

NOVEMBER 9, 2012 ISSUE

OCTAGON REFUSES OBSI COMPENSATION RECOMMENDATION

The Ombudsman for Banking Services and Investments (OBSI) today announced the refusal of Octagon Capital Corporation ('Octagon') to compensate one of its customers in the amount of \$181,339 as recommended by OBSI. This is only the second refusal to compensate ever received by OBSI from an investment firm.

Octagon is an independent Canadian investment dealer based in Toronto. A complaint was brought to OBSI concerning the investor, Mrs. B., who was an elderly and widowed client of Octagon. She was primarily a low-risk investor and needed income from her investments to last her lifetime. Mrs. B's advisor at Octagon traded frequently in her accounts, and often without her authorization. The securities he purchased were too risky for her, as were the margin and short selling strategies he used. Mrs. B's accounts were unsuitably invested overall. She was an unsophisticated investor who did not know her investments were unsuitable.

Octagon is responsible for the advisor's unsuitable recommendations and for its own compliance deficiencies that led to Mrs. B's unsuitable investment portfolio at the firm. It has chosen not to fulfill its responsibilities to her by providing the compensation she is owed based on the facts of the case. Octagon has not even interviewed Mrs. B to determine what occurred during her time as a client of the firm.

The Octagon advisor at the centre of Mrs. B's complaint was also the subject of an Investment Industry Regulatory Organization of Canada (IIROC) hearing concerning unsuitable investments and unauthorized trading in Mrs. B's account. The IIROC Panel concluded that Mrs. B had limited investment knowledge, was a low-risk income investor, was recommended unsuitable investments by her advisor, was not consulted about trades, and that her advisor, Mr. H, traded excessively in her accounts. The panel fined the advisor \$125,000 and suspended his registration, among other things. Mrs. B received no compensation as a result of the IIROC Panel Decision because that is not the Panel's role.

OBSI's recommended compensation amount of \$181,339 is arrived at by first calculating the difference between the amount Mrs. B's account should have been worth had it been suitably invested and the actual value as of the date she removed her investments from Octagon. Interest to compensate Mrs. B for the loss of use of her money, calculated from the date she first complained to Octagon, was then added.

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. Mrs. B'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. Octagon 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 Mrs. B.

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 resorting to announcing a refusal to compensate. Over 99.8% of complaints brought to OBSI since the organization's inception have been successfully resolved.

OBSI is the 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.

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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