September 14, 2007 ISSUE

WELCOME!

Welcome to the first issue of Contact, OBSI's new e-newsletter.

We are launching Contact to broaden and strengthen communications with all of our important stakeholders: government, regulators, participating firms, consumer and community groups, fellow dispute resolution services and interested members of the public.

Contact will be distributed by email, and will contain news and information about OBSI, including case studies, consultations and more. Respecting your time, we'll keep the items brief and to-the-point, with links to more in-depth information.

Please forward Contact to anyone you think has an interest in our work, and we'd be delighted to add them to our subscription list. You can subscribe (or unsubscribe) by following the links at the bottom of this email.

As well, we welcome suggestions for topics you'd like to see addressed in the newsletter. Send us your thoughts at publicaffairs@obsi.ca.

Happy reading!

David Agnew
Ombudsman

OBSI'S APPROACH TO NON-FINANCIAL LOSS

While recommendations to compensate "loss, damage or harm" are part of OBSI's mandate, we often get questions about our approach to what is commonly called non-financial loss, which doesn't involve monetary loss for a client. These are the cases where we believe the loss or damage for the client goes beyond direct financial loss because of the distress or inconvenience involved. It may also involve loss of reputation, damage to credit ratings or loss of privacy.

While every file is unique, and we consider what is fair in all the circumstances, it's important for all parties to know that we look at cases and consider recommendations consistently.

What is a non-financial loss?

A non-financial loss does not have a direct monetary value. In OBSI's dispute resolution process, a common example is the distress or inconvenience caused by a firm's maladministration or error.

Does OBSI recommend compensation for non-financial loss?

For the most part, our recommendations for compensation are designed to put clients back where they should have been if there hadn't been an error or poor advice. However, occasionally we have

a case where we believe the loss suffered goes beyond direct financial loss because of the distress and inconvenience, or other non-financial loss, involved. In those cases, we will recommend compensation to recognize that loss as well.

In some cases, we may also recommend compensation even when there is not a direct financial loss. In addition to distress and inconvenience, are there other non-financial losses OBSI will look at?

OBSI will also look at loss of reputation, damage to credit ratings and loss of privacy. In some cases of privacy breaches we may recommend that the complaint is better handled by the appropriate privacy commission. When does OBSI not recommend compensation for non-financial loss?

All clients experience some inconvenience when dealing with a dispute with their financial institution. OBSI will not recommend compensation for the distress or inconvenience that may be expected as a normal part of doing business or for the time and effort required to make a complaint, unless it exceeds what we believe to be reasonable under the circumstances.

We do not look at health issues, such as stress or other medical conditions, when assessing non-financial losses. Nor do we consider claims for pain and suffering.

Our recommendations to compensate for non-financial loss should not be viewed as punishments. Where warranted, that is the role of a regulator or court. Similarly, we do not levy fines or award punitive damages.

Non-financial loss does not include "indirect" financial losses. However, if a client takes time off work to resolve a complaint and loses income as a result, that may be considered in the calculation of financial loss depending on the circumstances.

How often, and how much, does OBSI recommend for non-financial loss?

We have been making recommendations for non-financial loss since our office was formed in 1996. Except in extreme cases, the recommended compensation ranges from $100 to $5,000, but in most cases is less than $1,000. Clients who consider their non-financial losses to be significant, or who want damages in addition to reimbursement, may want to pursue their complaint through other avenues such as the courts. Do recommendations for non-financial loss always mean a financial award?

No. OBSI may recommend that firms compensate clients in ways that are not monetary, such as a letter of apology, restoring a product or service, correcting a credit bureau record or explanatory letters to a client's creditors. What do we consider in determining the amount of recommended compensation?

What do we consider in determining the amount of recommended compensation?

While there is no exact measuring stick for assessing fair compensation for non-financial loss, we will consider the following as we make our recommendations:

- Was the non-financial loss prolonged?
- Was the non-financial loss significant?
- Has the client been through a period of unnecessary financial hardship?
- Was the complaint process itself unnecessarily difficult or prolonged?
- Did the client contribute to their non-financial loss?

FRAMEWORK WITH THE REGULATORS

Federal and provincial regulators, OBSI and the insurance ombudservices recently agreed on a Framework for Collaboration to ensure effective consumer protection in the Canadian financial services market.

The Framework underlines the importance of accessible processes for dealing with consumer complaints, and the vital role of independent dispute resolution through services such as OBSI. OBSI has approved the Framework and is working closely with the regulatory community, along with other stakeholders, to maintain and strengthen the integrity of our services.

View the "Framework with the Regulators" document.

CASE STUDY: AN UNPLEASANT AND INCONVENIENT SURPRISE

A couple decided to sell their home in a major city and relocate to a smaller town. They made arrangements through their long-time banker to apply for mortgage financing for their new home. The mortgage application was completed and approved by the bank. Prior to the mortgage closing date, a bank representative met with the couple to finalize the application and insurance documentation. The couple then made arrangements for moving.

On the closing date, also moving day, the couple received a phone call from their lawyer. He had just been informed by the bank of a condition on the mortgage requiring the couple repay nearly $65,000 in loans they had with other banks before it would release any funds.

This was the first time the couple had heard of the condition. They immediately contacted the banker who had arranged the mortgage. He told them he was not aware of it either. When the couple asked the bank to remove the condition, they were advised this was not possible and that $65,000 had to be paid before any funds could be advanced. The purchase of the new residence was part of a series of property sales and closings. Any postponement of the mortgage closing could cause serious problems and lead to potential lawsuits.

To meet closing requirements, the couple had to make hurried arrangements with another financial institution to increase their existing line of credit. While they were away arranging this financing, the movers packed and shipped items meant to be left at their old house. Subsequently, these items had to be shipped back at the couple's expense.

After they had moved to their new house, the couple made numerous calls and visits to their bank branch to find out how the bank could have neglected to inform them about the mortgage condition. They also requested copies of the mortgage documents they had signed. It took four months and many additional requests for the bank to provide the documents.

When the couple reviewed the bank's mortgage documentation, a Conditional Approval form was found indicating the repayment of $65,000 in loans was required prior to the mortgage funds being released. While the form was allegedly signed by the couple, they said they had not seen nor signed the form. The signatures on the form had little resemblance to the couple's actual signatures.

The bank did not offer an acceptable explanation of the signatures on the form. The couple then hired a lawyer to help them in their dispute with the bank. They also made further trips to the bank's

offices to meet with senior personnel in an effort to get an explanation of the bank's actions. The couple didn't get satisfactory answers, but the bank did offer to pay $11,000 as a goodwill gesture if the couple signed a release. The couple rejected the offer and asked OBSI to investigate.

OBSI reviewed the Conditional Approval form and concluded the couple had not signed the document. Our investigation also determined that certain bank personnel knew about the conditions of approval, but did not convey these to the couple before the closing date.

We determined the bank's actions resulted in increased moving, transportation and legal costs for the couple. We also concluded they caused the couple to suffer considerable inconvenience, due not only to the undisclosed mortgage condition, but also to the bank's unwillingness to provide any requested information in a timely manner.

OBSI recommended the bank reimburse the couple $11,430 for actual expenses. We also recommended that the bank compensate the couple $4,000 for the inconvenience they suffered because of the bank's actions. The bank agreed.

GUEST COLUMN BY DAVID AGNEW, INVESTMENT EXECUTIVE, SEPTEMBER 2007

The straight goods on OBSI

David Agnew, Ombudsman

Readers of recent Investment Executive issues can be forgiven for being more than a little confused about OBSI, the financial industry ombudsman service.

Are we the tyrants that Torys securities litigator Joel Wiesenfeld makes us out to be, leaving in our wake a trail of whimpering investment firms cowed by our bully-boy threats? Or are we the investment industry's best friend, as consultant Ken Kivenko portrays, biased against consumers and helping to oppress small retail investors, seniors and immigrants?

Of course the truth is that we are neither. And while both of these industry and consumer advocates are guilty of grasping for a headline with over-the-top rhetoric, they raise issues that – if they can park the hyperbole – are worth discussing.

First, the straight goods on OBSI. The Ombudsman for Banking Services and Investments is an independent alternative dispute resolution service. We offer consumers and firms an alternative to the legal system if they can't settle a dispute on their own.

Our service is informal, confidential and free to clients. We're funded by the companies that participate in our service, not the taxpayer. Our governance structure and procedures protect our impartiality.

We are the outcome of discussion among government, industry and consumer representatives looking for an effective and efficient way to increase consumer protection in financial services. We make recommendations, and don't have the authority to issue binding orders.

Our "stick" is to make public a firm refusal to follow our recommendations. It's not something we darkly whisper to recalcitrant firms – it's a provision has been front-and-centre in our rules from Day One. Name-and-shame is standard stuff for ombudsmen unless they have the power to issue binding orders.

Finally, we're unique in the landscape of Canadian financial services. Amidst the swirl of debate about national securities and jurisdictional issues, we seamlessly cover federally regulated banks, loan and trust companies, a growing number of provincially regulated credit unions, and all members of the IDA, MFDA and IFIC. We're available to the customers of about 650 firms representing the vast majority of retail banking services and investment transactions in Canada.

Let's also be clear about what we are not.

We're not a court of law. Our approach may not be entirely comfortable for those who thrive in the formal, costly and adversarial legal system, where the tactics of the fight can be as important as the merits of a case to the outcome.

As the Chief Justice of the Supreme Court of Canada recently said, "for average Canadians, access to justice remains an ideal, not a reality." It will be further out of reach for retail investors if we let the apparatus of the legal system – the appeals, cross-examinations, strategic delays, procedural straightjackets and so on – take over. That's when those with the deepest pockets have home field advantage.

We're also not consumer advocates, as clearly some consumer advocates want us to be. We remain firmly impartial in our work, not tallying up the outcomes of our files as proof of our toughness. We're looking for fairness, not batting averages.

Unabashedly, our job is to level the playing field for consumers. Not to tip it in any party's direction, but to make sure that both sides have an opportunity to have their story heard and objectively considered.

We have a skilled and committed team of investigators with training and experience in the industry, law and dispute resolution. In our recommendations we take into account many factors – not only jurisprudence and regulation, but also good industry practices and firm policies. Ultimately, we look to what is fair in all the circumstances.

How can we do better? We need to continue to work to resolve cases more quickly, make sure our services are known to all consumers who need them, and continue to expand our coverage. We are working with regulators and stakeholders on all these fronts.

The MFDA and IDA are consulting on new complaint-handling rules that will put time limits on firms to deal with complaints and increase consumer awareness of our service. Under the registration reform initiative, the CSA is proposing that all registered firms must join a dispute resolution service. These are important advances, and deserve industry endorsement.

A comprehensive and effective dispute resolution system for the retail investor is fundamental to the integrity of our financial markets. Judging by the cooperation and support we get from most of the firms in our service, that's a consumer protection concept widely embraced by the industry.

As OBSI and the dispute resolution system continue to evolve, we welcome spirited debate about how we can improve. However, we must be vigilant that strident voices – with their proposals that would compromise our independence, informality and accessibility – don't win the day.

**This Guest Column was published by Investment Executive in its September 2007 issue*

INVESTOR FORUM

The Ontario Securities Commission (OSC), the Investment Dealers Association of Canada (IDA), the Mutual Fund Dealers Association of Canada (MFDA) and the Ombudsman for Banking and Investment Services (OBSI) will be hosting an Investor Forum on Wednesday, October 24, 2007 from 6:00 to 8:30 pm. at the Metro Toronto Convention Centre In Toronto.

The Forum will offer investors an update on recent investor initiatives, followed by educational breakout sessions, and will conclude with a plenary session with the heads of the four organizations. Participants will identify the seminar they wish to attend when registering.

Registration for the Investor Forum is now open.

For more information or to register: http://secure.inorbital.com/InvestorForum/default.htm

Admission to the Forum is free. It will take place at the Metro Toronto Convention Centre, South Building, Level 700, Room, 718A, located at 222 Bremner Boulevard.

Plenary panelists:

David Agnew, Ombudsman, OBSI Larry Waite, President & CEO, MFDA David Wilson, Chair & CEO, OSC Susan Wolburgh Jenah, President & CEO, IDA

Breakout Sessions:

Working with an Adviser – What to look for and what to expect from the relationship

Getting help with your Investment Complaint – Who to contact and how the process works

Understanding Investment Products and Risks – Learn about complex investments such as hedge funds and PPNs and pick up some tips on frauds and scams