

SUPERIOR COURT
(Class Action Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-06-001125-216

Date: November 23, 2021

PRESIDING: THE HONORABLE THOMAS M. DAVIS, J.S.C.

ELI ELKOUBI

Applicant

c.

TD WATERHOUSE CANADA INC.

Defendant

JUDGMENT ON THE APPLICATION FOR DISCONTINUANCE

- [1] **CONSIDERING** the *Application to Authorize the Bringing of Class Action and to Appoint the Status of Representative Plaintiff* (the "**Class Action**") against TD Waterhouse Canada Inc. ("**TDW**"), on behalf of the following proposed class:
- All persons who had a TD Waterhouse brokerage account and who were restricted by TD Waterhouse from purchasing or selling securities.
- [2] **CONSIDERING** that this authorization application followed a decision by TDW taken in the last week of January 2021, to restrict margin lending for GME (GameStop) securities;
- [3] **CONSIDERING** that on August 19, 2021, the Court authorized TDW to file certain exhibits, as well a sworn statement of its representative, Cathy Sleiman ("**Ms. Sleiman**"), and dismissed the Applicant's request to examine TDW's representative;¹
- [4] **CONSIDERING** the allegations contained in the sworn statement of TDW's representative;

¹ *Elkoubi c. TD Waterhouse Canada Inc.*, 2021 QCCS 3691.

- [5] **CONSIDERING** the *Application for Permission to Discontinue the Putative Class Action* (the “**Application**”) and the allegations in its support;
- [6] **CONSIDERING** the representations of the Applicant and his counsel, and in particular the following ones:
- a) As the file progressed – and in particular in the context of the evidence this Court allowed TDW to adduce at the authorization stage – it became increasingly apparent to the Applicant that he would be unlikely to succeed in demonstrating a common issue (art. 575(1)) and that his ability to properly represent other members was questionable, notably because:
- (i) Although the Applicant initially thought that he had a margin account at the time of filing his action, he now concedes that he did not have a margin account with TDW in the last week of January 2021 or at any time thereafter; and
- (ii) The allegations contained in the sworn statement of Ms. Sleiman, including the allegation to the effect that the margin lending restrictions did not prevent TDW customers, including the Applicant, who had sufficient equity in their accounts from placing market or limit orders to purchase or sell shares of GME stock during the relevant period, are compelling;
- [7] **CONSIDERING** the consent of TDW to the discontinuance of the proceedings against it;
- [8] **CONSIDERING** that the parties all agree that it would not be proportional in the circumstances to pursue this Class Action;
- [9] **CONSIDERING** that class counsel has confirmed to the Court that no Quebec resident has contacted them in relation to the proposed class action, despite it having been publicized on the Web site of co-class counsel Renno Vathilakis;
- [10] **CONSIDERING** that no release is granted by the Applicant or any other member of the putative class in exchange of the discontinuance;
- [11] **CONSIDERING** that in the circumstances notice of the discontinuance, as well as a French version thereof, and the present judgment should be published on the Class Action Registry of the Superior Court and the Web site of Renno Vathilakis;
- [12] **CONSIDERING** that the Application does not undermine the integrity of the justice system in any way;

FOR THESE REASONS, THE COURT:

- [13] **GRANTS** the Applicant's Application for discontinuance;
- [14] **TAKES ACT** of the filing of the discontinuance into the Court record;
- [15] **ORDERS** the Applicant, within 30 days of the present judgment, to publish a copy of the present judgment, as well as the discontinuance and a French version of the discontinuance, on the Class Action Registry of the Superior Court and to post these documents on the Web site of Renno Vathilakis for a period of 120 days;
- [16] **THE WHOLE** without judicial costs.


THOMAS M. DAVIS, J.S.C.

Mtre Michael E. Vathilakis
Mtre Karim Renno
Renno Vathilakis Inc.

Mtre Joey Zukran
LPC Avocat Inc.
Lawyers for Applicant

Mtre Céline Legendre
Mtre Frédéric Plamondon
Osler, Hoskin & Harcourt
Lawyers for TD Waterhouse Canada Inc.

Hearing date: Novembre 23, 2021