



Ontario
Securities
Commission

Commission des
valeurs mobilière
de l'Ontario

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

- and -

**IN THE MATTER OF
HELEN KUSZPER and PAUL KUSZPER**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
AND PAUL KUSZPER**

PART I - INTRODUCTION

1. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the “Act”), it is in the public interest for the Commission to make certain orders in respect of Paul Kuszper (“the Respondent”).

PART II - JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding commenced by Notice of Hearing dated December 13, 2010 (the “Proceeding”) against the Respondent according to the terms and conditions set out in Part V of this Settlement Agreement. The Respondent agrees to the making of an order in the form attached as Schedule “A”, based on the facts set out below.
3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, the Respondent agrees with the facts as set out in Part III and the conclusion in Part IV of this Settlement Agreement (“the Settlement Agreement”).

PART III - AGREED FACTS

A. OVERVIEW

4. This proceeding relates to Staff's allegations of insider trading, tipping and misleading Staff of the Commission in breach of the Act by Helen Kuszper and the Respondent, her son (collectively, the "Kuszpers").
5. Between April 29 and May 7, 2008 (the "Relevant Period"), the Kuszpers purchased and sold securities of Kingsway Financial Services Inc. ("Kingsway") with knowledge that the company would report a material net loss for its Q1 2008 financial results before the information was publicly disclosed. Helen Kuszper had acquired the information in her capacity as a Senior Accountant within Kingsway's Investment Reporting Group and had tipped the information to her son, Paul. Throughout the Relevant Period, each of Helen and Paul Kuszper were in a special relationship with Kingsway, as defined in subsections 76(5)(c) and (e) of the Act.
6. The Kuszpers collectively realized over \$320,000 in profits after Kingsway publicly announced the material loss. Through their loss avoidance transactions, the Kuszpers had also managed to avert considerable loss.

B. BACKGROUND

(a) Kingsway Financial Services Inc.

7. Kingsway Financial Services Inc. ("Kingsway") is a reporting issuer in Ontario with shares listed on the Toronto Stock Exchange and the New York Stock Exchange under the trading symbol "KFS". Kingsway is a property and casualty insurance company which specializes in providing non-standard automobile and trucking insurance throughout North America.

(b) The Respondents

8. Helen Kuszper is a resident of Mississauga, Ontario. During the Relevant Period, Helen was employed as a Senior Accountant in the Investment Reporting Group of Kingsway.
9. The Respondent, Paul Kuszper, is a resident of Mississauga, Ontario and is Helen's son. During the Relevant Period, Paul was employed as an Accountant in St. John's, Antigua.

C. PARTICULARS

10. The material information in this case relates to the negative financial results for Kingsway's first quarter ended March 31, 2008 ("Q1 2008").

(a) The Press Release (May 7, 2008)

11. On May 7, 2008 (after the close of trading), Kingsway reported a net loss of \$34.4 million for its Q1 2008 financial results. In Kingsway's press release (the "Press Release"), the company stated that the results were "unacceptable" and were primarily attributable to a \$52.8 million reserve increase at its American subsidiary, Lincoln General (the "Lincoln Reserve Increase").

(b) Draft Quarterly Financial Statements (April 29, 2008)

12. The material loss for Q1 2008 first came to be reflected in Kingsway's draft quarterly financial statements on April 29, 2008. On this day, the draft financials were revised to incorporate the Lincoln Reserve Increase which caused Kingsway's income to dramatically decline and reflect a net loss of \$26.4 million.¹

(c) The Insider Trading and Tipping

13. On April 29, 2008 (the same day Kingsway's draft Q1 2008 financial statements were revised to reflect the \$26.4 million loss), the Kuszpers began to trade with the benefit of Kingsway's undisclosed material loss. Helen Kuszper had become aware of the information in her capacity as a Senior Accountant in Kingsway's Investment Reporting Group.

14. With knowledge that Kingsway's loss would cause the share price to decline, the Kuszpers engaged in strategic trading in Kingsway puts and calls designed to maximize profit and avoid loss. To profit:

- (a) **Purchased Kingsway Puts:** the Kuszpers purchased hundreds of Kingsway put contracts prior to the issuance of the Press Release. Helen Kuszper began to purchase these puts on April 29. She purchased them first through the Respondent's account (she later denied having made these trades, as set out below). She continued to accumulate put contracts on almost every trading day from April 29 until the Press

¹ On May 1, Kingsway's draft financials were further revised to reflect a larger net loss of \$34.4 million, which was ultimately reported in the Press Release, as noted above.

Release was issued, in small increments, and on an alternating basis through Paul and her own trading accounts. By May 7, the Kuszpers had acquired over 980 Kingsway put contracts at considerable cost (\$31,574), all with a short expiration date of May 16.

Date	Helen Kuszper	Paul Kuszper
April 29, 2008		Bought 10 KFS Puts
April 29, 2008		Bought 100 KFS Puts
April 30, 2008		Bought 100 KFS Puts
April 30, 2008		Bought 100 KFS Puts
April 30, 2008	Bought 100 KFS Puts	
May 1, 2008		Bought 100 KFS Puts
May 1, 2008	Bought 100 KFS Puts	
May 2, 2008	Bought 28 KFS Puts	
May 2, 2008	Bought 100 KFS Puts	
May 2, 2008		Bought 50 KFS Puts
May 5, 2008	Bought 100 KFS Puts	
May 7, 2008	Bought 50 KFS Puts	
May 7, 2008	Bought 50 KFS Puts	
Total =	528 Puts	460 Puts

- (b) **Sold Calls Short:** On May 1, Paul also sold short 50 Kingsway call options.

Date	Helen Kuszper	Paul Kuszper
May 1, 2008		Sold 50 KFS Calls

15. Further, to avoid future loss on their existing Kingsway holdings:

- (a) **Sold Existing Calls:** Helen Kuszper divested her account of 75 Kingsway call options on April 29. She had been holding these calls since February and sold them at a loss.

Date	Helen Kuszper	Paul Kuszper
April 29, 2008	Sold 75 KFS Calls	

- (b) **Closed Existing Open Puts:** On May 1, Paul also closed 57 open Kingsway put options which he had sold short in February.

Date	Helen Kuszper	Paul Kuszper
May 1, 2008		Bought 30 KFS Puts
May 1, 2008		Bought 27 KFS Puts

16. The Kuszpers were in regular contact during, and after, the above trading period and would often discuss the insider trading and tipping scheme in code language.

(d) Profit and Loss Avoided

17. After the Press Release was issued (May 7, after the close of trading) and the material loss was publicly disclosed, Kingsway's share price fell dramatically. The stock price closed the next trading day (May 8) at \$9.97, which represented a one day decline of 30% from the closing price of \$14.26 the day before.

18. The Kuszpers proceeded to immediately sell their Kingsway puts for considerable profit:

Date	Helen Kuszper	Paul Kuszper	Proceeds
May 8, 2008		Sold 150 KFS Puts	\$44,852.51
May 8, 2008		Sold 140 KFS Puts	\$55,815.01
May 8, 2008		Sold 10 KFS Puts	\$3,987.50
May 8, 2008	Sold 150 KFS Puts		\$60,557.53
May 8, 2008	Sold 150 KFS Puts		\$59,057.52
May 9, 2008		Sold 100 KFS Puts	\$29,365.01
May 9, 2008		Sold 60 KFS Puts	\$18,815.01
May 9, 2008	Sold 128 KFS Puts		\$29,870.64
May 9, 2008	Sold 100 KFS Puts		\$39,734.41
TOTAL =			\$342,055.14

19. The Respondent also later purchased Kingsway calls in order to cover his earlier open short position in these options and profited more than \$11,000 from this trade:

Date	Transaction	Total
May 1, 2008	Sold 50 KFS Calls - Opening	\$12,115.00 (Proceeds)
May 12, 2008	Bought 50 KFS Calls - Closing	\$822.49 (Cost)
TOTAL =		\$11,292.51

20. The total profit realized by the Kuszpers from their trading (after accounting for commissions) is at least \$321,772. Of this amount, Helen Kuszper realized \$173,080 and Paul Kuszper realized profits of \$148,692. As noted above, Helen Kuszper and the Respondent also avoided considerable loss through their loss avoidance transactions (\$7,500 and \$21,573, respectively).

(e) False and Misleading Statements to Staff

21. During separate compelled examinations, Helen Kuszper and the Respondent each misled Staff by denying that Helen had access to Paul's trading account and that she had executed the Kingsway put option trades on his behalf.
22. Internet and trading records indicate that all put option trading originated from a computer located at Kingsway's head office in Mississauga, Ontario and at a time when Paul was living abroad in Antigua.
23. Only after being confronted with evidence to the contrary did the Respondent admit to Staff that he had instructed his mother to execute the put option trades in his account on his behalf.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW AND THE PUBLIC INTEREST

24. Pursuant to subsection 76(6) of the Act, the Kuszpers' trading in puts and calls constitutes trading in securities of Kingsway.
25. Throughout the relevant trading period, each of Helen Kuszper and the Respondent were in a special relationship with Kingsway. Helen Kuszper was an employee of Kingsway and was, accordingly, a person deemed to be in a special relationship with Kingsway within the meaning of subsection 76(5)(c) of the Act. The Respondent had learned material information with respect to Kingsway from his mother who he knew to be an employee of Kingsway and was, accordingly, also deemed to be in a special relationship with the issuer pursuant to subsection 76(5)(e).
26. By purchasing and selling securities of Kingsway with knowledge of Kingsway's undisclosed material loss, the Respondent contravened subsection 76(1) of the Act and acted contrary to the public interest.
27. The Respondent also made misleading and untrue statements to Staff contrary to subsection 122(1) of the Act and the public interest.

PART V – TERMS OF SETTLEMENT

28. The Respondent agrees to the terms of settlement listed below.
29. The Commission will make an order, pursuant to sections 127 and 127.1 of the Act, that:
 - (a) the settlement agreement is approved;
 - (b) trading in any securities by the Respondent, including as the term “security” is defined in subsection 76(6) of the Act, shall cease until the later of fifteen (15) years from the date of such order and such time as all payments specified in paragraphs (i), (j) and (k) are made in full;
 - (c) the acquisition of any securities by the Respondent, including as the term “security” is defined in subsection 76(6) of the Act, is prohibited until the later of fifteen (15) years from the date of such order and such time as all payments specified in paragraphs (i), (j) and (k) are made in full;
 - (d) any exemptions contained in Ontario securities law do not apply to the Respondent until the later of fifteen (15) years from the date of such order and such time as all payments specified in paragraphs (i), (j) and (k) are made in full;
 - (e) the Respondent is reprimanded;
 - (f) the Respondent shall immediately resign any position he holds as a director or officer of any issuer or registrant;
 - (g) the Respondent is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager until the later of fifteen (15) years from the date of such order and such time as all payments specified in paragraphs (i), (j) and (k) are made in full;
 - (h) the Respondent is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter until the later of fifteen (15) years from the date of such order and such time as all payments specified in paragraphs (i), (j) and (k) are made in full;

- (i) the Respondent shall disgorge to the Commission \$148,692, being the profits obtained by the Respondent as a result of his non-compliance with Ontario securities law. The disgorged amount shall be allocated to or for the benefit of third parties, in accordance with subsection 3.4(2)(b) of the Act;
 - (j) the Respondent shall pay an administrative penalty of \$340,530 for his failure to comply with Ontario securities law, which represents two (2) times the profit made and loss avoided by the Respondent. The administrative penalty shall be allocated to or for the benefit of third parties, in accordance with subsection 3.4(2)(b) of the Act; and
 - (k) the Respondent shall pay costs in the amount of \$30,000.
30. The Respondent undertakes to consent to a regulatory Order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the prohibitions set out in the Settlement Agreement. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.
31. The Respondent agrees to attend in person at the hearing before the Commission to consider the proposed settlement.

PART VI – STAFF COMMITMENT

32. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 33 below.
33. If the Commission approves this Settlement Agreement and the Respondent fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario securities law against the Respondent. These proceedings may be based on, but are not limited to, the facts set out in Part III of this Settlement Agreement as well as the breach of the Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

34. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled on a date to be determined by the Secretary to the Commission, or

such other date as may be agreed to by Staff and the Respondent, according to the procedures set out in this Settlement Agreement and the Commission's *Rules of Procedure*.

35. Staff and the Respondent agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on the Respondent's conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.
36. If the Commission approves this Settlement Agreement, the Respondent agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.
37. If the Commission approves this Settlement Agreement, neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.
38. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

39. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:
 - (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the settlement hearing takes place will be without prejudice to Staff and the Respondent; and
 - (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this agreement.
40. Both parties will keep the terms of the Settlement Agreement confidential until the Commission approves the Settlement Agreement. At that time, the parties will no longer

have to maintain confidentiality. If the Commission does not approve the Settlement Agreement, both parties must continue to keep the terms of the Settlement Agreement confidential, unless they agree in writing not to do so or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

- 41. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.
- 42. A fax copy of any signature will be treated as an original signature.

DATED AT TORONTO this 1st day of September, 2011.

“Paul Kuszper”

Paul Kuszper
Respondent

“Harval Bassi”

Witness

“Tom Atkinson”

Tom Atkinson
Director, Enforcement Branch

SCHEDULE "A"



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

- AND -

IN THE MATTER OF HELEN KUSZPER AND PAUL KUSZPER

ORDER (Sections 127 and 127.1)

WHEREAS the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") and Staff of the Commission ("Staff") filed a Statement of Allegations in this matter on December 13, 2010 against Helen and Paul Kuszper (collectively, the "Respondents");

AND WHEREAS Paul Kuszper entered into a settlement agreement with Staff dated September 1, 2011 (the "Settlement Agreement"), subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, and upon hearing submissions from counsel for Staff and counsel for Paul Kuszper;

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

IT IS HEREBY ORDERED THAT

1. the Settlement Agreement is approved;

2. pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Paul Kuszper, including as the term “security” is defined in subsection 76(6) of the Act, shall cease until the later of fifteen (15) years from the date of this Order and such time as all payments specified in paragraphs 9, 10 and 11 are made in full;
3. pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Paul Kuszper, including as the term “security” is defined in subsection 76(6) of the Act, is prohibited until the later of fifteen (15) years from the date of this Order and such time as all payments specified in paragraphs 9, 10 and 11 are made in full;
4. pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Paul Kuszper until the later of fifteen (15) years from the date of this Order and such time as all payments specified in paragraphs 9, 10 and 11 are made in full;
5. pursuant to clause 6 of subsection 127(1) of the Act, Paul Kuszper is reprimanded;
6. pursuant to clauses 7 and 8.1 of subsection 127(1) of the Act, Paul Kuszper shall immediately resign any position he holds as a director or officer of any issuer or registrant;
7. pursuant to clauses 8, 8.2 and 8.4 of subsection 127(1) of the Act, Paul Kuszper is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager until the later of fifteen (15) years from the date of this Order and such time as all payments specified in paragraphs 9, 10 and 11 are made in full;
8. pursuant to clause 8.5 of subsection 127(1) of the Act, Paul Kuszper is prohibited from becoming or acting as a registrant, an investment fund manager or a promoter until the later of fifteen (15) years from the date of this Order and such time as all payments specified in paragraphs 9, 10 and 11 are made in full;
9. pursuant to clause 9 of subsection 127(1) of the Act, Paul Kuszper shall pay an administrative penalty of \$340,530 for his failure to comply with Ontario securities

law. The administrative penalty shall be allocated to or for the benefit of third parties, in accordance with subsection 3.4(2)(b) of the Act; and

10. pursuant to clause 10 of subsection 127(1) of the Act, Paul Kuszper shall disgorge to the Commission \$148,692 obtained as a result of his non-compliance with Ontario securities law. The disgorged amount shall be allocated to or for the benefit of third parties, in accordance with subsection 3.4(2)(b) of the Act; and
11. pursuant to section 127.1 of the Act, Paul Kuszper shall pay costs of the Commission's investigation in the amount of \$30,000.

DATED at Toronto this 1st day of September, 2011.

Christopher Portner