are "a little high". He believes that they are at least double of what they should be. He points out that the Purdon case involved a higher fine, but also involved more numerous trades.

With respect to the non-financial sanctions, he says he has no real problem with them, including the requirement of 12 months of strict supervision.

The Panel has reviewed and considered the submissions of the parties and agrees that Mr. Charlton's conduct was serious and reflected an element of deceit, in preferring his own interests over those of his employer and his clients and in hiding his conduct from his employer to benefit himself.

In considering the proposed penalties, the Panel has assessed Mr. Charlton's conduct in light of the cases supplied by the Exchange. In the Panel's view, Mr. Charlton's case is not as serious as

the facts in the Purdon case, insofar as Mr. Purdon engaged in significantly more transactions, albeit over a similar period of time. Accordingly, we think the fine in that case reflected the greater seriousness of the facts of that case.

In the Panel's view, the *Desjardins* case is also a serious case, particularly since Mr. Desjardins was a Branch Manager and therefore a person in a position of greater responsibility than Mr. Charlton. However, the Panel notes that Mr. Desjardins' conduct occurred over a shorter period of time (11 months). The Panel also notes that the *Desjardins* case did not involve a promise to a client of no loss.

The Panel considers the Walsh case to be less serious, insofar as Mr. Walsh's conduct occurred over a much shorter period of time, although the Panel notes that it also involved a promise to a client that it would not suffer a loss and concealment of trades from a registrant's employer.

As a result of the foregoing, the Panel is of the view that an appropriate fine to impose in the instant case would be $20,000, approximately $5,000 of which would be attributable to Mr. Charlton's infraction relating to his promise to his client of no loss.

With respect to the Exchange's proposal that should Mr. Charlton return to the industry, he be required to do so under strict supervision for a period of 12 months from the date of his return, the Panel is of the opinion that this is not in keeping with the cases supplied. In the *Desjardins* and Purdon cases, a requirement of strict supervision was imposed for a period of six months. In the Walsh case, no such requirement was imposed at all. In our view, it is in keeping with the cases to impose a requirement of strict supervision for six months.

With respect to the issue of costs, the Panel agrees with the Exchange that Mr. Charlton should be required to pay a contribution towards the cost of the investigation of up to $2,500.

The Panel agrees with the other requirements proposed by the Exchange.

Accordingly, in view of Mr. Charlton's breaches of VSE By-Law 5.01 and VSE Rule F.2.22(1), the Panel orders that the following sanctions be imposed on Mr. Charlton:

1. a fine in the amount of $20,000;

2. withdrawal of Exchange Approval for a period of six months from the date of this decision;

3. that should Mr. Charlton return to the industry, he do so under strict supervision for a period of six months from the date of his return to the industry;

4. that should Mr. Charlton return to the industry, he be required to re-write the Conduct and Practices Handbook Examination; and

5. payment by Mr. Charlton of a contribution towards the costs of the investigation of up to $2,500.

DATED at the City of Vancouver, in the Province of British Columbia this 2nd day of October, 2001.

"Alison H. Narod"
ALISON H. NAROD, Chair

"Chris Oosthuizen"
CHRIS OOSTHUIZEN, Member

"Jean-Paul Bachellerie"
JEAN-PAUL BACHELLERIE, Member