

SUPREME COURT OF NOVA SCOTIA

Citation: Saturley v. CIBC World Markets Inc., 2013 NSSC 300

Date: 20130926

Docket: Hfx No. 305635

Registry: Halifax

Between:

Fredrick Thomas Saturley

Plaintiff

v.

CIBC World Markets Inc.

Defendant

LIBRARY HEADING

Judge: The Honourable Justice Michael J. Wood

Heard: April 4-5, 10, 12, 16-17, 19-20, 23-26, 30, 2012
May 1-4, 7-9, 14-16, 2012
October 1-4, 9-11, 15-18, 22-25, 29-31, 2012
November 1, 20-21, 2012
December 17-18, 2012, in Halifax, Nova Scotia

**Final Written
Submissions:** March 31, 2013

Written Decision: September 26, 2013

Subject: Employment - Wrongful Dismissal
- Just Cause
- Condoning Conduct
- Post Termination Evidence of Cause

Evidence - Witness Credibility
- Adverse Inference

Torts - Intentional Interference in Economic Relations

Summary:

The plaintiff was employed as an investment advisor by the defendant. Many of his clients were involved in trading options on margin. As a result of an error in the defendant's margin calculations, many clients suffered significant losses in their accounts. While investigating the margin error, the defendant became aware of evidence suggesting that the plaintiff was engaged in unauthorized discretionary trading and terminated his employment for cause.

Issue:

Was the defendant able to satisfy the onus of proving discretionary trading which would justify termination of the plaintiff's employment?

Was the defendant's investigation of the plaintiff's trading activities unfair or biased?

Did the defendant engage in conduct which amounted to intentional interference in the plaintiff's economic relations with his clients?

Result:

The Court was required to consider witness credibility and the proper inferences to be drawn from documentary evidence in order to determine whether discretionary trading took place. An adverse inference was drawn from the plaintiff's failure to call an employee witness who was alleged to be receiving client instructions and processing trades.

The Court was satisfied that the defendant met the evidentiary burden of proving that discretionary trading occurred. It rejected arguments by the plaintiff that the conduct was condoned or should result in discipline

short of termination.

The Court permitted the defendant to rely on post-termination evidence of discretionary trading in support of the allegation of just cause. There is no evidence that the defendant's investigation was improper or that it acted with any intent to harm the plaintiff's economic relationship with his clients.

The plaintiff's action was dismissed, with the exception of a small claim for outstanding disability benefits.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.***