

SUPERIOR COURT
(CLASS ACTION)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-06-000500-104

DATE : JULY 14, 2010

IN THE PRESENCE OF: THE HONOURABLE ROBERT MONGEON, J.S.C.

VIRGINIA NELLES
Petitioner

vs.

ROYAL BANK OF CANADA
Respondent

JUDGMENT

[1] **SEEING** the petition of Virginia Nelles for authorization to bring a class action on behalf of the following group of persons, namely:

All persons, and estates of deceased persons, trustees, es qualité trusts and corporations whose funds were deposited to the account "Earl Jones In Trust, number 00361-5266622" (the "Earl Jones In Trust Account") at the Royal Bank of Canada, Beaconsfield Branch, between the period October 22, 1981 and August 28, 2008, and who did not receive reimbursement of the total funds deposited therein.

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[2] **CONSIDERING** that the claims of the members raise identical, similar or related questions of law or fact;

[3] **CONSIDERING** that the facts alleged seem to justify the conclusions sought;

[4] **CONSIDERING** that the composition of the group makes the application of Articles 59 or 67 of the Code of Civil Procedure (R.S.Q., c. C-25) difficult or impractical;

[5] **CONSIDERING** that the class action which the Petitioner wishes to bring on behalf of the members is an Action in compensatory damages against the Respondent;

[6] **CONSIDERING** that Virginia Nelles is in a position to represent the members of the class adequately;

[7] **CONSIDERING** that the Respondent does not contest the Motion;

[8] **FOR THESE REASONS**, the Court:

[9] **GRANTS** the Motion for Authorization to Institute a Class Action;

[10] **ASCRIBES** to Virginia Nelles the status of representative for the purpose of bringing a class action on behalf of the following group of persons:

All persons, and estates of deceased persons, trustees, es qualité trusts and corporations whose funds were deposited to the account "Earl Jones In Trust, number 00361-5266622" (the "Earl Jones In Trust Account") at the Royal Bank of Canada, Beaconsfield Branch, between the period October 22, 1981 and August 28, 2008, and who did not receive reimbursement of the total funds deposited therein.

[11] **IDENTIFIES** as follows the principal questions to be dealt with collectively:

- a) Did Respondent commit a fault by allowing the Earl Jones In Trust Account to be operated as the personal account of Earl Jones, when it knew that the funds in the account belonged to and were to be administered on behalf of third parties?
- b) Did Respondent commit a fault by failing to make verifications as to the authenticity of endorsements in respect of cheques deposited into the Earl Jones In Trust Account?
- c) Did Respondent commit a fault by permitting Earl Jones to operate a trust

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business, which entailed co-mingling funds belonging to numerous third parties, estates and trusts, out of a single "personal" account?

- d) Did Respondent commit a fault by facilitating Earl Jones to hold out to the members of the Class that their funds had been deposited into a true trust account?
- e) Did Respondent fail to act as a prudent, vigilant and reasonable banker would have in the circumstances?
- f) Was Respondent negligent and/or willfully blind in allowing Earl Jones to perpetrate a ponzi scheme, using the Earl Jones In Trust account, for approximately 27 years?
- g) Did Respondent fail to put an end to the irregular operation of the Earl Jones In Trust account in a timely manner?
- h) Did the Respondent fail to make appropriate verifications throughout the operation of the Earl Jones In Trust Account in respect of knowing its client and his business?
- i) Did the Respondent fail to consider that there was a conflicted situation between Earl Jones's personal interests and those of the beneficiaries of the funds deposited to the Earl Jones In Trust Account?
- j) Did Respondent act in a wrongful manner in August 2008, knowing the funds deposited in the Earl Jones In Trust Account belonged to members of the Class and constituted funds from a "Trust Business", by requesting and allowing Earl Jones to transfer the balance of funds in the Earl Jones In Trust Account to a new account opened in the name of Earl Jones Consultant & Administration Corporation?
- k) If the answer to any of the foregoing questions is "yes", is the Respondent liable for the damages sustained by the members of the Class, collectively, as a result of the ponzi scheme?
- l) What is the amount of damages sustained by the Class, collectively, as a result of the fault(s) of the Respondent?

[12] **IDENTIFIES** as follows the conclusions sought with relation to such questions:

GRANT the Class Action against the Respondent;

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CONDEMN the Respondent to compensate the Class for their collective loss, namely the total amount of funds deposited to the Earl Jones In Trust Account during the period October 22, 1981 to August 28, 2008 less the amount(s) received therefrom, the whole with interest and additional indemnity provided by law, calculated from February 5, 2010;

DECLARE that Respondent is liable for the costs of judicial and extrajudicial fees and disbursements, including fees for expertise incurred in the present matter for and in the name of Petitioner and the members of the Class;

ORDER collective recovery of the total amount of the claims herein;

ORDER that the claims of the members of the Class be the object of individual claims in accordance with Articles 1037 to 1040 C.C.P. or, if impractical or inefficient, order the Respondent to perform any remedial measures that this Honourable Court deems to be in the interests of the members of the Class;

ORDER the Respondent to advise all members of the Class of the present Class Action lawsuit;

CONDEMN the Respondent to any further relief as may be just and proper;

THE WHOLE with costs, including the costs of all exhibits, reports, expertise and publication of notices.

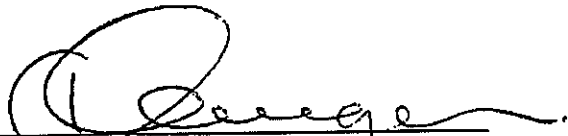
[13] **FIXES** the date after which a member may no longer request his exclusion from the group at September 13, 2010;

[14] **ORDERS** that a Notice to the members be sent by the Respondent to the Canadian Press via Newswire no later than Saturday, July 24, 2010, in accordance with the notice approved by the Court;

[15] **REFERS** the record to the Chief Justice so that he may fix the district in which the class action is to be brought;

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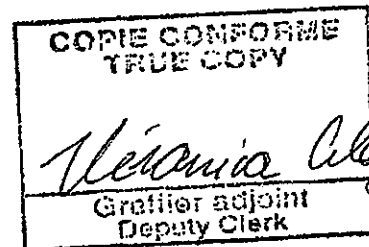
[16] THE WHOLE with costs to follow suit, including the costs of all publications of Notices.


ROBERT MONGEON, J.S.C.

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Me Robert Kugler
Kugler Kandestin L.L.P.

Attorneys for Petitioner



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Date of hearing: July 14, 2010

DECISION OF CHIEF JUSTICE

CONSIDERING the interests of the parties and of the members, I hereby fix the district of Montreal as the district in which the class action authorized by the foregoing Judgment is to be brought.

The Honourable Mr. Justice Robert Mongeon, J.S.C. is hereby designated to hear the entire proceedings relating to the said class action.

MONTREAL, this 14th day of July, 2010.

**THE HONOURABLE CHIEF JUSTICE
OF THE SUPERIOR COURT**