

ROCHESTER FINANCIAL CLASS ACTION FREQUENTLY ASKED QUESTIONS

COURT CERTIFIES CLASS ACTION LAWSUIT OVER BANYAN TREE GIFT PROGRAM

1. I HEARD THAT THE COURT CERTIFIED THE CLASS ACTION AGAINST THE DEFENDANTS? WHAT DOES THIS MEAN?

This means that the action will now proceed and move forward as a class proceeding through the discovery process and then to a common issues trial.

The defendants sought leave to appeal to the Divisional Court from the order certifying the action.

The defendants' motion was dismissed. This means that the Certification Order stands.

2. WHAT HAPPENS NEXT?

A notice will now be mailed out to all class members advising them of the certification and explaining the process going forward.

The mailing may be accompanied by a newspaper publication with both taking place on or before June 1, 2010.

Any class member who does not wish to be included in the class proceeding will have the right to opt-out by completing the form and sending it to the Opt-Out Administrator.

If you opt-out, you will not participate in the class proceeding and will not be bound by the result whether favourable or unfavourable. You will not be entitled to any benefits under the class proceeding.

As a practical matter, you would opt-out only if you intend to proceed with your own legal action.

3. WHAT DO YOU NEED FROM ME NOW?

You do not need to do anything further at this point in time. If you have not already done so, you may provide us with your information including copies of documentation and we will record your information on our database so that you can receive future updates as to the progress of the action. Being included on our database does not obligate you in any way. It does not necessarily mean that you are part of the Class as defined by the Court either.

4. HOW DO I KNOW IF I AM PART OF THE CLASS ACTION?

If you fall within the Class as defined by the Court, it is not necessary for you to do anything in order to be included in the lawsuit. The *Class Proceedings Act* is by default inclusive, rather than exclusive. This means that you will be automatically included in the lawsuit, subject to your right to opt-out and exclude yourself. Your opt-out election will occur after you receive notice of certification as referenced in question 2 above. The notice will tell you what to do if you wish to opt-out.

If you were a participant in the Banyan Tree gift program for the tax years 2003, 2004, 2005, 2006 or 2007, you should be included in the Class since that is the Class definition approved by the Court.

We do not know this definitively, however, since the complete Class Member database rests with the defendants and a mailing will eventually go out based on those records.

5. I NEED ADVICE REGARDING MY TAX SITUATION AND ISSUES WITH CANADA REVENUE AGENCY. CAN YOU HELP?

We are not in a position to offer tax advice or advice on individual situations to Class Members, particularly in respect of tax issues. You should consult with a tax lawyer or a chartered accountant in respect of your tax questions.

6. I PARTICIPATED IN 2002, WHY IS THIS YEAR NOT COVERED UNDER THIS CLASS PROCEEDING?

At the commencement of the action we did not have a representative plaintiff who had participated in 2002.

Furthermore, our initial investigations revealed some differences in respect of the 2002 program as compared to the subsequent years and we elected to attempt to streamline the action by maximizing commonality and minimizing individuality. We felt that focusing on the subsequent years helped to improve our chances of success.

7. WHAT IS THE COST TO ME IN PARTICIPATING IN THE CLASS PROCEEDING?

Individual class members are not personally liable to pay counsel for prosecuting the common issues in the class action nor are they liable to pay their own legal fees if the class action is not successful.

Individual Class Members may be responsible for their own legal fees if, after the trial of common issues, they are required to retain their own counsel to deal with individual issues that remain.

Plaintiffs' counsel may seek counsel fees from the value or benefit gained by class members resulting from the class proceeding.

Plaintiffs' counsel must obtain court approval of any counsel fees to be paid by the Representative Plaintiffs and class members.

8. HOW CAN I GET MORE INFORMATION?

Plaintiffs' counsel are maintaining a database of individuals who request to be kept up to date as to recent developments. To be added to this database, or to obtain further information, you can contact plaintiffs' counsel David Thompson or Matthew Moloci of Scarfone Hawkins^{LLP} at 905-523-1333 extension 238 or adobson@shlaw.ca.

You can also check out the following website for the most recent developments:

www.classactionlaw.ca