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Dear Mr. Stevenson and Ms. Beaudoin

What do the Fiduciary Standard Consultations and the 2012 Enforcement Report Have in Common?

I am sorry I am late answering this request for comments but I do feel I have to write this.

The CSA says that Canadians don't know what a fiduciary standard is. The people who know what a fiduciary standard is are lawyers. And if you get a fiduciary standard one thing you can be sure of you will get more lawsuits. And more legal fees. And while I am very glad to keep lawyers employed, here's what I know for facts, not anecdotes and not unmeasured things.

The two cases of financial fraud I know of – one was a lawyer and the other an accountant – did not involve people or companies that were regulated as securities companies or advisors. The lawyer lost millions of dollars he'd invested in real estate for people at the church he belonged to, including all the savings of the church secretary. The law society apparently caught this and told him to close/wind down his practice but did not advise his clients directly and so the lawyer continued to operate for more than a further year, taking in more money from the unsuspecting. The accountant had put a friend into derivatives and lost almost all of her small estate that her husband had left her.

And the kicker is that both the lawyer and accountant were decent people who I really believe had been trying to help make more money for their clients. I don't believe that either made a dime for themselves. They made bad investments for their clients and were so ashamed that they compounded their honest investment errors by dishonest ones:

- The lawyer effectively used new money coming in for investment to hide old mistakes, not to enrich himself.
- The accountant tried to get my friend to sign after the fact that she knew what derivatives were and that she had agreed to his investing in them even though she hadn't worked or been at school in 40 years and the word derivative hadn't even been invented then.

So even though there are high standards in law and accounting, these standards didn't seem to help these people, did it?

Will a fiduciary standard for advisors help investors?

The two times I've had problems with a financial advisor in one case and a financial firm in another acting for my aunt, neither was a case of something illegal (unlike the above). In the first case I got the money back through the MFDA lighting a bit of a fire under one company and in the other through OBSI without me paying a dime to anyone in either case. Not one single dime. I didn't wait for years like for lawsuits to go to court. With media, and investor advocates and ombudsmen and others out there plus the requirement for at least the companies and advisors I know of to put information about complaint-handling on their websites and hand it out it seems with every document (too many) I get from them, I'd rather rely on something cheaper and equally effective to get things I am owed.

On the other hand, I HAVE lost money because a health club franchise I dealt with, which I found out has done this before, closed, took money from my account, got a new incorporation number, and the Better Business Bureau can't even post this on their website and the Ministry of Consumer Affairs hasn't bothered to call back. Hmmm. Go figure.

Speaking of figures (and maybe some facts), please securities commissioners, do not change things that will just lead to more costs and benefits you can't measure (or even guess at). If you look at the websites of regulators, including your own, you see people being charged and fined. What you also see – I just saw the release of charges by securities commissions – is that 85% of the cases weren't people to whom, presumably, the advisor or company fiduciary standard would apply to. Did I get that right? And the fines and penalties to this group over which securities commissions presumably have the most control, were 5%.

If you were a company and had this kind of information about where problems are, shouldn't you leave off the fiduciary standard and work on catching the criminals that seem to be more in number and bring you in more revenue and use that to give back to people who they've stolen from rather than imposing more costs on, let's think, ordinary little people like me? This is because I have to assume trying to block off every little hole, and the costs of lawsuits because regulated companies and people you catch can't avoid some bad apples, will be something people like me end up paying for as a customer?

Barbra Curvin

P.S.

I currently work in a company supporting the financial services sector but am not working at and never have been an advisor or worked in a dealer (I did work in a bank over 20 years ago). I was not encouraged to write this by anyone but I think people in the sector think they can't write themselves because there will be people saying it's just out of self-interest. What's pretty funny is I'd probably be fired for writing this by my company because it would embarrass them. Ha!