

Court File No. 31902/99

**ONTARIO
SUPERIOR COURT OF JUSTICE**



OFFICE OF THE HONOURABLE

MADAM JUSTICE ELLEN MACDONALD

BETWEEN

) MONDAY, THE 19TH
)
) DAY OF DECEMBER, 2005

PERCY LEVY

Plaintiff

- and -

NELBAR FINANCIAL CORPORATION, ESSEX CAPITAL MANAGEMENT LTD.,
GEORGE NELSON ALLEN, ROBIN MORIARTY, BARBARA ALLEN, WOODBINE
DRIVING RANGE LIMITED, FORMERLY KNOWN AS 884085 ONTARIO LIMITED,
1272327 ONTARIO INC., NELSON ALLEN FINANCIAL CORPORATION and KUKOKE
HOLDINGS INC.

Defendants

J U D G M E N T

THIS MOTION, made by the Plaintiff, for:

- (a) summary judgment against the Defendant George Nelson Allen ("Allen") with a reference to a Master of the Superior Court of Justice for Ontario for the purpose of:
- (i) quantifying the claims of the individual members of the class proceeding save and except those claims that have already been determined by Master Linton and confirmed by order of this Court dated December 27, 2001; and
 - (ii) quantifying the claims of the class as whole.
- (b) in the alternative, an order for summary judgment against the Defendant Allen in favour of the sub-class of individuals identified in Schedule "C" hereto (the "Sub-Class"), with a reference to a Master of the Superior Court of Justice for

Ontario for the purpose of quantifying the claims of the members of the Sub-Class save and except those claims that have already been determined by Master Linton and confirmed by order of this court dated December 27, 2001;

- (c) costs of this motion; and
- (d) such further and other relief as counsel may advise and this Honourable Court deems just,

which motion was, by order of the Honourable Mr. Justice Nordheimer dated November 1, 2004, adjourned, was heard this day at 361 University Avenue, Toronto, Ontario.

ON READING the materials filed, including the affidavit of David Robins sworn October 7, 2004, and the exhibits referred to therein, and on hearing the submissions of counsel for the Plaintiff, and upon hearing from the Defendant Allen who appeared in person.

1. **THIS COURT ORDERS AND ADJUDGES** that the Defendant Allen pay the sum of \$10,610,807.94 to the persons listed in, and as allocated in, Schedule "A" of Master Linton's Interim Report #1 dated April 30, 2001 ("Report #1") and Schedule "A" of Master Linton's Interim Report #2 dated June 29, 2001 ("Report #2") attached hereto.
2. **THIS COURT ORDERS AND ADJUDGES** that Allen pay post-judgment interest from and after March 30, 1999, being the date of calculation of the amounts in Schedule "A" of Report #1 and Schedule "A" of Report #2 at the rate of 7% per year.
3. **THIS COURT ORDERS** and directs a reference to a Master of the Superior Court of Justice for Ontario to quantify the claims of the individual members of the class on the basis of the procedure set out in the order of Mr. Justice Cumming dated October 23, 2000, save and except those claims that have already been determined by Master Linton and confirmed by order of this Court dated December 27, 2001.
4. **THIS COURT ORDERS** that Allen shall account to the class for all income earned and assets received directly or indirectly by Allen arising out of or related to the sale of corporate investment certificates issued by Nelbar Financial Corporation.

5. **THIS COURT ORDERS** the Defendant Allen pay to the Plaintiff the costs of the motion fixed at \$3,500.00.

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ORDER ENTERED
77-72
JAN 16 2006

SCHEDULE "1"

Court File No. 99/31902

ONTARIO
SUPERIOR COURT OF JUSTICE

MASTER LINTON

) MONDAY, THE 30TH
)
) DAY OF APRIL, 2001

BETWEEN:

PERCY LEVY

Plaintiff

- and -

NELBAR FINANCIAL CORPORATION, ESSEX CAPITAL MANAGEMENT LTD.,
GEORGE NELSON ALLEN, ROBIN MORIARTY, BARBARA ALLEN, WOODBINE
DRIVING RANGE LIMITED, FORMERLY KNOWN AS 884085 ONTARIO LIMITED,
1272327 ONTARIO INC., NELSON ALLEN FINANCIAL CORPORATION and KUKOKE
HOLDINGS INC.

Defendants

Proceeding under the *Class Proceedings Act*, 1992

INTERIM REPORT #1

IN ACCORDANCE with the Order of the Honourable Mr. Justice Cumming granted on October 23, 2000 wherein it was ordered that, *inter alia*, Judgment be granted against the Defendants Nelbar Financial Corporation and Essex Capital Management Ltd. for the amounts contained in the Report or Reports of the Master to whom a reference is directed to quantify the amounts of the individual claims, and pursuant to that Order there being approximately 125 Affidavits of Claim representing those class members whose claims are not being disputed, and upon hearing a motion made by the Plaintiff for an order quantifying the claims of individual class members whose claims are not being disputed.

ON READING the Affidavits of Claim, and on hearing the submissions of counsel for the Plaintiff, counsel for the Defendant Robin Moriarty and the Defendant George Nelson Allen, appearing in person, no one appearing for the Receiver of Nelbar Financial Corporation or Essex Capital Management Ltd., although properly served,

AND UPON entry of this report which may be immediate by reason of those parties who were entitled to be served with this Report consenting to immediate confirmation.

1. **THIS COURT ORDERS** that pursuant to paragraph 1 of the Order of the Honourable Mr. Justice Cumming granted on October 23, 2000, the individual class members identified in Schedule "A" hereto, and the class as a whole, shall be, subject to the confirmation of this Interim Report #1 as provided in paragraph 10 of the said Order of the Honourable Mr. Justice Cumming, entitled to Judgment against the Defendants Nelbar Financial Corporation and Essex Capital Management Ltd. on the principal amount of their individual claims and interest calculated thereon to March 30, 1999 for their actual investment losses, as set out in Schedule "A" hereto, and the class members as a whole, shall be entitled to Judgment for the aggregate amount of those individual claims.

2. **THIS COURT ORDERS** that pursuant to paragraphs 7 and 8 of the said Order of the Honourable Mr. Justice Cumming, the class members identified in Schedule "B" hereto shall attend before a Master on a date or dates to be determined by this Honourable Court to give *viva voce* evidence for the purpose of quantifying their claims, following which an Interim Report #2 will be issued by the Master, subject to confirmation of that Report, entitle individual class members and the class as a whole to Judgment against the Defendants Nelbar Financial Corporation and Essex Capital Management Ltd. on the principal amount of the individual claims and interest calculated thereon to March 30, 1999 for their actual investment losses.

3. **THIS COURT ORDERS** that pursuant to paragraph 9 of the said Order of the Honourable Mr. Justice Cumming, the claims of individual class members and the class as a whole, as set out in this Interim Report #1 and as shall be set out in Interim Report #2, shall, subject to a subsequent determination of liability in this action against the Defendants George Nelson Allen and Robin Moriarty, be determinative of the amounts owing by the said Defendants to the individual class members and the class as a whole, subject to any right of appeal the said Defendants might have from the confirmation of the Interim Reports or such other Order made by this Honourable Court on receipt of the Interim Reports.

4. **THIS COURT ORDERS** that the determination made in this Interim Report #1 and as shall be made in Interim Report #2 is inclusive of interest calculated on the principal sums due to the individual class members and the class as a whole for their investment losses to March 30, 1999, such determination shall be subject to any further interest that may be granted by Order of this Honourable Court subsequent to March 30, 1999.

5. **THIS COURT ORDERS** that the costs of the motion shall be payable to the Plaintiff at a later time on the request for compensation by Class Counsel.

Signed June 29, 2001

A. B. L...
M.A.S.T. ~

SCHEDULE "A"

<u>CLASS MEMBER</u>	<u>PRINCIPAL AMOUNT INCLUSIVE OF INTEREST AS AT MARCH 30, 1999</u>
Apex Publications	US\$50,000.00 (CAD\$75,665.00)
Bartlett, Robert W.	\$25,000.00
Bastien, Richard & Isabelle	\$551,998.41
Berlett, Craig	\$30,000.00
Berlett, Craig in trust for Berlett, Daniel	\$25,000.00
Berlett, Craig in trust for Berlett, Michael	\$25,000.00
Bishop, Barbara	\$70,000.00
Campbell, Ann	\$44,911.75
Campbell, Ann Marie, Power of Attorney for Campbell Christopher Thomas	\$47,787.65
Campbell, Ann Marie, Power of Attorney for Campbell Jason	\$47,787.65
Campbell, Vickie	\$100,000.00
Campbell, Vickie in trust for Nelson, Kyle	\$10,000.00
Campbell, Vickie in trust for Nelson, Scott	\$10,000.00
Clairmont, Tracey	\$15,000.00
Clarkson, Doug	\$195,575.00
Corin, Douglas & Christine	\$28,007.19
Corin, Douglas, Christine & Hazel	\$68,881.12
Cramb, Geoffrey G. and Yenney-Cramb, Nicolette	\$19,955.77

Crone, Ruby	\$86,640.83
Cuff, Christopher J.	\$45,000.00
D & S Vending	\$99,406.45
Demonte, Giovanna	\$30,000.00
Dzialowski, Ted	\$50,000.00
Efston Science Inc.	\$116,350.00
Efston, Nick	\$20,711.23
Gebasco Management Company Ltd.	\$64,181.18
Gillis, Lynne	\$25,000.00
Gilmour, John	\$20,045.60
Gilmour, Patricia	\$10,200.99
Goland, Maya in trust for Goland, Liza	\$20,000.00
Good, David trustee for the Good Children's Trust	\$62,357.34
Goodeve, Patrick	\$50,000.00
Greenberg, Aaron	\$52,700.00
Halpert, Marvin	\$28,500.00
Halpert, Marvin	\$31,800.00
Handscomb, William by Power of Attorney for Handscomb, Heidi	\$48,258.31
Harries, Tom	\$9,410.89
Hawryluk, Deborah and Hawryluk, Margaret	\$19,000.00
Hemophilia Ontario	\$61,794.17
Hirst, J.E.	\$50,000.00
Hodara, Shalom and Nessa	US\$316,517.74 (CAD\$478,986.00)

Hutton, Gloria	\$273,637.78
Hutton, Gloria	\$49,500.00
Hutton, Gloria	\$60,000.00
Hutton, Gloria	\$11,000.00
Hutton-Morton, Faye	\$28,167.39
Ilott, Ruby	\$52,949.45
Ilott, Ruby, Administrator of the Estate of Ilott, John	\$47,285.76
Jackson, Emily	\$10,000.00
James, Scott W.	\$54,000.00
Joyce, James	\$25,472.59
K.B.C. Metal Manufacturing Limited	\$95,551.54
Kan Cro Non Profit Homes Corp.	\$300,000.00
Kellar, Robert	\$25,000.00
Khera, Amit	\$32,292.86
Khera, Madhu	\$26,740.80
Kongkham, Paul	\$23,643.99
Lamont, Margaret	\$65,679.80
Lamont, Margaret	US\$4,390.24 (CAD\$6,643.75)
Lamont, Margaret	\$15,200.00
Lawrence, Janice M.	\$20,000.00
Lepine, John & Lillian	\$41,200.00
Les Publications Vacances (Quebec) Inc.	\$70,000.00
Levy, Percy	\$40,000.00
Linnard, Bryan	\$80,000.00

Liu, Tai and Huynh-Liu, My Lan	\$30,000.00
Lodhia, Kakulal	US\$65,858.69 (CAD\$99,664.00)
Lodhia, Kakulal	\$1,730.06
Marsh, Patricia	\$127,914.59
Mathieson, Jamie & Gail	\$35,904.34
McSweeney, Hoan	\$14,148.64
Messervey, Debora E.	\$94,295.44
Meyer, J.F.	\$25,000.00
Morton, Lillian	\$142,339.48
Morton, Robert	\$7,000.00
Mount Albert Bakery	\$330,790.26
Mowat, Barbara	\$349,754.30
Mowat, Barbara in trust for Logan Justus Lavigne	\$10,825.00
Mowat, Barbara in trust for Kalei Anne Lavigne	\$10,825.00
Music, Sead	\$20,000.00
Parks, Roy	\$87,742.00
Petrocone, Gianna & Hutton, Kent	\$30,175.79
Pinto, Anthony & Celina	\$100,674.00
Pinto, Celina & D'Souza, Lydia	\$21,085.00
Plomp, Richard	\$12,410.00
Prevost, Nathalie	\$10,000.00
Purcell, James	\$35,620.00
Rasquinha, A.C. & Olivina	\$28,130.00
Riordan, Roma	\$25,000.00

Robins, Arthur & Kay	\$150,000.00
Robins, James	\$70,000.00
Samson, Vicki	\$10,000.00
Shah, Premal	US\$4,225.00 (CAD\$6,393.69)
Shah, Premal	\$21,000.00
Shah, Vasanti	\$15,367.08
Stuikys, Victor	\$10,000.00
Sommerville, Curtis J.	\$25,000.00
Swayze, Harold & Ruth	\$40,000.00
Swayze, Lorne & Mildred	\$50,000.00
Swayze, Ruth	\$10,000.00
Thomas, Diane	\$22,632.70
Thynne Investments	\$18,534.26
Thynne Investments Limited	\$137,352.33
Thynne Investments Limited	\$30,169.35
Thynne, Fred	\$152,216.54
Tomlin, Lynn	\$10,824.71
Tri-Blend Bakery Mixes Inc.	\$44,103.01
Trigiani, Michael & Tina	\$25,000.00
Valpy, Michael	US\$52,673.66 (CAD\$79,711.00)
VanderHart, John & Margo	\$30,000.00
VanderHart, Jon-Albert	\$141,142.50
Varsity Tents Inc.	\$573,736.33
Whittaker, Margaret	\$50,000.00

Williams, Verbal	\$45,000.00
Woodroffe, Beverly	\$20,000.00
Wiley, Bernard	US\$728,982.88 (CAD\$1,103,107.00)
Wylie, James Brock	\$178,003.60
Yiu, Chris	\$10,000.00
Zeta Psi	\$62,035.69
Crone, Doug	\$8,269.31
Dobson, Lu	\$422,607.00
Hodge, Patrick G.	\$130,000.00
Murray, Grant	\$40,041.26
Thynne, Daryl	\$131,554.15

Note: The U.S. conversion rates are as at March 30, 1999

SCHEDULE "B"

<u>CLASS MEMBER</u>	<u>PRINCIPAL AMOUNT INCLUSIVE OF INTEREST AS AT MARCH 30, 1999</u>
Birchall, Carol May	\$68,000.50
Harding, Doris	\$20,315.20
Helby, Geoff	\$45,053.15
Hutton, Ron	\$499,100.00
Hutton, Ron	\$35,001.00
McKay, Bruce & Ellen	\$68,630.44
Kongkham, Lynn	\$25,000.00

Note: The U.S. conversion rate is as at March 30, 1999

SCHEDULE

Court File No. 99/31902

**ONTARIO
SUPERIOR COURT OF JUSTICE**

MASTER LINTON

) FRIDAY, THE 29TH
)
) DAY OF JUNE, 2001

BETWEEN:

PERCY LEVY

Plaintiff

- and -

**NELBAR FINANCIAL CORPORATION, ESSEX CAPITAL MANAGEMENT LTD.,
GEORGE NELSON ALLEN, ROBIN MORIARTY, BARBARA ALLEN, WOODBINE
DRIVING RANGE LIMITED, FORMERLY KNOWN AS 884085 ONTARIO LIMITED,
1272327 ONTARIO INC., NELSON ALLEN FINANCIAL CORPORATION and KUKOKE
HOLDINGS INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

INTERIM REPORT #2

IN ACCORDANCE with the Order of the Honourable Mr. Justice Cumming granted on October 23, 2000 wherein it was ordered that, *inter alia*, Judgment be granted against the Defendants Nelbar Financial Corporation and Essex Capital Management Ltd. for the amounts contained in the Report or Reports of the Master to whom a reference is directed to quantify the amounts of the individual claims, and pursuant to that Order there being seven Affidavits of Claim representing those class members whose claims are being disputed, and upon hearing a motion made by the Plaintiff for an order quantifying the claims of individual class members whose claims are being disputed.

ON READING the Affidavits of Claim, and on hearing the submissions of counsel for the Plaintiff, no one appearing for the Defendant Robin Moriarty, the Defendant George Nelson Allen, and the Receiver of Nelbar Financial Corporation or Essex Capital Management Ltd., although properly served,

1. **THIS COURT ORDERS** that pursuant to paragraph 1 of the Order of the Honourable Mr. Justice Cumming granted on October 23, 2000, the individual class members identified in Schedule "A" hereto, and the class as a whole, shall be, subject to the confirmation of this Interim Report #2 as provided in paragraph 10 of the said Order of the Honourable Mr. Justice Cumming, entitled to Judgment against the Defendants Nelbar Financial Corporation and Essex Capital Management Ltd. on the principal amount of their individual claims and interest calculated thereon to March 30, 1999 for their actual investment losses, as set out in Schedule "A" hereto, and the class members as a whole, shall be entitled to Judgment for the aggregate amount of those individual claims.

2. **THIS COURT ORDERS** that pursuant to paragraph 9 of the said Order of the Honourable Mr. Justice Cumming, the claims of individual class members and the class as a whole, as set out in Interim Report #1 and this Interim Report #2, shall, subject to a subsequent determination of liability in this action against the Defendants George Nelson Allen and Robin Moriarty, be determinative of the amounts owing by the said Defendants to the individual class members and the class as a whole, subject to any right of appeal the said Defendants might have from the confirmation of the Interim Reports or such other Order made by this Honourable Court on receipt of the Interim Reports.

3. **THIS COURT ORDERS** that the determination made in Interim Report #1 and in this Interim Report #2 is inclusive of interest calculated on the principal sums due to the individual class members and the class as a whole for their investment losses to March 30, 1999, such determination shall be subject to any further interest that may be granted by Order of this Honourable Court subsequent to March 30, 1999.

4. **THIS COURT ORDERS** that the costs of the motion shall be payable to the Plaintiff at a later time on the request for compensation by Class Counsel.

Signed June 29, 2001

R. B. L...
MASTER

SCHEDULE "A"

<u>CLASS MEMBER</u>	<u>PRINCIPAL AMOUNT INCLUSIVE OF INTEREST AS AT MARCH 30, 1999</u>
Birchall, Carol May	\$68,000.50
Harding, Doris	\$20,315.20
Helby, Geoff	\$45,053.15
Hutton, Ron	\$499,100.00
Hutton, Ron	\$35,001.00
McKay, Bruce & Ellen	\$68,630.44
Kongkham, Lynn	\$25,000.00

PERCY LEVY and NELBAR FINANCIAL CORPORATION,
Plaintiff ET AL.
Defendants

Court File No: 31902/99

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

JUDGMENT

Heenan Blaikie LLP
Lawyers
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