

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

AND

JOSE CASTANEDA

**SETTLEMENT AGREEMENT BETWEEN
JOSE CASTANEDA and
STAFF OF THE ONTARIO SECURITIES COMMISSION**

I. INTRODUCTION

1. By Notice of Hearing dated March 27, 2008, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing to consider whether, pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5 (the “Act”), it is in the public interest for the Commission to make an order approving the settlement agreement entered into between Staff of the Commission and the Respondent Jose Castaneda.

II. JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) recommend settlement with Jose Castaneda (referred to hereafter as the “Respondent”) in accordance with the terms and conditions set out below. The Respondent agrees to the settlement on the basis of the facts set out in Part IV herein and consents to the making of an Order in the form attached as Schedule “A” on the basis of the facts set out in Part IV herein.

3. The terms of this settlement agreement, including the attached Schedule "A" (collectively, the "Settlement Agreement"), will be released to the public only if and when the Settlement Agreement is approved by the Commission.

III. ACKNOWLEDGEMENT

4. Staff and the Respondent agree, solely for the purposes of this Settlement Agreement and any order of the Commission contemplated hereby, with the facts and conclusions set out in Part IV of this Settlement Agreement. Staff and the Respondent agree that this Settlement Agreement is without prejudice to the Respondent in any past, present or future civil proceeding which may be brought by any person. Nothing in this Settlement Agreement is intended to be an admission of civil liability by the Respondent to any person or company; such liability is expressly denied.

IV. AGREED FACTS

(a) Background

5. The Respondent is an individual residing in Ontario and is not currently registered with the Ontario Securities Commission ("Commission") in any capacity.

(b) Prior Cease Trade Order and Settlement Agreement

6. For approximately two years from September 1996 - September 1998, the Respondent was employed as a trader for Koman Investment Inc. During this time, the Respondent acted as an account executive for several clients, purchasing and selling speculative foreign exchange contracts with full discretionary authority.

7. The Respondent was never registered with the Commission to trade in these types of securities and several of his clients suffered significant trading losses.

8. As a result of a Staff investigation into the Respondent's unregistered trades, the Commission issued a temporary cease trade order on September 10, 1998 against the

Respondent and others pursuant to clause 2 of subsection 127(1) of the *Act* (the “Cease Trade Order”).

9. Staff of the Commission and the Respondent entered into a Settlement Agreement on May 31, 2000 (the May 2000 Settlement Agreement) whereby the Respondent acknowledged that he had traded without the appropriate registration and without an exemption from the registration requirements, contrary to section 25 of the *Act* and contrary to the public interest.
10. The May 2000 Settlement Agreement was approved by the Commission on June 7, 2000. On that date and pursuant to the agreed upon terms of the May 2000 Settlement Agreement, the Respondent was reprimanded by the Commission, prohibited from trading in any securities pursuant to clause 2 of subsection 127(1) of the *Act* for a period of five years, and agreed not to apply for registration in any capacity under the *Act* for a period of fifteen years.
11. The Cease Trade Order issued by the Commission on September 10, 1998 remained in effect until the Commission approved the May 2000 Settlement Agreement on June 7, 2000.

(c) Violation of the Cease Trade Order and May 2000 Settlement Agreement

12. Between 1999 and 2003, the Respondent continued to participate in the same type of unauthorized trading activity which resulted in the Cease Trade Order and the sanctions under the May 2000 Settlement Agreement.
13. During this time period, the Respondent entered into joint venture profit-sharing agreements with numerous individuals that authorized the Respondent to engage in “speculative short term trading of currency forward or spot contracts” at his absolute discretion. The Respondent improperly traded in both foreign currencies and commodity futures for his clients as set out in greater detail below. All amounts are in Canadian dollars unless otherwise indicated.

14. The Respondent did not inform any of these individuals that the Commission had issued the Cease Trade Order or that he had entered into the May 2000 Settlement Agreement with the Commission.

(d) Joint Venture Agreement with John M.

15. Sometime in the fall of 1999, the Respondent met John M. (“John”) at John’s office. The Respondent informed John that he was engaged in the business of foreign currency trading. The Respondent represented to John that any monies invested with him would be pooled with other investors in an investment fund or “club” for trading purposes.
16. Shortly after their initial meeting, John entered into a joint venture profit-sharing agreement with the Respondent and began investing money with him. Over a period of roughly 18 months, John invested approximately \$200,000 with the Respondent. In early 2001, at John’s request, the Respondent returned the entirety of his funds plus some profits at John’s request.

(e) Joint Venture Agreement with Paul M. and Clara M.

17. The Respondent entered into a supposed joint venture profit-sharing agreement with Paul M. and Clara M. (“Paul and Clara”) on February 11, 2000. The stated investment objective of the agreement was to make “substantial gains in the long term through speculative ‘short term’ trading of currency forward or spot contract”. The agreement granted the Respondent full discretionary authority over any funds provided.
18. Prior to entering the Agreement, the Respondent told Paul and Clara that he was doing a lot of foreign trading for numerous investors.

19. Between February 11, 2000 and July 2, 2002, Paul and Clara gave the Respondent \$900,000 in Canadian funds to invest pursuant to the joint venture agreement. During this time period, the Respondent actively traded in foreign currencies and commodity futures over the Internet, primarily through the services of Peregrine Financial Group.
20. Although he never provided them with any account statements, the Respondent consistently informed Paul and Clara that he was making money for them through currency trading and was reinvesting their profits. By March of 2003, the Respondent reported to Paul and Clara that their initial investment had grown substantially.
21. In the summer of 2003, the Respondent informed Paul and Clara that all of their money was gone. Paul and Clara lost the entire amount invested with the Respondent.

(f) Joint Venture Agreement with Andrew M.

22. Andrew M. (“Andrew”) was introduced to the Respondent through John, his brother. Andrew met with the Respondent in November, 2000. At that meeting, The Respondent represented to Andrew that he managed an investment group involved in currency trading. Andrew entered into a supposed joint venture profit-sharing agreement with the Respondent. Andrew gave the Respondent \$50,000 for trading purposes, pursuant to the profit-sharing agreement.
23. In May, 2003, the Respondent informed Andrew that all of his money had been lost in trading on the spot currency market and that he would not receive any return on his investment.

V. VIOLATIONS OF THE ACT AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

24. The Respondent’s conduct constituted trading in securities without being registered as required by subsection 25(1) of the *Act*, contrary to paragraph 122(1)(c) of the *Act*.

25. The Respondent's conduct constituted trading in securities while he was prohibited from trading by order of the Ontario Securities Commission, contrary to paragraph 122(1)(c) of the *Act*.

26. The Respondent's conduct was contrary to the public interest.

VI. MITIGATING FACTORS

27. The Respondent cooperated with Staff's investigation.

28. For the conduct set out above, Staff brought proceedings against the Respondent in front of the Ontario Court of Justice pursuant to paragraph 122(1)(c) of the *Act* for trading in securities while prohibited from doing so in and trading in securities without being registered to do so. The Respondent pled guilty to both charges and on January 18, 2008 was sentenced by Justice Fairgrieve to a term of imprisonment of six months on each charge to be served concurrently.

29. The Respondent also pled guilty to one count of fraud over \$5000 pursuant to subsection 380(1) of the *Criminal Code (Canada)* R.S.C. 1985, c. C-46 (the "*Criminal Code*") related to his conduct set out herein. On January 18, 2008, the Respondent was sentenced by Justice Fairgrieve to a term of imprisonment of two years less one day to be served concurrently with his sentence of six months for violations of the *Act*.

30. In addition, Justice Fairgrieve ordered the Respondent to make restitution in the amount of \$798,500 to Paul and Clara and in the amount of \$50,000 to Andrew pursuant to paragraph 738(1)(a) of the *Criminal Code*. The Respondent had previously made partial restitution to Paul and Clara in the amount of \$1,500.

VII. TERMS OF SETTLEMENT

31. The Respondent agrees to the following terms of settlement, to be set out in an order by the Commission as follows:

- (a) pursuant to paragraph 1 of subsection 127(1) of the *Act*, that the Respondent be permanently restricted from registering in any capacity under Ontario securities law;
- (b) pursuant to paragraph 2 of section 127(1) of the *Act*, that the Respondent be permanently prohibited from trading in securities;
- (c) pursuant to paragraph 2.1 of section 127(1) of the *Act*, that the Respondent be permanently prohibited from acquiring any securities;
- (d) pursuant to paragraph 3 of subsection 127(1) of the *Act*, that any exemptions contained in Ontario securities law do not apply to the Respondent permanently; and
- (e) pursuant to paragraph 8 of subsection 127(1) of the *Act*, that the Respondent be permanently prohibited from becoming an officer or director of any issuer.

VIII. STAFF COMMITMENT

32. If this Settlement Agreement is approved by the Commission, Staff will not initiate any proceeding under Ontario securities law in respect of any conduct or alleged conduct of the Respondent in relation to the facts set out in Part IV of this Settlement Agreement, subject to the provisions of paragraph 36 below.

IX. PROCEDURE FOR APPROVAL OF SETTLEMENT

33. Approval of this Settlement Agreement shall be sought at a hearing of the Commission on a date agreed to by Staff and the Respondent.

34. Staff and the Respondent may refer to any part, or all, of the Settlement Agreement at the Settlement Hearing. Staff and the Respondent also agree that if this Settlement Agreement is approved by the Commission, it will constitute the entirety of the evidence to be submitted respecting the Respondent in this matter, and the Respondent agrees to waive his rights to a full hearing, judicial review or appeal of the matter under the Act.

35. Staff and the Respondent agree that if this Settlement Agreement is approved by the Commission, neither Staff nor the Respondent will make any public statement inconsistent with this Settlement Agreement.

36. If this Settlement Agreement is approved by the Commission and, at any subsequent time, the Respondent fails to honour any of the Terms of Settlement set out in Part VII herein, Staff reserve the right to bring proceedings under Ontario securities law against the Respondent based on, but not limited to, the facts set out in Part IV of the Settlement Agreement, as well as the breach of the Settlement Agreement.

37. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or an Order in the form attached as Schedule "A" is not made by the Commission, each of Staff and the Respondent will be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations in the Notice of Hearing and Statement of Allegations, unaffected by this Settlement Agreement or the settlement negotiations.

38. Whether or not this Settlement Agreement is approved by the Commission, the Respondent agrees that he will not, in any proceeding, refer to or rely upon this

Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any allegation against the Commission of lack of jurisdiction, bias, appearance of bias, unfairness, or any other remedy or challenge that may otherwise be available.

X. DISCLOSURE OF AGREEMENT

39. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Commission, except with the written consent of both the Respondent and Staff or as may be required by law.

40. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission.

XI. EXECUTION OF SETTLEMENT AGREEMENT

41. This Settlement Agreement may be signed in one or more counterparts which together shall constitute a binding agreement.

42. A facsimile copy of any signature shall be effective as an original signature.

Dated this 27th day of March, 2008

“Paul DeSouza”

Witness

“Jose Castaneda”

Jose Castaneda

Dated this 27th day of March, 2008

STAFF OF THE ONTARIO
SECURITIES COMMISSION

“Michael Watson”

Michael Watson
Director, Enforcement Branch

Schedule “A”

**IN THE MATTER OF THE *SECURITIES ACT*
R.S.O. 1990, c.S.5, AS AMENDED**

AND

JOSE CASTANEDA

ORDER

WHEREAS on June 20, 2005 the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the “Act”) in respect of the actions of Jose Castaneda (“Castaneda”);

AND WHEREAS on June 20, 2005 Staff of the Commission (“Staff”) filed a Statement of Allegations;

AND WHEREAS on December 19, 2005 Staff filed an Amended Statement of Allegations;

AND WHEREAS on March 27, 2008, Castaneda entered into a settlement agreement dated March 27, 2008 (the “Settlement Agreement”) in relation to the matters set out in the Amended Statement of Allegations;

AND WHEREAS on March 27, 2008 the Commission issued a Notice of Hearing setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Amended Statement of Allegations, and upon considering submissions from Castaneda and from Staff;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED, PURSUANT TO SECTIONS 127 AND 127.1 OF THE ACT, THAT:

1. the Settlement Agreement dated March 27, 2008 between Staff of the Commission and Castaneda is approved;
2. pursuant to paragraph 1 of subsection 127(1), Castaneda is permanently restricted from registering under Ontario securities law;

3. pursuant to paragraph 2 of subsection 127(1), Castaneda is permanently prohibited from trading in securities;
4. pursuant to paragraph 2.1 of subsection 127(1), Castaneda is permanently prohibited from acquiring any securities;
5. pursuant to paragraph 3 of subsection 127(1), any exemptions contained in Ontario securities law do not apply to Jose Castaneda permanently; and
6. pursuant to paragraph 8 of subsection 127(1), Castaneda is permanently prohibited from becoming an officer or director of any issuer

Dated at Toronto, Ontario this 27th day of March, 2008

Wendell S. Wigle, Q.C.

David L. Knight, F.C.A.