

NOVEMBER 22, 2012 ISSUE

W.H. STUART & ASSOCIATES REFUSES OBSI COMPENSATION RECOMMENDATION

The Ombudsman for Banking Services and Investments (OBSI) today announced the refusal of W.H. Stuart & Associates ('W.H. Stuart') to compensate its customers in the amount of \$41,066 as recommended by OBSI.

W.H. Stuart is a family-owned independent mutual fund dealer and insurance agency based in Markham, Ontario. A retired elderly couple, Mr. and Mrs. I, brought their complaint to OBSI after unsuccessfully trying to resolve their complaint with W.H. Stuart directly.

Mr. and Mrs. I were low to medium-risk investors with limited investment knowledge, limited income and net worth, and no investment experience in individual stocks or private shares. On the recommendation of their W.H. Stuart advisor the complainants purchased shares in an extremely small private company that later went bankrupt. The investment was portrayed as a guaranteed, risk-free investment that was in fact a high-risk, speculative investment unsuitable for them given their personal and financial circumstances.

W.H. Stuart is responsible for the advisor's unsuitable recommendations that led to Mr. and Mrs. I's unsuitable investment portfolio at the firm. If W.H. Stuart had assessed the suitability of the initial shares they purchased and warned them of the risks, the complainants could have sold the shares without a loss and avoided purchasing additional shares on which they also incurred losses. W.H. Stuart has chosen not to fulfill its responsibilities to the complainants and provide the compensation they are owed based on the facts of the case.

OBSI's recommended compensation amount of \$41,066 is arrived at by first calculating the difference between the amount the investors' accounts should have been worth had they been suitably invested and the actual value as of the date they removed their investments from W.H. Stuart. Interest was then added to compensate the investors for the loss of use of their money, calculated from the date they first complained to the firm.

At the direction of securities regulators, OBSI established a one-time method of independent review of certain cases that were headed towards refusals to compensate. Mr. and Mrs. I's case was one of them. Firms were offered the opportunity to have credible and experienced former commissioners of the Ontario Securities Commission (OSC) provide an independent assessment of the files in question based on standards consistent with OBSI's Terms of Reference. If OBSI had unfairly considered the facts of the case or our investigation findings were objectively flawed, the reviewer would say so in their report on the matter. W. H. Stuart chose not to take up this offer.

A [copy of OBSI's investigation report](#) regarding this case is available on OBSI's website. Some names and personal information have been edited from the original version to protect the identity of certain individuals involved, including Mr. and Mrs. I.

Where a complaint is found to have merit, OBSI makes a recommendation for compensation where it would be fair to do so, taking into account all of the facts and circumstances of the case. Refusals by firms to follow an OBSI recommendation to compensate mean that OBSI must publicize that refusal and the details of the complaint under Section 27 of OBSI's Terms of Reference. OBSI has taken [several significant and extraordinary steps](#) to resolve this and certain other complaints that could not be resolved before we've resorted to announcing a refusal to compensate.

OBSI is Canada's national independent dispute resolution service for consumers and small businesses with a complaint they can't resolve with their banking services or investment firm. As a free alternative to the legal system, we work informally and confidentially to find fair outcomes to disputes about banking and investment products and services. Over 99.8% of the thousands of complaints brought to OBSI since the organization's inception have been successfully resolved.

OBSI looks into complaints about most banking and investment matters including: debit and credit cards; mortgages; stocks, mutual funds, income trusts, bonds and GICs; loans and credit; fraud; investment advice; unauthorized trading; fees and rates; transaction errors; misrepresentation; and accounts sent to collections. Where a complaint has merit, OBSI may recommend compensation up to a maximum of \$350,000.

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