



**IN THE MATTER of the Administration of the Securities Industry Act, Chapter 363
and the Securities Industry Regulations, 2000**

AND

**IN THE MATTER of Proceedings under Part XVII of
the Securities Industry Regulations, 2000
and Section 33 of the Securities Industry Act, Chapter 363.**

BETWEEN

**THE EXECUTIVE DIRECTOR OF
THE SECURITIES COMMISSION OF THE BAHAMAS**

Plaintiff

AND

**FIRST BAHAMAS CAPITAL LIMITED (RENAMED CFAL SECURITIES)
AND
HIRAM COX**

Defendants

Matter No. SCB/HP/1/2008

HEARING PANEL FINAL DECISION

Hearing Panel: Sterling Quant, Chairman;
Lennox McCartney; and
Ryan Knowles.

Hearing: Monday 21st September, 2009.

The Hearing Panel (the Panel) held a hearing at the offices of the Securities Commission of the Bahamas (the Commission) concerning allegations against First Bahamas Capital Limited (FBCL), now called CFAL Securities, and a former employee, Mr. Hiram Cox. Although the matter concerned Mr. Cox as well, this ruling concerns the Panel's findings relative to FBCL and the pertinent facts are as follows:

FACTS

Mr. Hiram Cox was registered as a Broker by the Commission as of January 30, 2004 pursuant to Regulation 26 of the Securities Industry Regulations, 2000 (the Regulations). At the time Mr. Cox was employed as a Senior Broker with FBCL, a subsidiary of Colina Financial Advisors Limited (CFAL). FBCL was licensed by the Commission as a Broker-Dealer, Class 1 on April 18, 2002 pursuant to the Securities Industry Act, Chapter 363 (the Act). The registered office of FBCL is Alexiou, Knowles & Co., Frederick Street, and the directors at the time in question were Messrs. Anthony Ferguson and Emmanuel Alexiou.

A meeting was held between the Commission, Commonwealth Bank Limited (CBL) and CFAL on 3rd March, 2006 at the Commission's offices on a matter involving employees of both entities. Subsequently, the Commission received reports dated 6th and 7th March, 2006 from CFAL and CBL, respectively. The following was gleaned from the meeting, the reports and subsequent interviews held between the Commission and various persons involved in the matter.

Sometime during the year 2000, CBL issued a public offering of its shares. At the same time CBL established an Employee Stock Option Plan (ESOP) whereby certain members of its managerial staff were granted options to acquire shares in CBL (CBL shares) at a fixed price of \$6.00 per share. The options were to expire April 30th, 2006.

During November, 2005 CBL shares traded on BISX between \$8.50 and \$9.00 per share. In November 2005, Mr. Wayne Bethel, a Manager of CBL, exercised his option under the ESOP to purchase CBL shares and, with the assistance of Mr. Cox using his position at FBCL, sold the CBL shares at a profit. After Mr. Bethel exercised his option under the ESOP he told other CBL Managers what he had done. The Commission was advised that sometime between November 2005 and February 2006, Mr. Cox and Mr. Bethel allegedly facilitated, and participated in, a scheme whereby other Managers of CBL (seven (7) in total) were able to exercise their options under their respective ESOPs and sell their shares to third party purchasers who had unknowingly financed the exercise of the options by the CBL Managers.

A CBL Manager would either contact, or be contacted by, Mr. Bethel and would advise that they wished to exercise their option and sell their shares. Mr. Bethel would also advise the CBL Manager that the shares would be sold for \$8.00 per share and that the CBL Manager would receive the \$2.00 per share difference that would be realized once CBL was paid the \$6.00 per share as required under the ESOP. Mr. Bethel would then advise Mr. Cox of the "available" CBL shares. Mr. Cox would locate buyers for the CBL shares in an amount equal to the number of CBL shares that the CBL Manager was entitled to purchase under the ESOP. Once a buyer was located Mr. Cox would advise Mr. Bethel that a buyer for the CBL shares to which the CBL Manager was entitled under the ESOP had been identified. Mr. Bethel would then secure a signed Power of Attorney (POA) from the CBL Manager which would purport to transfer the CBL shares to FBCL and Mr. Bethel would sign the POA as the representative from CBL witnessing the signature of the CBL Manager.

Once the purported sale of shares to the third party purchaser had been conducted, the CBL Manager would go through the process of formally exercising his ESOP with CBL. The trades in the shares executed by Mr. Cox with the buyer however were executed at the prevailing market price of the shares which were always above the \$8.00 per share agreed between the Manager and Mr. Bethel. The POA signed by each CBL Manager and Mr. Bethel, the CBL confirmation and Mr. Cox's trade tickets would be delivered to the Registrar and Transfer Agent at FBCL in order to support the transfer of CBL shares on the Register from the CBL Manager to the buyer. Once the CBL shares were registered in the name of the buyer the transaction was complete.

Once the funds were received by Mr. Bethel he would instruct his bank to write a Manager's cheque to CBL in an amount equal to the amount that the CBL Manager would have to pay for the shares under the ESOP. Mr. Bethel would then deliver the Manager's cheque to the CBL Manager who then paid to exercise his/her entitlement under the ESOP. Each CBL Manager would then be instructed to provide confirmation that his/her option had been exercised. Once Mr. Bethel had received confirmation of the transfer of shares to the CBL Manager, the confirmation would be forwarded to FBCL and Mr. Bethel would give the CBL Manager a second cheque representative of the \$2.00 per share profit agreed to from the sale of the shares. Mr. Bethel would then keep for his own account any difference between the cost of selling the shares at \$8.00 per share, the amount paid to Mr. Cox, and the market price at which the shares were actually sold.

ALLEGED BREACH

The Executive Director alleges that during the material time FBCL failed to properly supervise the conduct and actions of its broker, namely Mr. Hiram Cox. FBCL thereby breached regulation 71(1) of the Regulations which provides that ***"A registered firm shall be responsible for the conduct and actions of its stockbrokers or brokers associated persons and other unregistered or unlicensed personnel in its employ"***

The Panel, having deliberated on the above matter following the hearing conducted on Monday, 21st September, 2009, rules as follows:

RULING

The Panel has determined that various checks and balances were not in place as confirmed by the report dated 6th March, 2006 issued by CFAL to the Commission on behalf of FBCL, particularly under the portion headed **"Corrective Actions Taken"**. FBCL further referred to these changes in their letter dated 17th November, 2008 in answer to the Executive Director's Formal Complaint. These are not insubstantial changes, and they were not in place at the time this incident took place.

The Panel's decision is also based on interviews conducted by the Commission with FBCL employees, the transcripts of which were provided in the hearing material. The evidence demonstrated that there was either no or very little supervision of the activities of FBCL broker, Hiram Cox. Existing procedures, such as the signatories on trade cheques and

review of all supporting trade documentation, were insufficient in preventing the activity engaged in by Mr. Cox. Mr. Ward, on behalf of the Executive Director, made particular reference to the interviews of FBCL employees Tamara Evans (pg. 44, line 3 to pg. 47, line 10 and pg. 52, line 7 to pg. 53, line 4 of transcript), Sean Longley (pg. 65, line 18 to pg. 66, line 22 of transcript) and Anthony Ferguson (pg. 68, line 5 to pg. 69, line 17 of transcript), which further confirmed that substantive controls were either not in place, or were not being followed.

It is therefore our conclusion that FBCL breached regulation 71(1) of the Regulations, and it failed to properly supervise its employee, namely Hiram Cox.

SANCTIONS

The Panel has considered that any penalty imposed ought to reflect the seriousness of the breach, and we also take into consideration the fact that FBCL has taken corrective action and incorporated procedures aimed at preventing a recurrence of such an incident. We therefore recommend that a fine in the amount of ten thousand (\$10,000) dollars be imposed on FBCL which is to be paid within thirty (30) days after receipt of this decision.

This is the unanimous decision of the Panel.

Dated this 25th day of September, 2009



Hearing Panel Chairman