



July 29th, 2004

The Investment Dealers' Association found not to owe a duty of care to disgruntled investors

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Morgis v. Thomson Kernaghan & Co. (2003), 65 O.R. (3d) 321 (C.A.)

In a recent decision, Ontario's highest Court considered whether liability can be imposed on the Investment Dealers Association of Canada (the "IDA") for the economic losses sustained by investors in their margin accounts with an IDA member.

As a result of sustaining substantial losses in their margin accounts, several investors sued their investment dealer, Thomson Kernaghan & Co. ("Thomson"). Thomson's IDA membership was subsequently suspended, and it was petitioned into bankruptcy. The investors then sought to add the IDA and certain IDA directors and officers as defendants. The IDA is a voluntary organization that is recognized by statute as being responsible for regulating the conduct of its member investment firms. In this case, individual investors claimed that the IDA owed them a duty of care to ensure that Thomson complied with the IDA's rules, regulations and bylaws.

The Court of Appeal found that the IDA did not owe a duty of care to the investors because the IDA's obligation to protect investors generally and the public in general, does not extend to any particular investor. As the Court found, imposing such a duty on the IDA, it would indirectly create "an insurance scheme for dissatisfied investors who have paid the IDA nothing." Because the IDA owed no duty to the individual plaintiffs, their action was dismissed.

This is a significant decision because it expands upon earlier Supreme Court of Canada decisions establishing that statutory regulators (ie. the Law Society of Upper Canada and the Registrar of Mortgage Brokers) owe no duty of care to individual members of the public. Although the IDA is not a statutory body, it is cloaked with similar responsibilities to statutory regulators; and therefore, owes a duty of care only to the public as a whole – not to individual investors. In the future, be aware that other quasi-statutory bodies may also be found to be exempt from negligence claims by individuals.