



**IN THE MATTER of the Administration of the Securities Industry Act, 1999
and the Securities Industry Regulations, 2000**

AND

**IN THE MATTER of Proceedings under Section 33 of
the Securities Industry Act, 1999 and Part XVII of the Securities Industry
Regulations, 2000**

BETWEEN

**THE EXECUTIVE DIRECTOR OF
THE SECURITIES COMMISSION OF THE BAHAMAS**

Plaintiff

AND

MONTAQUE CAPITAL PARTNERS LIMITED

Defendant

Matter No. SCB/HP/8/2011

HEARING PANEL FINAL DECISION

Hearing Panel: Sterling Quant, Chairman;
John Archer; and
Deborah Bastian.

Hearing: Wednesday 29 June, 2011.

2 The Hearing Panel (“the Panel”) held a hearing at the offices of the Securities Commission of
4 The Bahamas (“the Commission”) concerning allegations against Montaque Capital Partners
Limited (“Montaque Capital”). This decision concerns the Panel’s findings relative to the
defendant and the pertinent facts are as follows:

FACTS

2 Montaque Capital was licensed as a Securities Investment Advisor as of October 30, 2006
pursuant to the Securities Industry Act, 1999. Pursuant to regulation 50(1) of the Securities
4 Industry Regulations, 2000 (“the Regulations”), Montaque Capital is obligated to file its
audited annual financial statements with the Commission within four (4) months following its
6 financial year end. Montaque Capital has consistently failed to meet its obligations to submit
its audited annual financial statements to the Commission within the prescribed time.

8
10 The status of Montaque Capital audited annual financial statements for the periods ending
April 30, 2008 – December, 2010 was as follows:

12 The audited annual financial statements for the period ending April 30, 2008 were due on
October 31, 2008;

14 The Commission received the audited annual financial statements for the period ending
October 31, 2008 on January 13, 2009

16 The audited annual financial statements for the period ending April 30, 2009 were due on
October 31, 2009 and remain outstanding;

18 The audited annual financial statements for the period ending April 30, 2010 were due on
October 31, 2010 and remain outstanding.

20
22 Furthermore, pursuant to regulation 49(a) and (b), Montaque Capital had not submitted its
monthly Financial and Operational reports for 2009 and 2010. The Panel was advised that
Montaque Capital submitted on May 25, 2011 its Financial and Operation report for 2010.
24 The Executive Director filed a Formal Complaint (“the Complaint”) containing the breaches
which are outlined in greater detail below.

26

BREACHES AND SUBMISSIONS

28 The Complaint containing the following breaches of the Regulations:

30 BREACH 1

32 Montaque Capital Partners is in breach of Regulation 50(1) of the Regulations
which states: “A registered firm shall file with the Commission a copy of its annual
financial statements certified by an approved auditor not later than four months
34 following the end of its fiscal year.”

36 BREACH 2

38 Montaque Capital Partners is in breach of Regulation 50(1) of the Regulations
which states: “A registered firm shall file with the Commission a copy of its annual
financial statements certified by an approved auditor not later than four months
40 following the end of its fiscal year.”

2 **BREACH 3**

4 Montaque Capital Partners is in breach of Regulation 49(a) and (b) which
6 states: “A registered firm shall file by fax or other electronic means by the tenth day
8 of each month (or at such other times as may be specified by the Commission) in
10 Form H in the Fifth Schedule accompanied by the prescribed fee, the calculations and
12 evidence of the firm’s –

14 (a) Tangible net worth, regulatory capital as of the last business day of the
16 previous month and an income statement for the previous month;

18 (b) The number, volume, value and all trades executed,

20 And such other information as the Commission deems necessary.”

22 As regards Breaches 1 and 2, the Executive Director alleged that Montaque Capital failed to
24 submit its audited annual financial statements for the years 2009 and 2010 respectively. In
26 Breach 3 the Executive Director alleges that Montaque Capital failed to file monthly
28 Financial and Operational reports for 2009 and 2010.

30 In support of his allegations the Executive Director exhibited from the Commission’s files
32 various pieces of correspondence between the Commission and Montaque Capital which
34 showed that the Commission requested the audited annual financial statements for 2009 and
36 2010 along with monthly reports from Montaque Capital which were marked and presented
38 to the panel as Exhibits PBS 1 – PBS 8.

40 The defendant referred the panel to its Answer to the Complaint dated May 30, 2011. During
42 his submissions, Mr. Owen Bethel acting on behalf of Montaque Capital admitted that the
44 company was guilty of the breaches as set out in the Complaint.

46 **RULING**

48 The Panel, having deliberated on the above matter following the hearing of the same, has
50 found Montaque Capital guilty of the breaches in the Complaint. This finding is based on the
52 evidence presented by the Executive Director and the admission of guilt by Owen Bethel on
54 behalf of Montaque Capital. From the evidence and admission of guilt, Montaque Capital
56 failed to submit its audited annual financial statements for 2009 and 2010. Montaque Capital
58 also failed to submit by the tenth day of each month its monthly filings in Form H.

60 **SANCTIONS**

62 In making its decision the Panel considered the prevailing circumstances, mainly that there
64 was sufficient time for Montaque Capital to correct the issues with its accounting software
66 since becoming aware of it at the time of their licensing in 2006. Emphasis has also been

placed on, inter alia, whether the defendant engaged in the misconduct despite prior warnings from the regulator, the seriousness of the misconduct, evidence of whether the defendant addressed the failing(s) complained about and whether the defendant took full responsibility for the misconduct.

The Panel considered that any sanction that may be imposed ought to reflect the seriousness of the breaches. The Panel also considered the gravity of this matter given the nature of each of the breaches for which there was a finding of guilt.

The Executive Director sought a fine in the circumstances of this matter. The Panel notes that the defendant admits to the breaches and claims that they have been very transparent in regards to the problems that they have incurred and hopes that he was able to exhibit the genuine work going into trying to reconcile and rectify the matter. Further the defendant submitted that they have done what is necessary to correct the situation and so the penalty may not be in order.

The Panel, having heard and considered the submissions of both the Executive Director and the defendant, finds that the breaches warrant the imposition of fines. Therefore, having considered the case of *The Executive Director of The Securities Commission of The Bahamas v Accuvest Fund Services Limited et al. 2011/COM/com/00025*, we recommend that fines be imposed as follows:

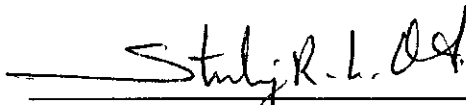
- 1) Regulation 50(1) – failure to file audited annual financial statements for 2009 and 2010 (2 years) **\$12,000** for each of the unfiled audited statements, totalling **\$24,000**;
- 2) Regulation 49(1) and (b) – failure to file by fax or other electronic means by the tenth day of each month in Form H in the Fifth Schedule accompanied by the prescribed fee for 2 years (2009 – 2012) **\$1,000** for each month the Form H form was not filed, totalling **\$24,000**;

The total penalty amount - \$48,000

The sanctions take effect from the date of this decision and the above penalty is to be paid within thirty (30) days after the defendant receives this decision.

This is the unanimous decision of the Panel.

Dated this 24th day of APRIL, 2012



Hearing Panel Chairman