



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

P.O. Box 55, 19th Floor
20 Queen Street West
Toronto ON M5H 3S8

CP 55, 19e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- and -

**IN THE MATTER OF
JOSEPH CAZA and SALIM KANJI**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and SALIM KANJI**

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 section 127(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “*Securities Act*”) it is in the public interest for the Commission to make certain orders in respect of Salim Kanji (“Kanji”).

PART II – JOINT SETTLEMENT RECOMMENDATION

2. Staff of the Commission (“Staff”) agree to recommend settlement of the proceeding to be commenced by Notice of Hearing against Kanji according to the terms and conditions set out in Part VI of this Settlement Agreement. Kanji agrees to the making of an order in the form attached as Schedule “A” based on the facts set out below.

PART III - AGREED FACTS

3. For this proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Kanji agrees with the facts as set out in Part III of this Settlement Agreement.

4. Staff and Kanji agree that the facts and admissions set out in Parts III, IV and V for the purpose of this settlement are without prejudice to Kanji in any other proceedings of any kind including, but without limiting the generality of the foregoing, any other proceedings brought by the Commission under the *Securities Act* (subject to paragraph 21 below) or any civil or other proceedings currently pending or which may be brought by any other person, corporation or agency (subject to paragraph 19 below). Nothing in this settlement agreement is intended to be an admission of civil liability by Kanji to any person or company; such liability is expressly denied by Kanji.

(a) Kanji

5. Kanji is a resident of Scarborough, Ontario. On or about June 30, 1996, Kanji became a director of Realcash and on or about January 20, 1998, Kanji became the Vice-President of Realcash. Kanji has never been registered with the Commission in any capacity nor employed in any capacity as, or on behalf of, a market participant.

6. In the period May 2009 to November 2010 (the “Material Time”), in addition to his role as Vice-President, Kanji was a director and owner of Realcash.

(b) Realcash

7. Barham Investment Services Inc. (“Barham”) was incorporated in Ontario on June 11, 1993. On June 27, 1996, Barham changed its name to Realcash. Realcash has never been registered with the Commission in any capacity.

8. On December 20, 2010, Realcash filed an assignment in bankruptcy under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

(c) Realcash Security

9. The business of Realcash involved the provision of commission advances to real estate agents and/or agencies. Funding for these advances was obtained from investors, who were paid an interest rate determined by Realcash or one of its principals. The investor was on occasion provided with a promissory note as evidence of the indebtedness. This arrangement is referred to herein as the “Realcash Security.”

10. Realcash Security investors typically received monthly interest payments, but played no role in the generation of profits and/or the accrual of interest. The Realcash Security was a “security” as defined in clauses (e), (g), and/or (n) of section 1(1) of the *Securities Act*.

11. During the Material Time, Kanji referred family and friends to Realcash, and on occasion, delivered interest cheques to Realcash Security investors.

(d) Total Investment

12. A total of more than \$2.8 million was raised from investors in the Realcash Security and more than \$3.2 million was paid to Realcash Security investors. Notwithstanding this, many investors did not receive full repayment of their capital.

PART IV - THE RESPONDENT’S POSITION

13. Kanji requests that the settlement hearing panel consider the following mitigating circumstances:

- a) that Kanji did not earn any remuneration during the Material Time;
- b) that Kanji invested his own funds in Realcash during the Material Time in an effort to sustain the business;
- c) that Realcash had a *bona fide* business which generated profits for more than 10 years and Realcash used those profits to pay interest to investors;
- d) that Kanji has suffered harm to his reputation and embarrassment within his community;
- e) that Kanji has never been the subject of any prior securities-related disciplinary proceeding.

**PART V – BREACHES OF *SECURITIES ACT* AND
CONDUCT CONTRARY TO THE PUBLIC INTEREST**

14. Kanji traded and engaged in or held himself out as engaging in the business of trading in

securities without being registered to do so and without an exemption from the dealer registration requirement, contrary to section 25(1)(a) of the *Securities Act* as that section existed at the time the conduct at issue commenced, and contrary to section 25(1) of the *Securities Act* as subsequently amended on September 28, 2009.

15. Kanji's activities in respect of the Realcash Security constituted trades in securities which were distributions, for which no preliminary prospectus or prospectus was filed or received by the Director, contrary to section 53 of the *Securities Act*.

16. Kanji's conduct was contrary to the public interest.

PART VI - TERMS OF SETTLEMENT

17. Kanji agrees to the terms of settlement set out below.

18. The Commission will make an order pursuant to section 127(1) of the *Securities Act* that:

- a) The settlement agreement is approved;
- b) pursuant to clause 2 of section 127(1) of the *Securities Act*, Kanji shall cease trading in any securities for a period of 4 years, with the exception that Kanji is permitted to trade securities for the account of his registered retirement savings plan ("RRSP") as defined in the *Income Tax Act*, 1985, c.1 as amended, and/or tax-free savings accounts ("TFSA") and/or for any registered education savings plan ("RESP") accounts for which he is the or a sponsor ;
- c) pursuant to clause 2.1 of section 127(1) of the *Securities Act*, Kanji shall cease acquisitions of any securities for a period of 4 years, except acquisitions undertaken in connection with Kanji's RRSP and/or TFSA and/or for any RESP accounts for which he is the or a sponsor;
- d) pursuant to clause 3 of section 127(1) of the *Securities Act*, any exemptions in Ontario securities law do not apply to Kanji for a period of 4 years, except to the extent such exemption is necessary for trades

undertaken in connection with Kanji's RRSP and/or TFSA and/or for any RESP accounts for which he is the or a sponsor;

- e) pursuant to clause 7 of section 127(1) of the *Securities Act* that Kanji resign any position that he holds as a director or officer of an issuer;
- f) pursuant to clause 8 of section 127(1) of the *Securities Act* that Kanji be prohibited from becoming or acting as a director or officer of any issuer for a period of 4 years;
- g) pursuant to clause 8.2 of section 127(1) of the *Securities Act* that Kanji be prohibited from becoming or acting as a director or officer of a registrant for a period of 4 years;
- h) pursuant to clause 8.4 of section 127(1) of the *Securities Act* that Kanji be prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 4 years; and
- i) pursuant to clause 8.5 of section 127(1) of the *Securities Act* that Kanji be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 4 years.

19. Kanji consents 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 paragraph 18 above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

PART VII - STAFF COMMITMENT

20. If the Commission approves this Settlement Agreement, Staff will not commence any proceeding against Kanji under Ontario securities law in relation to the facts set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 21 below.

21. If the Commission approves this Settlement Agreement and Kanji fails to comply with any of the terms of the Settlement Agreement, Staff may bring proceedings under Ontario

securities law against him. 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 VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

22. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission according to the procedures set out in this Settlement Agreement and the Commission’s Rules of Practice.

23. Staff and Kanji agree that this Settlement Agreement will form all of the agreed facts that will be submitted at the settlement hearing on Kanji’s conduct, unless the parties agree that additional facts should be submitted at the settlement hearing.

24. If the Commission approves this Settlement Agreement, Kanji agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the *Securities Act*.

25. If the Commission approves this Settlement Agreement, no party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the settlement hearing.

26. Whether or not the Commission approves this Settlement Agreement, Kanji 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 IX – DISCLOSURE OF SETTLEMENT AGREEMENT

27. 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 Kanji before the settlement hearing takes place will be without prejudice to Staff and Kanji; and

- (b) Staff and Kanji will 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.

28. All 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, all 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 X – EXECUTION OF SETTLEMENT AGREEMENT

29. The parties may sign separate copies of this agreement. Together, these signed copies will form a binding agreement.

30. A fax or email copy of any signature will be treated as an original signature.

Dated this 20th day of March, 2012

”Shirin Zaver”
Witness

”Salim Kanji”
Salim Kanji

Dated this 22nd day of March, 2012

STAFF OF THE ONTARIO SECURITIES
COMMISSION

”Tom Atkinson“
Tom Atkinson
Director, Enforcement Branch

SCHEDULE “A”

**IN THE MATTER OF THE *SECURITIES ACT*
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ORDER

WHEREAS on _____, 2012, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S. 5, as amended (the “*Securities Act*”) in respect of the conduct of, among others, Salim Kanji (“Kanji”);

AND WHEREAS on _____, 2012, Staff of the Commission filed a Statement of Allegations (the “Statement of Allegations”) in respect of the same matter;

AND WHEREAS Kanji entered into a settlement agreement dated _____, 2012 (the “Settlement Agreement”) in relation to the matters set out in the Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated _____, 2012 (the “Notice of Hearing”) setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from counsel for Kanji and from Staff of the Commission;

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 SECTION 127(1) OF THE
SECURITIES ACT THAT:**

- a) the settlement agreement is approved;
- b) pursuant to clause 2 of section 127(1) of the *Securities Act*, Kanji shall cease trading in any securities for a period of 4 years, with the exception that Kanji is permitted to trade securities for the account of his registered retirement savings plan (“RRSP”) as defined in the *Income Tax Act*, 1985, c.1 as amended, and/or tax-free savings accounts (“TFSA”) and/or for any registered education savings plan (“RESP”) accounts for which he is the or a sponsor ;
- c) pursuant to clause 2.1 of section 127(1) of the *Securities Act*, Kanji shall cease acquisitions of any securities for a period of 4 years, except acquisitions undertaken in connection with Kanji’s RRSP and/or TFSA and/or for any RESP accounts for which he is the or a sponsor;
- d) pursuant to clause 3 of section 127(1) of the *Securities Act*, any exemptions in Ontario securities law do not apply to Kanji for a period of 4 years, except to the extent such exemption is necessary for trades undertaken in connection with Kanji’s RRSP and/or TFSA and/or for any RESP accounts for which he is the or a sponsor;
- e) pursuant to clause 7 of section 127(1) of the *Securities Act* that Kanji resign any position that he holds as a director or officer of an issuer;
- f) pursuant to clause 8 of section 127(1) of the *Securities Act* that Kanji be prohibited from becoming or acting as a director or officer of any issuer for a period of 4 years;
- g) pursuant to clause 8.2 of section 127(1) of the *Securities Act* that Kanji be prohibited from becoming or acting as a director or officer of a registrant for a period of 4 years;

- h) pursuant to clause 8.4 of section 127(1) of the *Securities Act* that Kanji be prohibited from becoming or acting as a director or officer of an investment fund manager for a period of 4 years; and
- i) pursuant to clause 8.5 of section 127(1) of the *Securities Act* that Kanji be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for a period of 4 years.

Dated at Toronto, Ontario this day of 2012.
