SIPA Sentinel

July 2010

SIPA's mission: To aid public awareness of how the investment industry operates, to provide guidance to members with an investment complaint, and to pursue improved investment industry regulation and enforcement.

Small Investor Protection Association - A voice for small investors

SIPA SENTINEL

The SIPA Sentinel is issued bi-monthly. From time to time articles and re-prints are included that offer opinions on subjects related to investment and regulation. These are meant to help increase investor awareness, and SIPA may not share these opinions. This month news articles are included to illustrate some of the issues including dealing with an unregistered advisor and borrowing to invest. I met Catherine Rahal many years ago when she visited Toronto. Catherine spoke at one of SIPA's meetings and her story was published in the Gazette last year, but her story is worth re-telling. It has help for all investors as well as victims of financial loss. Thank you Catherine for telling your story.

Hard lessons from financial ruin

A fraud victim tells her story: Young widow, two kids, more than $1 million in insurance proceeds and a legal settlement, and a trusted chartered accountant. Where is he now? Living in New Zealand

BY CATHERINE RAHAL, FREELANCE *JULY 17, 2009*

In 1986, Catherine Rahal got a $1.6-million settlement for the death of her husband. She entrusted the money to a chartered accountant, and it disappeared.
Photograph by: JOHN MAHONEY, THE GAZETTE, Freelance

Once again, a "trusted financial adviser" has apparently taken a group of investors to the cleaners. The song is an old one and the refrain is familiar: "I trusted him ... he was a friend of the family ... we knew him for years ... never had a problem ... how could this happen?" - and so on. It seems he wasn't registered with the Autorité des marchés financiers, or any other regulatory body. I know this song well. I have sung it, all of the verses and reprised refrains. My loss was more than $1 million - blood money, as it were - gained by the loss of my spouse in an airline accident. Some of you reading this will know the story: young widow, two kids, insurance proceeds, legal settlement and a trusted chartered accountant.

Where is he now? Living in New Zealand with his wife and kids. His sister, who worked with him, is there, too, but then she knew what was going on while it was going on. And his partner? Well, he's still a practicing CA in Montreal. In 1986, three years after the death of my 37-year-old husband, I was worth about $1.6 million. Had I left my money in the mutual funds in which it was mostly invested, I would, market crisis notwithstanding, probably be worth around $8 million today, if not more. But no, I had a great and caring CA. He recommended limited partnerships in restaurants, motels and hotels. They all went belly up, and my money went with them.

I was promised that these investments were as safe as a term deposit and that I would derive income from them. I did receive income, but I did not know then that it was my own money coming back to me. Do I know what really happened? No. Do I have strong suspicions? Yes. Is there a lawyer who would work pro bono (or even on contingency) for me? Not to date. Yes, legal proceedings have been launched. No, they haven't been pursued. I don't have the money to do it.

That's the story - and it is not unique. What isn't talked about as much is what happens to you psychologically when you've been financially violated. Let's start with the stress that attacks your stomach, leaving you with roiling innards every time you think about the situation - which is pretty much most of the time. For months, it is all you think about, and when someone says "How are you?" you can't just say "Fine, thanks." By the time I was six months into my crisis, I might as well have been Typhoid Mary - no one wanted to talk to me. I lost a lot of weight (not a recommended diet plan), amazing for someone who gains simply by looking at chocolate. I didn't sleep. I had difficulty concentrating on just about anything. There are chunks of time of my children's lives that I am hard pressed to remember. It was worse than the year following my husband's death.

Time goes on, however, and if you want to survive, you need to get a handle on reality and figure out how best to manage, especially if you've lost almost everything. It takes time, it takes support from family and friends (if you have any left after your crisis obsession). Sometimes a stranger can help, too. I've told my sad tale to many a casual ear. Just verbalizing it can be cathartic. The right therapist is a godsend.

There are some hard truths to learn, too. The money is gone and the likelihood of seeing it again is slim. If you do, consider it a bonus. Prosecution may or may not be possible. Criminal proceedings may put the guy in jail, but only civil action will put money in your pocket. If you haven't got any more money, you can't pay the lawyers. For Earl Jones's alleged victims, it seems there are some legal good Samaritans, so perhaps these victims will fare better than I have.

Bitterness can last an awfully long time, and frankly, the only existence it will poison is your own – so you learn to laugh again, eventually, and you learn that you can survive, quite happily even, despite reduced circumstances. You regain an appreciation for the important essentials of life. The costs are high in other areas, too - for example, the post-secondary education of my kids, that should have easily been covered, became a juggling maneuver. No amount of money can pay children for the loss of a father, but then to deprive them of the available financial resources is unconscionable.

The biggest (and most permanent) victim of all, though, is trust - I'll never really trust anyone fully again, even on a personal level. That lack of trust permeates all aspects of your life - even makes delegating mundane daily chores

something you think about. There are some bits of personal advice that bear repeating - you'll read them in other places in this paper, but I'll review them here just for emphasis:
The grass is not always greener somewhere else. A decent return over a 10-year period is an average of seven per cent annually. Some do better, many do worse.
Have a plan and stick to it. And have that plan with a licensed, regulated financial adviser who uses known products that come with a prospectus. Check his or her credentials if you aren't sure. Knowing someone for years does not confer a guarantee of licensing or honesty. Call the AMF or the regulatory board in the place where you live.
Look for transparency - you want to know what you are getting. It usually isn't such a good idea to invest in something you don't understand.
Take responsibility for your finances. Playing ostrich (colour me guilty) is the worst thing you can do. If you need help, ask for it, but bring in a "trusted" third party (an adult child, a friend) or get a second professional opinion.
There are very few hard deadlines in life - if you miss out on this "once in a lifetime" opportunity, chances are another will come along. And if you choose to take the risk, do it with money you can afford to lose.
All of that being said, some people just have the gift of gab and can sell the Brooklyn Bridge 10 times over.

When it comes to your hard-earned money, go ahead and be suspicious. Don't give a second thought to hurting someone's feelings - the feelings hurt may ultimately be yours.

Catherine Rahal is today a licensed mutual funds (through DD Humes Financial Services/FundEX Investments Inc.) and insurance representative (independent) who earned her licenses after her money was gone. Some lessons unfortunately are not learned in school.
catrahal@csrconsultants.ca

INVESTOR BEWARE

A decade Robert Goldin published a book entitled "INVESTOR BEWARE". Recently Robert has updated this book and makes a copy available FREE on his website www.MacGold.ca. This book is an excellent primer for investors. It includes a glossary of terms, describes various investment products, and outlines some of the industry's practices that cause you to lose your savings.

Many investors rely upon their advisors and often allow the advisor to trade in their account on a discretionary basis. This is what Robert says about discretionary accounts on page 172:

> ***32 Discretionary Accounts***
> *Your financial advisor failed:*
> - *To get you to sign a written discretionary authority.*
> - *To obtain annually a written renewal of your discretionary account.*
> - *To tell you that she was not allowed to solicit a discretionary account from you.*

If you have savings and investments and depend upon an Advisor you owe it to yourself to visit http://www.macgold.ca/investorbeware and click on the book cover to get a pdf copy to read at leisure. I applaud Robert for making this excellent book available to small investors FREE. The book had been updated since its first publication. Investors need to be more aware of what happens in the industry so they take appropriate steps to avoid losing their savings due to wrongdoing. I urge all members to read INVESTOR BEWARE.

When Robert first published this book he asked me to read the draft and write something about it. The following is what I wrote:

FOREWORD

I first talked to Robert after reading an article on him in Maclean's magazine. The article was particularly interesting because I had been doing research for my complaint against a major brokerage firm for about two years. It seemed to me there was little help for the individual investor who has a complaint. The article indicated that Robert had been a lawyer in South Africa, had worked for eight as a financial investigator and was now offering services to help small investors who have suffered financial losses due to their broker.

The difficulty in trying to achieve restitution after being betrayed by a trusted broker or financial advisor is intimidating at best. It is much better to become aware of how the industry operates and to take appropriate action so one can avoid the pitfalls that can lead to extreme financial loss. The days of placing implicit trust in your broker appear to be over. The advice in this book is timely.

At a Small Investor Protection Association public forum in June 1999, Glorianne Stromberg talked about "streetproofing" for investors. This book expands upon this need. Readers will become aware of the need for them to monitor the activities of their brokers. As long as the investment industry is commission motivated, this need for "streetproofing" will continue.

These is some hope that a new breed of brokerage firm will emerge along with the new breed of investor who utilizes the internet. It is highly unlikely that the individual investor looking after his own investments will incur the incredible losses experienced by the investor who trusts and relies upon his broker or financial advisor. Remember there are few individuals who place their investments with a broker or advisor they do not trust.

Robert's firsthand experience of suffering loss early in his career, coupled with his industry experience and straight forward approach have resulted in this investment industry primer that should become a handbook for the small investor. It is a condensed description of the investment industry and is highlighted with examples of real-life events.

Robert has helped many indivuals who have experienced distress due to financial loss. This book should helpcountless investors to avoid this distress. It is a book that all investors should read. I have found it fascinating in its simplicity and extensive coverage of the investment industry..

PENSION PLANS – COMMON FRONT FOR RETIREMENT SECURITY

The recent financial market meltdown resulted in a crisis for some pension funds. With such a large drop in value of investments many funds became underfunded or their underfunding increased significantly. Also some companies failed which resulted in their employees and pensioners seeing their future security in question and the possibility of reduced pensions. This crisis caused Government to rethink pensions and reconsider contribution holidays, limits on pension surpluses (the Government had kept the limit on surpluses low to prevent companies using the surplus to avoid tax) and other issues regarding retirement security.

The Common Front for Retirement Security (CFRS) comprises over twenty organizations most of which represent pensioners. As a result a number of experts on pensions are available. One of these, Bernie Dussault is Senior Research and Communications Officer for the National Association of Federal Retirees (FSNA). I had the great pleasure of visiting Ottawa with Dan Braniff and Bernie Dussault to meet with Government as Common Front representatives. The following memo written by Bernard Dussault is a good summary of the current pension situation;

The advisors to the Common Front for Retirement Security (CFRS) reacted much favourably to the June 14 agreement of the federal/provincial Finance Ministers for a modest expansion of the CPP and look forward to its proper implementation. Such measure represents an important step to address the three main issues of the Canadian pension landscape, namely the lack of pension coverage for Canadian workers, the recurrent solvency problems affecting defined benefit plans and the trend of conversion of defined benefit plans into defined contribution plans.

Still, the CFRS finds that the public consultation process that took place over the last two years or so in respect of the pension crisis failed to properly address the chronic solvency problem that continues to affect the defined plans voluntarily sponsored by private employers for their employees. This solvency problem is structural and systemic in that plan sponsors are allowed to withdraw (through contribution holidays) from the pension fund any pension surplus as soon as it emerges while any emerging deficits are generally amortized, if ever, only over a long period of time.

The Income Tax Act (ITA) was amended last year for an increase from 10% to 25% of pension liabilities in the level of pension surplus that may be held in a pension fund. This amendment was the necessary first step to address the solvency problem. The required second step would consist of prohibiting plan sponsors to take contribution holidays. The only measure adopted so far in this respect is OSFI's recent increase from 0% to 5% of liabilities below which a pension surplus may not be withdrawn in the form of contributions holidays. As a matter of consistency with the ITA, OSFI's rule should have been changed form 0% to 25%. As far as I know, no province has changed so far their rules in respect of contribution holidays.

The CFRS believes that contribution holidays should be totally prohibited. Private plan sponsors oppose such drastic measure because they think that the pension plan surplus would thereby reach too high/unreasonable levels. This is not the case. Indeed, even if a plan sponsor finances his plan properly by paying contributions in accordance with the contribution rate set (presumably properly) by the valuation actuary (as opposed to the sponsor's accountant's liberal review of the actuary's safe measurements), surpluses and deficits will unavoidably emerge over time consistent with the statistical fluctuations in the market value of the invested pension fund. However, the proper payment of actuarially set contributions coupled with a proper amortization of emerging surpluses and deficits over a fixed period (from 5 to 15 years) is a good recipe for:

- *stabilizing the sponsor's contributions level;*
- *avoiding major solvency problems*
- *preventing at any time the pension plan from becoming overly underfunded or overfunded (the amortization of emerging surpluses and deficits would normally prevent the pension fund to exceed at any time 25% of the pension liabilities;*
- *avoiding the need to maintain any special internal or external earmarked contingency fund.*

The CFRS thinks that the CIA should consider the above proposal concerning the prohibition of contribution holidays.

The CFRS is attempting to arrange a meeting of relevant leaders of the CIA with some CFRS advisors to discuss this matter. SIPA is pleased to participate in the CFRS and for some time have been concerned about the trend from defined benefit plans to defined contributions plans which will make retirees responsible for the successful investment of their pension funds. Already small investors are having their savings and investments at risk when the industry fails to adequately protect investors and fails to supervise those representatives who may be incompetent or worse may have the intent to use client investments to generate wealth for themselves. In Canada there is apparently no requirement for investment representatives to put clients' interests first. There is also no fiduciary responsibility unless the account is discretionary or managed. We believe that the investment industry should have a fiduciary responsibility to clients and will continue to press for this change.

A SECOND OPINION ON YOUR FINANCES

In 2005 Warren MacKenzie published a book entitled "A Second Opinion on Your Finances". It is always a good idea to get a second opinion but investors may not know where to go. Some of the banks offer a second opinion but most second opinions are given by those who sell financial products or investment advice. Therefore I found it interesting when Weigh House Investor Services was created. Recently I met with Warren to see how his new venture was developing.

It has been a great success because it is a service that is needed by investors.

Now Weigh House Investment Services provide solutions. Weigh House does not sell products but they do charge for their services. The fees are modest when you consider how much money you are losing by not investing properly or having a commission motivated advisor unable to deal properly with the conflicts of interest inherent in the investment industry.

A number of Advisors and firms are offering a fee only service but have not totally abandoned commission sales. Weigh House does not sell investment products. They will analyze your investments and suggest ways to minimize your risks and maximize your returns. A visit to their website at www.weighhouse.com could lead you to a better way to invest. In addition to analyzing your investments, they can provide assistance with selecting an Advisor, or provide assistance to Do-It-Yourself investors.

The Weigh House website states:

> ***Solving Investment Problems without Selling Investments***
> *We do not sell or manage investments; rather, we employ proven strategies utilized by institutional money managers to strengthen your portfolio, improve your financial posture, and help you achieve your lifestyle goals with minimal risk.*
> *Without incentives to sell investments, we work only for you. We keep your interests front and centre as you transition through life's significant events. As true independents, we are free to tell the truth and this is our enduring promise to you.*

The web site includes some useful Investor Resources including: Calculate Your Portfolio's Return, and Compare Your Return to a Benchmark.

Members are encouraged to visit the Weigh House website as there is helpful information. With the volatility of the financial market and the proliferation of products that are not understood by investors or product sellers it is encouraging to know that there are services available for investors that will enable them to find their way in these uncertain times.

Financial planner sued for losses on borrowing to buy mutual funds

June 25, 2010
Ellen Roseman

David Karas, a certified financial planner, has been sued by a client who lost $1.5 million after being advised to borrow to buy mutual funds. His firm, Toronto-based Investia Financial Services Inc., has also been sued.

George French, 58, a retired dairy farmer in Phelpston (outside Barrie), says he "fell victim to investment strategies designed to generate compensation for the adviser at the expense of the adviser's clients."

Karas, a well-known media personality in Barrie, was rewarded for being the top sales producer from 1989 to 2009 for his firm, formerly called Money Concepts Canada. His registration as a mutual fund salesperson was suspended this spring. He remains registered as an insurance salesperson.

French's lawyers, Harold Geller and John Hollander of Doucet McBride in Ottawa, specialize in helping clients recover financial losses from investment advisers. "About 20 clients of David Karas have approached us," Geller said. "We're working on a second claim right now and the lawsuits will continue to flow out during the summer. We're informed that there are 150 people in this situation."

French has never married and has no dependants. Before seeking advice from Karas' firm in 2000, he had saved $380,000 for retirement, which he had invested in guaranteed bank deposits.
Under the
allegations, which have not been proven in court, Karas encouraged clients to borrow to buy mutual funds. He used the assets he managed as collateral to have clients borrow more money from lenders. The more they borrowed for investment, the more compensation was paid to Karas and his firm.

In late 2006, he created a new firm, Financial Victory Associates, to provide alerts that would tell clients the appropriate time to buy or sell mutual funds. He told clients they could eliminate exposure to losses by subscribing to this service. But he didn't tell them the extra annual fee of 0.75 per cent would make it harder for them to earn a profit from leveraging.

He also sold insurance to clients, whether suitable or not. French took his advice and bought life, critical illness and long-term care insurance policies with premiums of $22,000 a year. After borrowing more than $1 million to buy mutual funds, French found his portfolio – consisting of 92 per cent stocks, 8 per cent fixed-income securities and no cash – was hit hard by the stock market crash of 2008.

July 2, 2010

Ponzi scheme nets 6-year prison term

By CBC News
CBC News

A former investment manager who bilked dozens of eastern Ontario seniors out of their life savings has been sentenced to six years in prison.

A former investment manager in eastern Ontario has been sentenced to six years in prison for bilking dozens of seniors out of their life savings.

Bruce Elmore, 61, of Kemptville, Ont., was convicted by a jury April 23 on eight charges of theft and fraud. He was also found guilty of making false claims about his firm, Elmore Investment Services, and refusing to answer questions during the bankruptcy process after his company declared bankruptcy in 2002.

The Crown said Elmore ran a Ponzi scheme between 1997 and 2002 that defrauded about 30 people of amounts ranging up to hundreds of thousand of dollars each.

The clients, many of whom were elderly, believed Elmore was placing their money in GICs and other conservative financial products. Elmore, who defended himself in the trial, pleaded not guilty to all charges, and claimed his clients knew he was investing their funds in high-tech stocks and real estate.

Some of his clients died before his trial started in January.

During sentencing Friday, about 20 of Elmore's victims were in the courtroom. Elmore kept his head down during the proceedings then erupted in tears when he heard the sentence.

The Crown had been seeking a 10-year prison term.

SENIORS' SEMINARS IN EASTERN ONTARIO

In July I had the pleasure of travelling with Seniors Seminars to five locations in eastern Ontario visiting Millbrook, Beaverton, Apsley, Lindsay and Haliburton. Attendance at these seminars ranged from about 30 to about 200. The seminars are arranged by Judy Muzzi, Past President of the United Senior Citizens of Ontario and sponsored by Barry Devlin MP and Rick Johnson MPP. The format includes information booths for government and community organizations that provide loads of information, brief introductory statements by each of the booths and five or six speakers for 20 minutes each, and a mid-morning coffee break and a free lunch.

It is a great opportunity for me to speak to about 500 seniors and to hear what they have to say as many have questions regarding financial issues. It keeps me up to date with the real issues that seniors and other small investors face. Most Canadians need an investment advisor as few have sufficient investment knowledge to be a Do It Yourself investor. So the first problem is selecting an Advisor. When small investors deal with an advisor it is usual that they do not understand their statements. Worse, most statements do not show essential information and very few show the performance of the investment compared to an appropriate benchmark. There will be more on investing next issue, but do read INVESTOR BEWARE by Robert Goldin.