Docket: 2005-1930(IT)G

BETWEEN:

LLOYD M. TEELUCKSINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on November 8 to 10, November 12, November 15 to 19, and December 14 and 15, 2010, at Toronto, Ontario

By: The Honourable Justice Campbell J. Miller

Appearances:

Counsel for the Appellant:	Christina A. Tari and Cindy Chiu
Counsel for the Respondent:	Roger Leclaire and George Boyd Aitken

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JUDGMENT

The appeals from the reassessments made under the *Income Tax Act* for the 1993, 1994, 1995 and 1996 taxation years are allowed and referred back to the Minister of National Revenue for reconsideration and reassessment on the following basis:

a) the Appellant is entitled to restricted farm losses based on:

(i) the fair market value of the horses being $300,000 in the R Partnership and $350,000 in the XIII Partnership; and

(ii) expenses, including prepaid expenses, as filed by the Appellant; and

b) in computing the Appellant's income arising from withdrawals from his RRSP the amount to be included in income shall be reduced from $27,237 to $13,810.

Costs to be determined on further representations.

Signed at Ottawa, Canada, this 13th day of January 2011.

"Campbell J. Miller"

C. Miller J.

Citation: 2011TCC22
Date: 20110113
Docket: 2005-1930(IT)G

BETWEEN:

LLOYD M. TEELUCKSINGH,

Appellant,

and

HER MAJESTY THE QUEEN,

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REASONS FOR JUDGMENT

C. Miller J.

Facts

[1] The very term "Arabian horses" takes me back to the early 1960s watching in awe as Lawrence gallantly galloped across the Arabian sands on a sinewy strong stallion. The power, the grace, the beauty – it was unforgettable. In the 1990s, Montebello Farms Inc. ("Montebello") was in the business of breeding these magnificent creatures. It required funds to attain a level of herd that would make such a venture viable. It devised a plan whereby it sought investors as limited partners in partnerships which acquired the Straight Egyptian Arabian horses and held them for a very brief period of time before transferring them into a company that would issue preferred shares in return. The limited partners, Mr. Teelucksingh being one of them, could then transfer such shares into their RRSP, using available RRSP funds. Based on the cost of the horses and prepaid expenses, the limited partners claimed restricted farm losses for the very brief first fiscal period of the partnership, which losses were then carried forward. The Respondent denied the losses on the basis that there was no partnership as there was no business nor an intention to make a profit, or if there was a partnership, on the basis that the expenses incurred to create the loss were not reasonable, primarily due to the horses being overvalued. The Respondent also has included in Mr. Teelucksingh's income the amount he withdrew from his RRSP on the basis that the preferred shares were not qualified investments for RRSP purposes (a position withdrawn in argument) or that, in any event, they had no value.

[2] What is most interesting about this case is that, while the Respondent argues there may have been no partnership business as such, it is clear there was an underlying Straight Egyptian Arabian horse business founded in the operations of Montebello. The question is whether Montebello has created a legitimate financing arrangement that shifts the business into the many limited partnerships and companies, such businesses incurring fair market value costs and reasonable expenses in a manner that attracts the tax consequences sought by the Appellant. The Respondent suggests this is a scheme by unscrupulous businessmen to take advantage of investors by offering them tax benefits that do not properly flow from the arrangement.

Rulings

[3] Before turning to the facts, I wish to comment on some rulings I made during the trial and also on the general course of the trial. There were objections to the introduction of a number of documents on the basis that they could not be authenticated. Just by way of example, the Crown sought to introduce a letter signed by a non-party, a Mr. Little, addressed to another non-party, Mr. Schiebelhut. The Appellant had already entered as an exhibit a contract that had Mr. Schiebelhut's signature on it. As this arose on the Friday, I asked the parties to provide very brief written submissions on admissibility of documentary evidence on Monday so I could make an appropriate ruling. The Appellant's counsel did so: the Crown counsel did not.

[4] Relevance and authenticity are two different matters; simply because one document may appear to flow from another admissible document, and on its face appears relevant, it does not follow that it is admissible. Had the witness been familiar with Mr. Little's signature, that may have been sufficient to authenticate the letter. I do not suggest the Court must always resort to a handwriting expert: some practical considerations must come into play. It is not enough, however, for a witness to see a signature for the first time in Court and compare it to the signature on the document to be introduced, offering the opinion that it looks the same. That, I suggest, would fall short of authenticating a document.

[5] I also ruled against the Crown introducing what they claimed to be similar fact evidence in the cross-examination of Mr. Smith, who was on the stand for four days. Mr. Smith was an executive vice-president of Montebello, the moving force in the horse business giving rise to the investments in issue before me. The Crown intended to impeach his character by raising an Ontario Securities Commission ruling in 2007

concerning a 2003 – 2004 hedge fund investment in which Mr. Smith was involved. Mr. Smith has appealed that ruling. I did not allow the Crown to question Mr. Smith on this as I concluded the probative value did not outweigh the prejudicial effect. Indeed, I concluded there was little probative value to an assertion that, because 10 years after the investments in issue before me, Mr. Smith was involved in a totally different investment, which has run afoul of the Ontario Securities Commission, that he must have been unscrupulous in his earlier dealings. The facts were not similar enough, the timing was too distant and there could be some prejudice against the Appellant that would arise completely outside his control. On balance, I concluded this was not an appropriate line of questioning.

[6] The third ruling I wish to mention is allowing the Respondent to put certain Montebello customs documents to their Canada Revenue Agency (CRA) witness, Mr. Coehlo. The Respondent had presented these documents, prepared by Montebello for the shipping of horses between Canada and the United States, to Mr. Smith on cross-examination. Mr. Smith could not identify the documents so I marked them for identification, as Respondent's counsel indicated they understood the author of the documents, another employee of Montebello, was going to be called by the Appellant. After Mr. Smith's testimony, and after the expert's testimony, the Appellant's counsel advised that she had decided that it was no longer necessary to call this other employee. The Respondent's counsel indicated they would attempt to get a hold of this potential witness and, if necessary, subpoena her. Before that occurred, the Respondent put its CRA witness on the stand, who testified that as Chief of Appeals in Kitchener, he had asked the appeal's officer to obtain customs documents, if any, showing the movement of Montebello horses between the United States and Canada. It is those documents that were then presented to him. The Appellant's counsel objected on the basis of the relevance and that such documents had not been provided prior to trial either on the Respondent's list of documents or through any undertakings. The Respondent's counsel argued he had hoped to impeach the credibility of the Appellant's witness, as the customs documents showed much lower values for Montebello horses going from Canada to the United States and higher values on return. One of the horses in the Montebello Egyptian Bloodstock Investments R and Company, Limited Partnership was part of the list of horses in one of the bundles of the custom documents.

[7] I had heard enough evidence to satisfy me that the Montebello Egyptian Bloodstock Investments R and Company, Limited Partnership and Montebello Egyptian Bloodstock Investments XIII Limited Partnership investments were similar to many other such investments and that the shipment of horses between Canada and the United States was part of the *modus operandi* of Montebello. There could be any

number of explanations why Montebello might show a much higher value of the horses on the customs forms on leaving the United States than was shown on entering the United States, but it struck me it was some evidence relevant to value, though by no means determinative. In having found relevance, and given the circumstances of how the documents came to Mr. Coehlo, and how the line up of Appellant's witnesses was shifting, I exercised my discretion to admit the documents.

[8] The fourth ruling I wish to mention is in connection with a line of questioning Appellant's counsel wished to ask Mr. Coehlo. Mr. Coehlo was the supervisor of the appeals officer, Mr. Kodrick. Mr. Kodrick was the appeals officer in the Kitchener office who testified in 2003 in the case of *Balvinder Khaira v. Her Majesty the Queen*,[1] a case also involving a similar Cabreah Limited Partnership investment, though not a Montebello one. Mr. Kodrick is no longer alive. Appellant's counsel wished to read to Mr. Coehlo answers given by Mr. Kodrick at the 2003 trial as prior inconsistent statements to impeach Mr. Coehlo's credibility. Counsel wished to do so on the basis Mr. Coehlo was only appearing before me to replace Mr. Kodrick who obviously could not appear. I agreed that was one of the reasons for hearing from Mr. Coelho, but it did not overcome the fact that the prior statement was not Mr. Coehlo's statement – it was another person's in another action. I found it would be improper to impeach Mr. Coehlo's credibility on the back of someone else's evidence given in a different case. I did not allow this line of questioning.

[9] Mr. Coehlo was not the CRA officer who was examined for discovery in the case before me. That was Mr. Tangredi from the Laval, Québec taxation office. Appellant's counsel also wished to impeach Mr. Coehlo's credibility by referring him to answers given by Mr. Tangredi on examination. While I permitted such questions to be put to Mr. Coehlo, I found it was not to impeach his credibility as such, but to simply demonstrate to the Court there were inconsistent views coming from the CRA. This I found was acceptable, as Mr. Tangredi's evidence could be, and to some degree was, read in. If Mr. Coehlo provides a different answer it is for me to determine wherein lies the truth.

[10] Finally, with respect to the conduct of the trial generally, it was clear that counsel had a long and combative history in this litigation. Unfortunately, this would occasionally brew over into the courtroom. While the frustrations evident on both sides may be understandable and attributable to nothing more than human nature, I implored counsel to check such baggage at the door and conduct themselves as

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[1] 2004 TCC 118.

officers of the Court. Once the trial had started, the complaints, accusations and concerns that may have become the rule rather than the exception in the litigation process leading to trial, will not be tolerated at trial. The trial judge, and certainly this trial judge, is not interested in receiving a litany of such complaints and is only interested in a fair hearing where both sides can properly and effectively put their case before me so I hear all evidence and argument necessary to make a reasoned decision. While positions or objections can be made forcefully, they must at all times be presented courteously and respectfully. Enough said.

Facts

[11] Mr. Dale Smith, the former executive vice-president of Montebello gave a lengthy and detailed description of the business of Straight Egyptian Arabian horse farming and, specifically, the operation of Montebello. Indeed, I even saw a brief video of Montebello's farming operations and was able to visually appreciate the splendour of the Straight Egyptian Arabian horse. I also saw photographs of the process by which semen is collected and heard details of the science of breeding certain bloodlines together. I could go on at some length describing an industry in which the Straight Egyptian Arabian horse represents just a small fraction of the general population of Arabian horses. I could likewise go on in greater detail of what appeared to be a modern, extensive horse operation carried on by Montebello in Québec and in Texas. It was fascinating evidence and provided some insight and background that set the stage to address the issues raised by the investing arrangement, but this case is about the tax consequences of the investing arrangement more than about the intricacies and complexities of the horse business. All to say, my description of facts related to the horse farming business will be a significantly abbreviated version of what I heard at trial. The emphasis will be on the investments.

[12] Montebello was in the Straight Egyptian Arabian horse farm business from the late 1980's to 1997. The moving force behind Montebello was Mr. Paul Walker. Montebello obtained the nucleus of its horse inventory in an acquisition of a herd at auction from Stonebridge in October 1990. Mr. Walker was also involved with Stonebridge. It went out of business so there were deals to be had in buying their horse inventory. There was also a major acquisition of horses by Montebello in 1993 from Troy Associates Inc. of Luxemburg for $7,050,000. Interestingly, Mr. Walker also signed on behalf of Troy Associates. Mr. Smith recalled very few details of this major transaction.

[13] At its peak, Montebello had control of over 200 horses. It operated from a 350- to 400-acre farm near Montebello, Québec and also a training facility in Texas, with an administrative office in Pointe-Claire, Québec.

[14] Montebello started a Canadian Breeders of Straight Egyptian Arabian Horses Organization (CABREAH) with a view to further refine and improve the quality and reputation of Canadian bred Straight Egyptian Arabian horses. All mares bred by stallions owned by Montebello or any of the many other limited partnerships would be bred from CABREAH members' stallions. Other CABREAH members were Edwards Arabian Farms, Heritage Arabian Farms, SEAH Farms and Shiloh Ranches.

[15] Revenue is earned in this business primarily in four ways:

a) The sale of horses from a successful breeding program.

The sales of horses would be by private treaty (i.e. private sales), through sales agents or, in certain circumstances, by auction.

b) Breeding services of a stallion.

It is important to note that, according to Mr. Smith, only one of 15 or 20 colts may become a productive stallion. The breeding was described as part art, part science. At Montebello, Mr. Walker and the breeding manager, Mr. Simon made the decisions to mix appropriate bloodlines.

At Montebello all mares were inseminated artificially.

c) Providing the board and care of horses.

d) Winning prizes from competitions.

In this regard, it should be noted there was an annual Egyptian competition put on by the Pyramid Society, as well as a CABREAH incentive program, the CABREAH Breeders Challenge, only open to CABREAH horses.

[16] Just to give an example of the financial side of the Montebello business, Montebello's 1995 financial statements showed revenues from the sale of horses of approximately $16,000,000, revenues from breeding of approximately $900,000, and from board and care of approximately $1,873,000. As Mr. Smith pointed out, however, the revenue from the sale of horses did not necessarily equate to profits, as

the $16,000,000 sales resulted in a $500,000 loss, while the board and care revenue resulted in approximately a $200,000 profit.

[17] As early as 1989, Montebello started to offer limited partnership investments to the public. According to Mr. Smith, it had insufficient capital for the large pool of mares it felt it needed to produce exceptional horses. Its strategy was to get investors, who wanted to be the industry, as limited partners, allowing Montebello to grow more rapidly. As he put it, this was to use the leverage of others' capital. The two limited partnership arrangements before me are just two of many such investment arrangements put together by Montebello and other CABREAH members but are representative of these many other CABREAH limited partnership investments.

[18] I will refer to the Montebello Egyptian Bloodstock Investments R and Company, Limited Partnership as the "R Partnership" and Montebello Egyptian Bloodstocks Investments R Inc. as the "R Corporation" and the Montebello Egyptian Bloodstock Investments XIII Limited Partnership as the "XIII Partnership" and the Montebello Egyptian Bloodstock Investment XIII Inc. as the "XIII Corporation". Cumulatively, I will refer to the R Partnership and R Corporation as the "R Investment" and the XIII Partnership and the XIII Corporation as the "XIII Investment".

[19] Mr. Teelucksingh testified that he attended a presentation by a financial advisor on the Montebello horse farm operation and later received a copy of the Offering Memorandum, which I will soon describe, from the financial advisor. He confirmed that he decided to invest on the understanding that there would be profits coming out of these investments but also on the understanding that he would use money in his RRSP to make the investment. It was clear Mr. Teelucksingh was not intimately familiar with all the many details of the investment arrangement. He acknowledged signing all the documents necessary to make these investments

[20] It is useful to reproduce portions of the Offering Memorandum of the R Investment as Appendix A.

[21] The R Investment, as described in the Offering Memorandum of December 16, 1993 consisted of the following. The investor would acquire one unit in the R Partnership for $18,000 and 18 common shares in R Corporation for $18 (these shares could be put in the name of a co-investor, and in Mr. Teelucksingh's case some common shares were put in his wife's name). The maximum offering was $450,000. It was fully subscribed. The investor could borrow $18,000 from

Montebello to make the investment. Mr. Teelucksingh did this. The loan had to be repaid within a relatively short period of time. Mr. Teelucksingh did repay the loan.

[22] The Offering Memorandum went on to describe that the $450,000 raised plus a loan of $120,000 from Montebello would be used to cover the following:

- the acquisition of 50% of a stallion, The Atticus and a colt, MB Sehnari for $400,000 from Montebello;

- working capital of $105,000;

- commission $45,000;

- expenses of issue $20,000.

[23] The business of the R Partnership and R Corporation was described in the Offering Memorandum as the business of acquiring, raising, showing and exhibiting Straight Egyptian Arabian stallions and selling their breeding services, all for the purpose of earning farming revenue. Indeed, the R. Partnership entered an agreement with Montebello, the Stallion Services Purchase Agreement, whereby Montebello agreed to buy, over a five year period, 13 breedings per year at $6,000 per breed for The Atticus and, starting in 1996, 11 breedings per year with MB Sehnari, totalling $78,000 per year in 1994 and 1995 and $144,000 per year in 1996, 1997 and 1998, for a total of $558,000 to be earned over five years. If the breeding was unsuccessful, Montebello would have to provide the services of a different stallion.

[24] Montebello also contracted to provide board and care for the two horses at Montebello Farms at $1,000 per month for the first three years and $1,250 per month for the following two years, payable in advance. Montebello further agreed, in a Horse Replacement Agreement, to replace any horse in respect of which there is a loss incurred. This was an additional cost to the R Investment of one percent of the agreed insured value. The R Investment was also charged the insurance cost of 1.34% of agreed insured value: such insurance was taken out by Montebello.

[25] Montebello also provided consulting and management expertise to the general partner, a wholly owned subsidiary of Montebello, for an annual fee of two percent of the purchase price of the horses, to be payable annually in advance. The general partner was to charge the R Investment this two percent fee. The Offering Memorandum also provided for a final closing on December 31, 1993 and that on January 15, 1994, the R Partnership would transfer the assets into the R Corporation

for preferred shares. Within 45 days thereafter the partnership would be dissolved, distributing the preferred shares to the limited partners. The Offering Memorandum stated that the R Corporation would be dissolved on December 31, 1998. The Offering Memorandum went on to describe the conditions for the preferred shares to be considered a qualified investment for RRSP purposes.

[26] The Offering Memorandum indicated that, during the brief life of the R Partnership, any net income or loss would be determined in accordance with the cash method, anticipating losses available to the limited partners in 1993.

[27] I find the Offering Memorandum reflected closely what in fact occurred in this wholly subscribed offering. All the agreements were executed to put into place the investment just as set out in the Offering Memorandum.

[28] Mr. Smith outlined what happened. Montebello did lend money to the investors, who used it to buy the units and shares. Montebello did lend an additional $120,000 plus some additional monies for GST purposes. The R Partnership did use the funds to buy the two horses for $400,000 ($350,000 attributable to the half share in The Atticus and $50,000 for MB Sehnari), prepay expenses of $107,000, pay commissions and fees of the $45,000 and $20,000 respectively. This all took place immediately upon closing in 1993 effectively creating a loss in the period ended December 31, 1993 of $9,520 per partner, restricted to $6,010 in 1993, with $3,410 available for carry forward. The losses arose from the prepaid amounts and the treatment of the inventory cost of the horses, based on the $400,000 value attributed to them. See Appendix B for this calculation.

[29] Effective January 15, 1994, the partnership assets were rolled into the R Corporation (by virtue of a Transfer Agreement signed at closing and a meeting in January attended only by the general partner with proxies from investors): preferred shares were ultimately issued to Mr. Teelucksingh and his wife. At this time, the horses were valued by David Christie at $490,000. Mr. Teelucksingh transferred the preferred shares into his RRSP, using the RRSP funds to pay back the Montebello loan. The preferred shares were valued at $18,236. (see Appendix B for this determination)

[30] In May 1995, a $45,000 dividend was paid by the R Corporation to the preferred shareholders, which in Mr. Teelucksingh’s case, went into his RRSP accounts. A second dividend of a similar amount was paid in April 1996.

[31] The R Investment was referred to as a stallion deal, of which there were only a few. The vast majority of these types of investments were mare deals. The XIII Investment, which Mr. Teelucksingh also invested in, is an example of the mare deals. While the overall structure is similar, the proposed revenue streams differ in that revenue in the mare deals is generated from the sale of the mares' foals, rather than breeding fees. Mr. Smith provided a chart demonstrating projected births and sales of the XIII Investment foals.

[32] The XIII Investment was for 25 combined interests of $20,000 for one limited partnership unit in the XIII Partnership and $40 for 40 common shares in the XIII Corporation for a maximum subscription of $501,000. The schedule of events listed in the Offering Memorandum is informative:

Schedule of Events

Event	Date
Initial closing	July 21, 1995
Fiscal year end of Limited Partnership(1)	December 31, 1995
Limited Partners' meeting	January 12, 1996
Asset transfer from Limited Partnership to Corporation (1)	January 15, 1996
Dissolution of Limited Partnership	February 15, 1996
Distribution of Preferred Shares	February 15, 1996
Commencement of cash distributions	1998
Final cash distribution	December 2001
Dissolution of Corporation	December 31, 2001

[33] Again this was fully subscribed. Mr. Teelucksingh went through the same routine by first borrowing from Montebello for the initial subscription, repaying the loan once the horses were flipped from the partnership into the corporation. The partnership paid $600,000 for seven mares. With the subscription funds plus a Montebello loan of $360,000 the XIII Partnership had, after commissions and fees, $190,000 for working capital, from which the partnership incurred prepaid expenses of $171,000, including board and care at $525.00 per month for the mares

[34] The XIII Partnership's T5013 Schedule 1 form for the period ended August 15, 1995 showed a farming loss per unit of $15,000. The XIII Partnership's T5013 Schedule 3 form showed $5,640 farming income per unit for 1996. Mr. Teelucksingh sought to deduct the maximum restricted farm loss of $8,750 in 1995 and carry forward the $6,250 loss available to offset 1996 income similar to the R Partnership. The losses were derived from the prepaid expenses and the

amortization of the mares based on the value of $600,000 attributed to them. See Appendix C for this calculation.

[35] Similar to the R Partnership, the assets were transferred into the XIII Corporation. Mr. Teelucksingh and his wife used RRSP funds for the preferred shares valued at $20,001 (Mr. Teelucksingh received 9,001 preferred shares and Mrs. Teelucksingh received 11,000 preferred shares). For the calculation of the value of the preferred shares see Appendix C. Note the horses were valued at $695,000 for purposes of determining share value.

[36] Mr. Coehlo testified on behalf of the CRA. He was the Chief of Appeals in the Kitchener office of the CRA during the period the horse tax shelter partnerships were being reviewed by the CRA. The Kitchener office was chosen to manage this project. This involved reviewing the audit files, seeking further information and getting an independent appraiser, Ms. Henderson. Mr. Coehlo concluded that the value of the horses was overstated by 83% to 90%. The Kitchener office's recommendation was to confirm the assessments based on:

a) evidence on the audit file;

b) no additional representations;

c) Ms. Henderson's valuation and lack of confidence in Mr. Villasenor's valuation, the valuation put forward by Montebello;

d) the *Khaira* case, a decision in an informal procedure case by Justice Mogan going against the taxpayer in a similar horse limited partnership investment.

[37] I turn now to the facts surrounding the value of the horses. I will review the reports from each sides' expert as well as outlining what I consider to be other relevant facts that shed some light on value, such as insurance and the history of sales of certain of the horses. I will then address briefly any evidence regarding the value of board and care, which, as indicated, was prepaid.

[38] At the outset, I should say that I found both experts well qualified to opine on Straight Egyptian Arabian horses generally; Mr. Villasenor from an American large breeder perspective and Ms. Henderson from a Canadian small breeder perspective.

[39] Mr. Villasenor showed a good grasp of what Montebello was attempting to do in creating a nucleus of Straight Egyptian Arabian horses through a closed breeding program leading to a very special group of Arabian horses or even a signature horse. He testified that Montebello showed a lot of horses with success. With respect to the horses in issue before me, Mr. Villasenor saw all the horses at the relevant times in 1994 and 1995. I found the following excerpts from his report particularly helpful:

> …
>
> Based on my research and analysis, inspection of the specific horses, knowledge of the Arabian horse industry, and understanding of the Montebello/Cabreah breeding program and business plan, the estimated fair market value of the horses owned by the XIII LP was $685,000 CD at the valuation date (September 1, 1995), and the estimated fair market value of the horses owned by the R LP was $500,000 CD at the valuation date (January 15, 1994).
>
> …
>
> There are at least two major factors that drive the price for Straight Egyptian Arabian horses in the breeding context. The first is their rarity. Straight Egyptians account for only 1% of all Arabian horses. They are rare and therefore there is demand for them. The second is the purity of the horse's bloodline and the desirability of the particular bloodline for a particular breeding operation.
>
> …
>
> What was unique to the Montebello/Cabreah breeding program was the size and quality of its horse population. No independent breeder would have been able to duplicate this breeding program. This program involved the world's largest selection of Straight Egyptian Arabian bloodlines, and a wide palette of colours. Had the program operated for as long as it was planned, because of the international demand for exceptional Straight Egyptian Arabians, Montebello/Cabreah would readily have cornered the market for Straight Egyptian Arabians and controlled the price for these horses in the international market.
>
> …
>
> Just as Straight Egyptian Arabian horses are rare, there is not a large number of breeders of Straight Egyptian Arabian horses. Because this strain of Arabian horse is so rare, it is normally difficult to assemble a large herd of quality breeding stock. As with any other commodity, rareness and exclusivity drive the price upward in the market place. As noted, this challenge was overcome by the Montebello/Cabreah breeding program through its business plan. Limited partnerships were formed to provide the capital that allowed the assembly of an unparalleled collection of quality Straight Egyptian breeding stock. There are many strains and origins of Arabian

> horses and many breeding programs around the world. All Arabian horse breeding is not the same. The skillful mating of high quality Straight Egyptian Arabian horses is an art form. The Montebello/Cabreah farms had the facilities, the personnel and the bloodstock necessary to care for, Straight Egyptian horses of excellent quality, and to breed these horses to produce progeny of exceptional quality.
>
> …
>
> The estimates of value of the subject Straight Egyptian Arabian horses assessed for this report have been determined based on identification and qualitative assessment of their individual quality and pedigree analysis which can indicate future breeding success or failure. Of course, my estimates also had to consider proprietary programs such as the Cabreah Breeders Challenge Program. This program was open to an owner who had acquired a Straight Egyptian mare through the Montebello/Cabreah breeding program. Significant cash prizes were available to winning horses in a number of different competitions. The eligibility to compete in this program is a factor in the valuation of the XIII LP mares. In addition, in assessing the male horses acquired by the R LP, I took into account the existence of breeding guarantees over a five-year period. This guaranteed income stream from these horses has a direct impact on their value.
>
> …
>
> … In the case of the subject horses, clearly the intent of the business plan was to hold these animals as a breeding herd for a period of 5 to 7 years, and NOT to resell them to the open market in the near term. Hence, a significant factor in valuing the horses was their intended use, and the economic potential of that use.

[40] Mr. Villasenor also commented on Ms. Henderson's report, suggesting that reliance on prices obtained at a particular auction, the Gleannloch auction, was not appropriate as he believed the cream of the crop in the Gleannloch herd had already been sold privately.

[41] Turning now to Ms. Henderson's report, she acknowledged that she paid no attention to the impact of the business arrangements in valuing the horses. Indeed, she expressed suspicion of the guarantee of revenue provision as described in the Offering Memorandum. She also did not take into account access to the Cabreah breeders challenge. She referred to the future offspring of some of the horses, which obviously would not have been known as at the date of valuation. Finally, she believed public auctions were a dependable source of valuation information as opposed to private sales, where the price is often not known and parties would exaggerate what was paid. She described as "optimistic" prices for mares of $95,000,

fillies of $55,000 and colts of $10,000, being the standard prices Mr. Smith testified were used in Cabreah transactions.

[42] Some excerpts from her report, I found of interest:

> …
>
> My opinion as to value was arrived at through examination and research of pedigrees and the condition of the marketplace at the time in question. I have seen all but three of the horses and have notations in this regard. I have assumed the three mares I have not seen to be average to above average in Arabian type and conformation.
>
> …
>
> In 1992, overall prices were buoyed by the Gleannloch Final Legacy Sale where the average price was $19,267.00 USD. Im 1994, prices for Egyptian Arabians averaged $6,191.00 USD. The First Annual Scottsdale Egyptian Sale averaged $6,843.00 USD for the same time period. The highest selling horse at this sale went for $19,000.00 USD. One mare and one stallion went for this price, while the balance of the mares were sold for an average of $5,770.00 USD. This information was taken from the Arabian Horse Digest International.

[43] Ms. Henderson's report was not nearly as extensive or detailed as Mr. Villasenor's.

[44] Each expert had something to say about each of the horses, but rather than going through all horses, I will simply compare their comments on two of the horses.

[45] With respect to The Atticus, after outlining the bloodline of the horse Ms. Henderson stated:

> The Atticus was 3 years old at the time of valuation. There was one mare in foal to him at the time of valuation (which resulted in a chestnut filly). I viewed The Atticus in 1994 when he was shown at the Great Lakes Arabian horse show. I found him to be striking in appearance, with smooth body and good length of neck. He was a little long through the loin and the structure of his limbs has some faults.
>
> The "black" gene in Arabian horses is rare and is quite appealing to many people. The dam of The Atticus was black. The value of his pedigree plus the black gene would be considered worth pursuing as a young stallion.
>
> …

> BASED ON MY RESEARCH AND THE ABOVE INFORMATION, I VALUE THE ATTICUS AT $75,000.00USD.

[46] Mr. Villasenor after outlining the bloodline of The Atticus stated:

> …
>
> The Atticus would have to be considered one of the heirs apparent to the breeding legacy of the Minstril. The Atticus has a tremendous sire line, which would indicate a high level success as a breeding sire. Under the stewardship of a qualified and ongoing Straight Egyptian breeding and marketing program such as Cabreah, I believe he will be a top breeding stallion. …
>
> … Given the value of the breeding revenues over the first five years as well as the intrinsic value of The Atticus, under those circumstances, his fair market value would be approximately $850,000, so that his 50% interest would be a fair market value of approximately $425,000CD.

[47] I note that Montebello acquired The Atticus in an arms length deal in 1992 for approximately $105,000 Cdn when The Atticus was only a year old.

[48] With respect to the mare, Ansata Zaahira, after identifying the progeny and bloodlines Ms. Henderson stated:

> …
>
> ANSATA ZAAHIRA was 9 years old at the valuation date of January 16, 1996. She had a proven record as a broodmare. I have not personally seen this mare, but I do have a photograph of her 1996 filly, which gives me a good idea of the quality.
> BASED ON MY RESEARCH AND THE ABOVE INFORMATION, I VALUE ANSATA ZAQAHIRA AT $20,000.00USD.

[49] Mr. Villasenor goes into greater detail as to the bloodlines of Ansata Zaahira concluding:

> …
>
> … Mares of this breeding are highly sought by Straight Egyptian breeders around the world. Many of this mare's relatives have been exported to the Middle East and are now owned by Kings and Princes.
>
> Under the stewardship of a well-managed, high quality ongoing Straight Egyptian breeding program and business plan like that of Montebello/Cabreah, I believe she

> would have been a top producing breeding mare. Under these circumstances, I estimate her fair market value as $110,000 CD.

[50] Attached as Appendix D is a comparative chart of the experts' values.

[51] Apart from the experts' reports, the following evidence addressed the issue of value. First, though not with respect to the horses at issue before me, I received copies of two bills of sale, both in 1995. The first, dated July 17, 1995 was for the sale of nine horses from Arabco North Inc. to Heritage Arabian Farms Ltd. (a Cabreah member) for $63,000 US. Four days later on July 21, 1995 Heritage Arabian Farms sold the nine horses to Montebello for $857,500 Cdn. Mr. Villasenor, when asked about this discrepancy in price, had no answer.

[52] Second, Mr. Smith testified that there were general prices for horses sold to the limited partners:

> $95,000 for a mare;
>
> $70,000 for a two-year old mare
>
> $55,000 for a one-year old mare
>
> $10,000 for a colt
>
> $50,000 for a colt with breeding potential

[53] Third, according to Mr. Smith, Montebello would insure mares at $60,000 to $70,000 in the mid-1990's, but also provided mare replacement guarantees to the partners. In 1989, Lloyd's Livestock policy was produced indicating amounts insured ranging from $100,000 to $200,000 per horse. By 1992, Montebello was co-insuring their horses. A Montebello Equine Mortality Insurance Claims Report showed insured values and claim payments for the period 1992 to July 1997. Due to the co-insurance, all payments were 50% of the insured value which ranged from $15,000 to $97,000, with an average of approximately $25,000 for fillys and $40,000 for mares. This is remarkably close to a price paid by Montebello ($31,200 CD) for a bay mare, Bint Foula, in an acquisition from Gleannloch Farms in 1992, which Montebello sold shortly thereafter to another Cabreah member for $50,000 US. A year and half later, Montebello reacquired Bint Foula for $95,000.

[54] Fourth, the Appellant also produced letters of support dated July 1997 from Chapel Farms in Georgia and Misheks Arabian Farms in Minnesota, letters that had been reviewed and authenticated by Mr. Villasenor. Chapel Farms indicated it routinely sold its fillys for $30,000 to $40,000 US and mares for double that. They also bought a half-interest in a five-year old breeding stallion for $200,000, paid $75,000 for a yearling filly and $150,000 for a seven-year old mare. Misheks indicated it would market its Arabians at $30,000 to $75,000 for fillys and twice that for mares. The authors of these letters did not testify, therefore, there was no opportunity to cross-examine them.

[55] Fifth, in 1991, Montebello was negotiating for the acquisition of 50% of the breeding rights of the Stallion Simeon Shai for $600,000. There was no evidence this deal was ever finalized.

[56] Sixth, the Respondent put into evidence a number of customs forms indicating horses travelling from Canada to the US would be listed with a value of $10,000 per horse and on return from the US to Canada, sometimes only a few weeks later, listed with a value of $95,000 per horse.

[57] Finally, it should be noted that in reviewing the Arabian Horse Association Registry, some of the horses appear to be registered with another Cabreah member or with Troy Associates Ltd. before moving on to Montebello and then to the limited partners.

[58] With respect to the value of board and care, Montebello charged $525 per mare per month at the relevant time and $1,000 to $1,250 per month for the board and care of The Atticus and MB Sehnari. I find that the quality in board and care provided by Montebello was first rate.

[59] Mr. Villasenor stated in his expert report:

> … I find this amount to be very reasonable given the caliber of the Montebello/Cabreah Farm facilities, the knowledge and experience of their horse care staff and fine condition of the many animals I observed at their farms on many occasions. The amount of this fee is consistent with what was charged in the industry.

[60] With respect to the board and care of the stallions, Mr. Villasenor opined:

> …

> … In my experience as both a manager of a breeding farm operation as well as in speaking with a number of Arabian horse breeders, this monthly charge would be at the low end for board and care management of a breeding stallion.
>
> …

[61] Ms. Henderson indicated that she believed $250 per month would be the going rate in the mid 1990's though in her opinion she stated:

> …
>
> … I currently charge $600.00 per month per horse for board and care, plus HST. The reasonable range for the cost of board and care would be from $450.00 to $800.00 per month in today's market, depending on geographical location. This amount could increase to $1,500.00 per month per horse with training for showing included. I checked my figures with colleagues in the business of professional horse care, and these figures can be considered fair.
>
> It is common practice to charge on a "pay on the first of the month" basis. I do not know of any facility that would expect board to be prepaid for a period of two years.

[62] In 1997, the business of Montebello started to unravel for a couple reasons, according to Mr. Smith. First, the World Arabian Horse Organization disputed some of the bloodlines showing up in the American Registry. This made it difficult to sell horses outside the United States. At the same time, the CRA was questioning the investment arrangements and future funding dried up. The limited partnerships were offered the opportunity to move the horses to a different breeder or to sell them at a fireside auction, which took place in October 1997.

[63] In 2001, the Minister of National Revenue (the "Minister") reassessed Mr. Teelucksingh to deny the restricted farm losses claimed by him and to bring into his income $27,237, being $18,236 for the R Corporation shares and $9,001 for the XIII Corporation shares, as withdrawals from his RRSP.

Issues

a) Is Mr. Teelucksingh entitled to the restricted farm losses as claimed?

The answer to this depends on the answers to the following questions.

i) were the R Partnership and XIII Partnership legitimate partnerships?

ii) if so, were the prepaid expenses and cost of inventory (horses) reasonable?

b) Were the withdrawals from Mr. Teelucksingh's RRSP of $27,237 used to acquire qualifying shares valued at $27,237?

Analysis

a) Restricted farm losses

i) were the R Partnership and XIII Partnership legitimate partnerships?

[64] The Respondent argues that because the Offering Memorandums described preordained steps that, when actuated, required the dissolution of the partnership prior to the possibility of any profit, then the R Partnership and XIII Partnership do not come within either the common law or Québec Civil Code definition of partnership. The Appellant counters that the R Partnership and XIII Partnership meet the more stringent common law definition of partnership, being a group of persons carrying on business in common with a view to profit. The fact that the partnerships did not make a profit is no bar to finding the legal existence of a partnership. The Appellant asserts that the requirement for a view to profit is not to be interpreted so restrictively to limit the partners' view to only while the business is in partnership form. If the partners' view is one that looks down the road to profits from the same business, albeit in a different form, a corporate form, that is sufficient to meet the test for partnership. I agree with the Appellant.

[65] Before exploring this in more depth, I raise a matter not mentioned by the Respondent but that has troubled me. The Respondent simply suggests there is no partnership and therefore no losses available to Mr. Teelucksingh. But the Respondent has not elaborated that if there is no partnership, what exactly is Mr. Teeleucksingh's position? Is he a co-owner, a joint venturer, an adventurer in the nature of trade? He clearly paid money and received, at the very least, an interest in a horse. He transferred that to a company. If these transactions were not through a partnership, but individually, would the transfers therefore be arms length and not subject to fair market value rules? As indicated, this avenue was not flushed out by

the Respondent, and given my conclusion that the partnerships were legitimate, I need not explore this further.

[66] Before considering the case precedents that define partnership, and how they might apply to the circumstances before me, I wish to make an observation about the commercial reality of choosing a form of business organization. As the Appellant's counsel accurately pointed out, it is common practice for businesses to commence life as proprietorships or partnerships, so that losses can be taken personally, but when a business becomes profitable it makes economic sense to switch the business into corporate form. This is basic corporate commercial tax planning. There is no lack of intention to earn a profit from the business, but there is also an intention to shift losses and profits to optimize the tax advantages legitimately available to taxpayers starting a business. Does an individual, or a group of individuals, receiving advice from their professional advisers (lawyers or accountants) that they should immediately incorporate a company, once losses convert to profits, no longer have a view to profit because it is not their intention to have profits arise from the business in the partnership or proprietorship form, but only in the corporate form? This approach would be the death knoll for many a partnership. When I put this to Mr. Leclaire, his response was that the difference between receiving such advice and entering a deal such as the R Investment or XIII Investment is that under the latter it was preordained or guaranteed that only losses, and no profits, would arise while the business was in partnership form, while simply receiving advice to transfer the business into a company left open the possibility of profit in the partnership. Yet it is still preordained because it is known, with some degree of certainty, when income, and subsequently profits, are likely to flow. I see no compelling difference between a common commercial practice and the commercial arrangement established by the R Partnership and XIII Partnership that would warrant finding the R Partnership and XIII Partnership are not partnerships. I will now explore this in more detail.

[67] The case of *Continental Bank Leasing Corp. v. Canada*[2] succinctly sets out the three essential ingredients of a partnership: (i) a business, (ii) carried on in common, (iii) with a view to profit. It is interesting to note that the Supreme Court Canada's observation that:

> 24 The *Partnerships Act* does not set out the criteria for determining when a partnership exists. But since most of the case law dealing with partnerships results from disputes where one of the parties claims that a partnership does not exist, a number of criteria that indicate the existence of a partnership

[2] 98 DTC 6505 (S.C.C.).

> have been judicially recognized. The indicia of a partnership include the contribution by the parties of money, property, effort, knowledge, skill or other assets to a common undertaking, a joint property interest in the subject-matter of the adventure, the sharing of profits and losses, a mutual right of control or management of the enterprise, the filing of income tax returns as a partnership and joint bank accounts.

[68] In the case before me, it is the Government that does not recognize the partnership as such. Certainly, the partners and the Partnership Agreement suggests a partnership exists. Also, the indicia of partnership are apparent in both the R and XIII Partnerships: contributions of money, a common undertaking, sharing of profits and losses, joint bank account. Obviously, with respect to a limited partnership, the question of control and management is somewhat different and it is only the general partner who would exercise such control and management.

[69] As the Supreme Court of Canada went on to advise in the case of *Backman v. The Queen*,[3] courts must be pragmatic in their approach to the three essential ingredients. The Respondent did not suggest there was no commonality, but simply there was no business, and, if there was, it was not carried on with a view to profit.

[70] Mr. Leclaire argued that a lot of paper does not mean there is a business. With respect, surely it depends on what the paper says. Legal rights, obligations and ownership are impacted by paper. Frankly, I am not sure what the Crown is getting at – are they suggesting that limited partners, who for the most part simply sign paper and pay their money must somehow do something more to be carrying on business? As former Chief Justice Bowman pointed out in *Grant v. The Queen*:[4] "the limited partners' role is a passive one, but if the partnership carries on a business so does the limited partner.". The papers for the R Partnership and XIII Partnership were meticulously put in place, assets were transferred, horses were acquired and were boarded, payments were made, accounts were established…. This was not a fiction. This was not a passive investment. Businesses were being carried on. It was abundantly clear the Government did not like how the businesses were being carried on, but they are barking up the wrong tree to suggest no business was being carried on. The evidence supports a finding there was a business in each of the partnerships.

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3 2001 CarswellNat 246 (S.C.C.).

4 2000 CarswellNat 447 (T.C.C.).

[71] The Respondent goes on to suggest that the third element is missing, in that there was no view to profit from the business. The Respondent relies on a passage from *Lindley and Banks on Partnership*,[5] adopted by the Supreme Court of Canada in *Continental Bank Leasing Corp*:

> 43 …
>
> …if a partnership is formed with some other predominant motive [other than the acquisition of profit], e.g., tax avoidance, but there is also a real, albeit ancillary, profit element, it may be permissible to infer that the business is being carried on "with a view of profit." If, however, it could be shown that the sole reason for the creation of a partnership was to give a particular partner the "benefit" of, say, a tax loss, when there was no contemplation in the parties' minds that a profit…would be derived from carrying on the relevant business, the partnership could not in any real sense be said to have been formed "with a view of profit."

[72] The Respondent points to the preordained steps in the Offering Memorandums and concludes that, as the assets of the business were to be transferred to the corporations prior to the making of any profit, this proves there was no view to profit. I disagree with the Respondent's reasoning and logic and overly technical, rather than pragmatic, approach to this third element. In reading the passage cited in a practical, commercially sensible manner, the question to ask is not whether the parties intended to profit from the business during the operation of the business as a partnership, but rather whether the parties intended to profit from that particular business. Mr. Teelucksingh's evidence, supported by the Offering Memorandums and the testimony of Mr. Smith was that this investment was not solely, or even primarily, to obtain the loss, although that was certainly a selling feature of the investment, but Mr. Teelucksingh anticipated a profit. He was the only limited partner who gave evidence. He was direct, intelligent and honest. He intended to make money. Why else would anyone take funds from their RRSP? Granted, the funds did not come out of the RRSP until the business was shifted into a corporate form, this factor still corroborates Mr. Teelucksingh's stated intention, which he held at the time he initially entered the investment arrangement, to profit in the longer term, and to profit from the horse breeding business which started in a partnership form. This pragmatic approach to determining whether an individual has a view to profit accords with the Supreme Court of Canada's view expressed in the case of *Spire Freezers Ltd. v. Canada*:[6]

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5 17th ed. London: Sweet & Maxwell, 1995.

6 [2001] 1 SCR 391 (S.C.C.).

> 26 … However, the determination of the existence of a view to profit is not a matter of strictly quantitative analysis. The quantum of the initial loss compared to the anticipated profit does not negate the holding of partnership in this case. The law of partnership does not require a net gain over a determined period in order to establish that an activity is with a view to profit. For example, a partnership may incur initial losses during the start-up phase of its enterprise. That does not mean [page 404] that the relationship is not one of partnership, so long as the enterprise is carried on with a view to profit in the future. …

[73] I note that the Supreme Court of Canada in *Spire Freezers* specifically addresses a partnership historically incurring losses in the start-up phase, though recognizing the "enterprise" is carried on with a view to profit in the future. I am satisfied Mr. Teelucksingh intended to profit from the "enterprise" in the future.

[74] In the case of *Agnew v. Canada*[7], Justice O'Connor, in a very similar investment, summarized the situation as follows:

> 126 The investment changed in form from one of initial limited partnerships where losses were incurred to the later structure where corporations were formed and assets were transferred by the partnerships to the corporations and shares in the corporations were issued to the former partners and the limited partnership was dissolved shortly thereafter. I do not believe that a change of structure that was contemplated in the initial OM is sufficient to destroy the initial concept of a business source and a profit. Even though the operation is carried out at different stages by different entities it is one continuous plan which considering there was no personal element was a source of business. Moreover, although no profits were contemplated immediately for the limited partners, it was planned they were to receive dividends in due course on the corporate shares they received in exchange for the partnerships' assets.

This supports my view that a view to profit is a view to profit from the business or enterprise, not strictly from the particular form of legal entity.

[75] In conclusion on the first question, I find the R Partnership and the XIII Partnership were properly constituted legitimate partnerships falling squarely within the definition of partnership as persons carrying on a business in common

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[7] 2002 DTC 2155 (T.C.C.).

with a view to profit. The fact that no profit was made while in the partnership form is not sufficient to deny this form of arrangement its legitimacy. This was a cleverly crafted investment vehicle, premised on the existence of a real business.

[76] Before turning to the second question as to the reasonableness of the costs incurred by the partnerships, I wish to address two aspects of the Respondent's argument that pertain to both the question of the existence of a partnership and the reasonableness of the costs.

[77] The first matter is the reliance by the Respondent on the findings of Justice Mogan in the *Khaira* case. Justice Mogan was faced with a similar investment by Mr. Khaira in that informal procedure case. Justice Mogan found that the Appellant was not carrying on business in common with a view to profit. He also concluded that the shares in the corporation to which the horses were transferred had no value.

[78] Informal procedure cases have no precedential value. There is good reason for this: the taxpayer is often unrepresented (Mr. Khaira was unrepresented), there is no discovery process unearthing all relevant information to assist the parties and a judge determine the truth, rarely are experts called (Mr. Khaira called no experts), and argument can be a David and Goliath event. The time, effort and preparation that has gone into Mr. Teelucksingh's General Procedure case is simply on a different planet than what I understand would have occurred in the *Khaira* matter. I feel no compulsion whatsoever, notwithstanding my great respect for Justice Mogan, to give his case any precedential consideration. Indeed, in these circumstances, it would be contrary to the interests of justice to do so.

[79] The second matter I wish to address is the Respondent's argument that I should draw a negative inference from the non-appearance of Mr. Walker as a witness. The Respondent referred me to the case of *Huneault v. The Queen*[8] in support of this proposition. In *Huneault*, Justice Lamarre of this Court refers to Justice Sarchuk's comments in *Enns*:

> 25 …
>
> In *The Law of Evidence in Civil Cases*, by Sopinka and Lederman, the authors comment on the effect of failure to call a witness and I quote:

[8] 98 DTC 1488 (T.C.C.).

> In *Blatch v. Archer* (1774), 1 Cowp. 63, at p. 65, Lord Mansfield stated:
>
> > It is certainly a maxim that all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted.
>
> The application of this maxim has led to well-recognized rule that the failure of a party or a witness to give evidence, which it was in the power of the party or witness to give and by which the facts might have been elucidated, justifies the court in drawing the inference that the evidence of the party or witness would have been unfavourable to the party to whom the failure was attributed.
>
> *In the case of a plaintiff who has the evidentiary burden of establishing an issue, the effect of such an inference may be that the evidence led will be insufficient to discharge the burden.* (*Lévesque et al. v. Comeal et al.*, [1970] S.C.R. 1010, (1971), 16 D.L.R. (3d) 425) (emphasis added)

[80] I make two comments regarding this submission. First, exactly what issue does the Respondent believe Mr. Walker could have elucidated on which I must draw the negative inference? There are basically two issues before me: (i) was there a partnership, (ii) were costs reasonable? Does the Respondent believe Mr. Walker would have given testimony denying the legitimacy of the partnerships? Does the Respondent believe Mr. Walker would have given testimony establishing the value of the horses at far less that Mr. Villasenor's values? I do not see it. Perhaps Mr. Walker could have enlightened the Court in more detail on the role of Troy Investments, but I already know from the testimony that I did hear, that some horses were transferred in and out of this Walker related company.

[81] Second, to draw a negative inference, there must be a vacuum in the evidence. It was certainly clear in Justice Mogan's decision in *Khaira* that many questions were, to his mind, left unanswered because there was no one from Shiloh Farms (the counterpart of Montebello in that case) who gave evidence. Before me, I had Mr. Smith from Montebello testify for three days, going over in detail the operation of these investments. I see no need to draw any negative inference from Mr. Walker not testifying.

ii) Were the prepaid expenses and costs of inventory (horses) reasonable?

[82] I believe this is the crux of the issue in determining the correctness of the Minister's assessment. The tax treatment sought by Mr. Teelucksingh, which he was led to believe from the promoters of the investment he would receive, depends very much on the value of the prepaid expenses and the horses acquired by the partnership. Given the non-arms length relationship between the partnerships and Montebello, it is for me to determine the true fair market value of these expenses and horses at the relevant time.

Valuation – horses

[83] I start the valuation analysis by observing that, unlike sales of real property, where there is a public record of accurate comparable sales figures, valuing horses has no such readily available comparative data, and is not therefore as easily ascertainable. I attribute a number of reasons to making the valuing of horses, in this case, more art than science:

a) most sales of Arabian horses are private and prices are unknown;

b) public auctions are not the first choice of a market for the horses;

c) income derived from horses is a factor, though often speculative;

d) like art, beauty of a horse is in the eye of the beholder;

e) knowing a great deal about Arabian horses is not enough to establish value; there must be an appreciation of the financial trappings surrounding the purchase and sale of a horse;

f) two extremely knowledgeable horse experts have provided opinions reflecting a widely divergent value: this has not been particularly helpful as they simply have set the parameters. I conclude, particularly in connection with Ms. Henderson's report, which I shall discuss in more detail later, that the experts present more as judges of horses' qualities for the purposes of competition, rather than valuators for the purpose of commercial investment.

[84] My valuation of the horses is further influenced by a number of factors, apart from the experts' reports:

a) insurance values in the mid-1990's which averaged significantly less than Mr. Villasenor's values but significantly more than Ms. Henderson's;

b) lack of third party sales data from the Appellant;

c) some history of ownership of horses going through non-arms length hands before passing on to the partnerships;

d) customs forms showing significant increases in amounts shown as value on the return of the horses from the United States;

e) the remarkable uniformity of values, given experts' testimony of the importance of specific bloodlines on value;

f) evasive answers of Mr. Smith concerning the transaction in 1993 for $7,000,000. While I recognize he ran the financial side of the business and was not the horse expert, I found it surprising he had little memory of this transaction which must have involved several dozen horses;

g) lack of any hard financial analysis as to how a realistic income stream from a property such as a horse could justify value;

h) the original third party acquisition of The Atticus at $85,000, recognizing he was unproven at this time;

i) the letters from Chapel Farms and Misheks Farms, though untested.

[85] A number of these factors suggest to me that the values attributed to the horses by Montebello, and indeed charged to the partnerships, have been set more for Montebello's own purposes than to truly reflect their fair market value. It is important though to scrutinize the experts' reports in greater detail before attempting to reflect in real numbers the impact of all of the above observations.

[86] With respect to Mr. Villasenor, it was my impression he understood completely what Montebello was attempting to do in developing Canadian breeders of Arabian horses industry, and was supportive of that attempt. He testified that, in reaching his valuation, he considered the commerciality of the program reflected in the Offering Memorandums. It is easy to make such a statement, but it is not so easy

to quantify how this actually factored into value. Mr. Villasenor did not provide any financial analysis that could be tested. He certainly struck me as an advocate for the industry. His comments that Straight Egyptian Arabian horses are rare, their bloodlines are important and that the size of the Montebello operation was significant are all general comments that would suggest someone might pay more for the horses than other horses, but again nothing quantifiable that proves to me a more exact value. For example, no comparison of price is achieved for one bloodline of horses versus another. It is not enough for me to simply hear that the horse has good bloodlines and is therefore worth $500,000. Ms. Henderson acknowledged there were good bloodlines, yet came up with totally different values. Generalizations are not as helpful as specifics would have been. Mr. Villasenor did give some specific examples of private sale prices but without a great deal of information. For example, he indicated an Ansata mare (of which there were some in the XIII Partnership) sold to an Israeli breeder for $175,000; no information as to when or to compare with the Ansata mares in the XIII Partnership. Are all Ansata mares valued the same – unlikely.

[87] Mr. Villasenor also relied on the letters from Misheks and Chapel, both dated in 1997, and both suggesting prices for mares starting at $60,000 (I presume U.S. dollars given both farms are from the United States).

[88] Overall, Mr. Villasenor's report was detailed, and recognized the business program in play and provided some independent farms' corroboration. What it lacked was any expansive third party private sale figures of proven comparable horses, or any financial analysis of the quantifiable impact of the Montebello breeding program on the value of the horses.

[89] Turning to Ms. Henderson's report, while I do not doubt her qualifications in judging a horse's strengths, I have some concerns with her approach to valuing the horses for the following reasons:

a) she based her values primarily on information from auctions, which I have concluded are not the optimal gauge, and even then she provided no hard data to test; indeed, she acknowledged that if she were to sell a horse, she would not look first to an auction;

b) she took no account of the projected income stream to flow from the breeding program; she simply expressed suspicion without satisfying me of a thorough understanding of the commercial arrangements;

c) she comes from a small breeder background; nothing on the scale of Montebello;

d) she took account of events after the valuation date (offspring for example) that would not have been known at the time of valuation;

e) when asked directly about Mr. Villasenor's values, she simply described them as optimistic;

f) her experience was limited vis-à-vis Straight Egyptian Arabian horses;

g) she did not take into account the impact of the Cabreah Breeders Challenge.

[90] Overall, Ms. Henderson's report lacked the detail and level of inquiry or sophistication that would lead me to accept it unequivocally. Frankly, with no disrespect to the experts who were clearly knowledgeable about Arabian horses, I find I am not confident in relying fully on either of them as providing truly independent valuations.

[91] I conclude that Ms. Henderson's generalizations that Mr. Villasenor's values are optimistic is likely accurate based on:

a) Mr. Villasenor's support for the Cabreah program;

b) Mr. Villasenor had no explanation for increased values on the non-arms length transfer of horses;

c) the horses were insured for less than suggested values;

d) while the commercial arrangement should not be ignored, it must also be considered that Montebello effectively created its own market and it would be unwise, indeed artificial, to look only at what other Cabreah partnerships would pay.

[92] Yet, I also conclude that Ms. Henderson's values are pessimistic, having relied on auction figures and totally ignoring the commercial nature of the Cabreah program. So, the values are somewhere between the two extremes offered by the two experts.

[93] It would be a mug's game for me to even attempt to review the characteristics of each horse and reach some conclusion on the value of each horse. No, I need to deal in averages and I need to find some hard reliable numbers, untainted by advocates on either side. Chapel and Misheks' 1997 letters might have been more helpful if subjected to scrutiny; perhaps the low end of their evaluations though is closer to reality (that is approximately $80,000 Cdn for mares). Yet this does not appear to correspond to insured values as set out in the Montebello Farms Equine Mortality Insurance Claims Report, which indicated values of $40,000 per mare. Those are certainly real numbers. While Mr. Smith testified mares were insured for $60,000 to $70,000 in the mid-1990s, this does not seem to accord with the claims history just indicated. He did testify though that the horses were not insured for their full value as Montebello's was absorbing some risk. I believe this information does narrow the range presented by the experts, suggesting that Ms. Henderson's average for mares of approximately $15,230 is too low and Mr. Villasenor's average of $97,800 is too high. I conclude that a more realistic range is $40,000 to $60,000 per mare and will therefore take the middle ground average, or $50,000 Cdn as reflecting a truer picture of the fair market value at the relevant time. I recognize this is a somewhat general approach not distinguishing fillys from yearlings and mares, but it does accurately convey my balancing of the following factors:

- the experts' reports deficiencies;

- insured values;

- untested third party letters;

- lack of explanation for non-arms length transfer of horses between Walker related entities.

[94] The stallion, The Atticus, and the colt, MB Sehnari, are somewhat more problematic as there is little insurance or third party information to assist. The evidence suggests stallions can indeed fetch a pretty price, but there is no extensive hard core data on stallion sales that support a value for The Atticus of $850,000 versus $101,250. Both experts describe the horse and its bloodlines favourably and then Ms. Henderson simply concluded, "based on my research and the information, I value at $75,000". Mr. Villasenor concluded "given the value of the breeding revenues over the first five years as well as the intrinsic value of The Atticus, under those circumstances, his fair market value would be approximately $850,000". Mr. Villasenor did not attempt to illustrate his determination of the value based on

The Atticus yielding an income stream of $78,000 a year for five years, but I do accept it produces some inherent value in the asset, the horse, even taking into account the prepaid expenses and possible lost opportunity cost in funding the acquisition: a more detailed analysis would have been helpful. But then Mr. Villasenor's reference to "intrinsic value" and Ms. Henderson's reference to "research" are frankly both sketchy, untestable best guesses. The fact some stallions sell for big bucks is not determinative. What I do know is that Montebello paid approximately $105,000 Cdn in 1992, before The Atticus was proven. I also know that, pursuant to the commercial arrangement outlined in the Offering Memorandum, it would yield income after expenses of roughly $330,000 over five years. When I add these factors to the fact that at the relevant time, The Atticus was no longer a colt but closer to meeting its potential as a stallion, I am satisfied the value is well beyond what Ms. Henderson opined. Also, I have Chapel Farms statement it paid $200,000 for a half-interest in a five-year old breeding stallion, though again this may be comparing Chevrolets to Cadillacs. Who knows? For similar reasons expressed in grappling with the mare's value, I am not prepared to accept Mr. Villasenor's optimistic value. I find a more realistic value to be $500,000, taking into account the original costs, the maturity of The Atticus since its acquisition and its scheduled income yield.

[95] With respect to MB Sehnari, I start with Mr. Smith's evidence that there were certain general prices for the horses established for sale to the partnerships, $10,000 for a colt and $50,000 for a colt with breeding potential. Mr. Villasenor valued MB Sehnari at $75,000 while Ms. Henderson valued it at $13,500. Ms. Henderson did not take into account the breeding revenue to be generated by MB Sehnari as forecast by the Offering Memorandum. Frankly, I was never clear on how one distinguishes a one-year old colt with breeding potential versus one without. My approach, therefore, is to consider Ms. Henderson's value as a starting point and factor in the three year potential revenue stream contemplated by the Offering Memorandum of $60,000 per year for three years, less of course applicable expenses (mainly prepaid). This would, I find, justify a value for MB Sehnari in line with the $50,000 which the R Partnership in fact paid for the horse.

[96] In summary, on the value of the horses, I conclude that the value of MB Sehnari and the half-interest in The Atticus totals $300,000, both at the time of the transfer to the R Partnership and at the time of the transfer out of the R Partnership to the R Corporation. I see no reason why the value would have changed over a few-week period. I conclude the value of the horses transferred into the XIII Partnership and subsequently to the XIII Corporation is $350,000: again, I find there is no change in value during the time of the two transactions.

Valuation – prepaid expenses

[97] The Respondent only addressed the board and care elements of the prepaid expenses, relying on Ms. Henderson's report to argue that the amounts charged were not reasonable. In her letter of September 29, 2010 Ms. Henderson stated:

> I currently charge $600 per month, per horse for board and care plus HST. The reasonable range for the cost of board and care would be from $450 to $800 per month in today's market, depending on geographical location. This amount could increase to $1,500 per month, per horse, with training for showing included. I checked my figures with colleagues in the business of professional horse-care and these figures can be considered fair.

[98] Mr. Villasenor stated:

> BOARD AND CARE FEES
>
> Because of my knowledge of the industry and relationship with a number of significant Arabian horse breeding operations in the USA and other countries, I am able to opine as to the reasonableness of the amounts charged by Montebello Farms Inc. ("Montebello Farms") for board and care of these horses. It is my understanding that during the relevant period, being the mid-1990's, Montebello Farms charged each mare partnership $525 Canadian per month for board and care per horse 6 months and older. I find this amount to be very reasonable given the caliber of the Montebello/Cabreah Farm facilities, the knowledge and experience of their horse care staff and the fine condition of the many animals I observed at their farms on many occasions. The amount of this fee is consistent with what was charged in the industry. I have attached at Schedule F a copy of a contract that I was able to obtain from Arabians Ltd., the largest farm breeding Egyptian Arabians in the United States of America, and an excerpt from this organization's website. As for the male partnership R LP, I understand that the board and care charge by Montebello Farms to R LP and its successor corporation was $1,000 Canadian for the first 3 years of the business, and $1,250 per month for the following two years. In my experience as both a manager of a breeding farm operation as well as in speaking with a number of Arabian horse breeders, this monthly charge would be at the low end for board and care management of a breeding stallion.

[99] I also had the benefit of the evidence of Tara Fox, a former manager at Montebello, whose testimony was sincere and straightforward. It was clear she had the highest regard for the quality of the care the horses received at Montebello. From her testimony, and that of Mr. Smith and Mr. Villasenor, and with no dispute from Ms. Henderson, I was left with a clear impression of an extremely well-managed and well-equipped large breeding operation at Montebello Farms. Given Mr. Villasenor's

broader knowledge of the larger herd industry, and having obtained some third party corroboration in making this report, I accept his assessment that the costs charged were reasonable.

[100] The only evidence I heard regarding the reasonableness of the prepayment nature of the payments for board and care was Ms. Henderson's opinion that it is common practice to pay monthly, and that she did not know of a facility that would expect to be prepaid for a two-year period. The Appellant's position was that the reasonableness of the prepayment provision is not an issue, only the amount of the charges. While I have some concern as to the commercial reasonableness of such a prepayment provision, I have nothing concrete upon which to substitute my judgment for the partnerships' judgment. Ms. Henderson's statement is not sufficient to rule out the possibility of prepayments. Neither party gave any in-depth argument on this point. Having concluded the costs are reasonable, I am not going to reduce the deductibility of the prepaid expenses simply because they are prepaid.

[101] In summary on the first issue, I find the partnerships are legitimate partnerships and that Mr. Teelucksingh is entitled to claim restricted farm losses based on the partnerships' prepaid expenses as filed and based on a fair market value of the horses being limited to $350,000 for the XIII Partnership and $300,000 for the R Partnership at the relevant times.

b) RRSPs

Were there withdrawals from Mr. Teelucksingh's RRSP of $27,237 used to acquire qualifying shares with a value of $27,237?

[102] The answer to this simply flows from my conclusion above. With the decreased value of the horses, the value of the preferred shares must correspondingly decrease. So, for example the Net Assets of the XIII Partnership would be reduced effective September 1, 1995 by $345,000 (reflecting the reduction from $695,000 to $350,000) from $500,044 to $155,044, resulting in the preferred shares' value going from $20,001 to $6,201. The same calculation for the R Partnership leads to a reduction in the value of the preferred shares from $18,236 to $10,636. This would result in $7,600 being a taxable withdrawal in connection with the R Corporation. With respect to the XIII Corporation where the value is reduced from $20,001 to $6,201, the amount of $9,001 withdrawn by Mr. Teelucksingh should be prorated (6,201 ÷ 20,001) resulting in $6,210 being a taxable withdrawal from his RRSP.

[103] I wish to be clear that I specifically asked counsel for the Respondent if there was an issue as to whether the preferred shares were qualifying shares for purposes of RRSP investments: I was assured that was not an issue. The only issue was the value of the preferred shares eligible for RRSP investment purposes.

[104] I recognize that Mr. Teelucksingh is only one investor of many hundreds assessed by the Respondent, and that they await the outcome of this decision. Both parties expressed some expectation that this decision would allow these investors and the Respondent to reach a mutual accord, and save the time and expense of any further litigation. I have tried to make clear that the only failing, if I can call it that, in this well crafted plan to raise funds for Montebello and provide some advantages to investors, was the inflated value of the horses. I hope that I have provided some guidelines on the issue of value that can, with some mutual cooperation, lead to resolution of the remaining investors' assessments.

[105] In summary, the appeals from the reassessments made under the *Income Tax Act* for the 1993, 1994, 1995 and 1996 taxation years are allowed and referred back to the Minister for reconsideration and reassessment on the following basis:

a) the Appellant is entitled to restricted farm losses based on (i) the fair market value of the horses being $300,000 in the R Partnership and $350,000 in the XIII Partnership and (ii) expenses, including prepaid expenses, as filed by the Appellant; and

b) in computing the Appellant's income arising from withdrawals from his RRSP the amount to be included in income shall be reduced from $27,237 to $13,810.

[106] Mr. Leclaire asked that I refrain from making a costs order until the parties have had an opportunity to review these reasons. I ask that they provide written representations to me on or before February 11, 2011.

Signed at Ottawa, Canada, this 13th day of January 2011.

"Campbell J. Miller"

C. Miller J.

Appendix A

Excerpts from R Investment Offering Memorandum

The 25 Combined Interests offered hereby consist of limited partnership units (the "Units") of Montebello Egyptian Bloodstock Investments R and Company, Limited Partnership (the "Limited Partnership") and common shares (the "Common Shares") of Montebello Egyptian Bloodstock Investments R Inc. (the "Corporation"). The General Partner of the Limited Partnership is Montebello Bloodstock Management Inc. (the "General Partner"). Accepted subscribers for Combined Interests will become limited partners (the "Limited Partners") of the Limited Partnership and shareholders of the Corporation. The Limited Partnership and the Corporation have been formed to carry on the business of acquiring, raising, showing and exhibiting Straight Egyptian Arabian stallions and selling their breeding services, all for the purpose of earning farming revenue. The Limited Partnership anticipates that there will be losses available for income tax purposes in 1993 for use by a subscriber against non-farming sources of income. The Limited Partnership has to date entered into agreements pursuant to which it will acquire: (i) a 50% undivided interest in a Straight Egyptian Arabian stallion; and (ii) a Straight Egyptian Arabian colt with the proceeds of this offering and sell their breeding services, on a non-exclusive basis, for a period of five years, for gross revenues of $588,000. The Limited Partnership will also seek to enter into additional agreements for the further sale of breeding services. It is anticipated that subscribers for Combined Interests will receive cash distributions in 1994 and subsequent years arising from the net cash flow derived from the foregoing sale of breeding services. The Limited Partnership has also entered into long-term agreements relating to the board and care of its Straight Egyptian Arabian horses and the management of its operations, thereby fixing it operating costs in advance.

It is proposed that the Limited Partnership will carry on business until approximately January 15, 1994. Subject to approval by the Limited Partners, the assets of the Limited Partnership will then be transferred to the Corporation (the "Asset Transfer"). In consideration of the Asset Transfer, the Corporation will assume all of the liabilities of, and will issue preferred shares (the "Preferred Shares") to, the Limited Partnership. Within 45 days of the Asset Transfer, the Limited Partnership will be dissolved. Upon dissolution, the Limited Partners will receive all of the Preferred Shares on a *pro rata* basis. The Corporation will continue operations until December 31, 1998, at which time it will be dissolved. Prior to dissolution, the Corporation’s assets will be liquidated in order to permit a final cash distribution on or before the dissolution date. It is expected that the Corporation’s assets will then

consist of its interest in the two Straight Egyptian Arabian horses to be acquired with the proceeds of this offering. See "Schedule of Events".

…

Event	Date
Final closing	December 31, 1993
Limited Partners' meeting	January 14, 1994
Asset transfer from Limited Partnership to Corporation	January 15, 1994
Dissolution of Limited Partnership	February 28, 1994
Distribution of Preferred Shares	February 28, 1994
Commencement of cash distributions	1994
Final cash distribution	December 1998
Dissolution of Corporation	December 31, 1998

…

The Common Shares and the Preferred Shares will not be qualified investments for deferred sharing plans. Subject to certain conditions being met, however, if the business of the Limited Partnership is transferred to the Corporation pursuant to the Assets Transfer Agreement, it is expected that the Common Shares and the Preferred Shares will be qualified investments for a registered retirement savings plan or a registered retirement income fund of a shareholder who deals at arm's length, for income tax purposes, with the Corporation. See "Income Tax Considerations".

…

Investment	$18,000
Loss Allocated to Limited Partner (1)	9,520
Income Tax Deductions	
- 100% of first $2,500	2,500
- 50% of balance (up to $6,250)	3,510
	$ 6,010
Total Income Tax Savings (2)	$ 3,146
Total Income Tax Savings as a % of Investment	17.5%

…

The Limited Partnership will acquire from Montebello Farms: (i) a 50% undivided interest in the Straight Egyptian Arabian stallion; and (ii) Straight Egyptian Arabian colt set out in Appendix "A", for an aggregate purchase price of $400,000. The Limited Partnership has also entered into the Stallion Service Purchase Agreement with Montebello Farms. Under the Stallion Services Purchase Agreement, the Limited Partnership has sold non-exclusive breeding rights to its Straight Egyptian Arabian stallion and Straight Egyptian Arabian colt to Montebello Farms for a period of five years, for the purpose of breeding to mares owned by Montebello Farms or under its care. The agreement provides for Montebello Farms to purchase 13 breedings per year with the Straight Egyptian Arabian stallion at a price of $6,000 per breed and, commencing in 1996, 11 breedings per year with the Straight Egyptian Arabian colt, also at a price of $6,000 per breed. Montebello Farms will thus pay the Limited Partnership and, after the proposed Asset Transfer, the Corporation, an aggregate amount of $588,000, consisting of $78,000 in each of 1994 and 1995, and $144,000 in each of 1996, 1997 and 1998.The additional $66,000 to be paid by Montebello Farms commencing in 1996 represents the breeding fee for the Straight Egyptian Arabian colt, which will reach breeding age in that year.

…

The Limited Partnership will be dissolved on the earliest of:

(a) a date to be selected by the General Partner, which shall be within 45 days of the completion of the Asset Transfer, unless the Limited Partners fail to confirm the Asset Transfer;

(b) December 31, 2025; or

(c) an earlier date, if approved by Special Resolution with the concurrence of the General Partner.

Pursuant to the Asset Transfer Agreement, the General Partner will transfer all of the Limited Partnership’s assets to the Corporation, subject to the Corporation assuming all of the liabilities of the Limited Partnership. As consideration for the Asset Transfer, the Corporation will issue Preferred Shares to the Limited Partnership. The number of Preferred Shares to be issued to the Limited Partnership shall be determined based on the net asset value of the Limited Partnership at the date of the Asset Transfer. See "Share capital" and "Preferred Shares" under the section entitled

"The Corporation". Upon the dissolution of the Limited Partnership, the General Partner will distribute the Preferred Shares to the Limited Partners in accordance with their respective Sharing Ratios.

…

Business of the Corporation

The business of the Corporation will be to acquire, raise, show and exhibit Straight Egyptian Arabian stallions and to sell their breeding services, all for the purpose of earning farming revenue. To enable it to carry on its business, the Corporation has entered into the Asset Transfer Agreement with the Limited Partnership to purchase the Limited Partnership's assets, subject to confirmation by the Limited Partners, and has agreed to assume the obligations of the Board and Care Agreement, the Stallion Services Purchase Agreement and the Loan Agreement.

…

The Business of the Limited Partnership

The Limited Partnership will acquire, breed, raise, show, exhibit and sell Straight Egyptian Arabian stallions, and will sell their breeding services. Under the Federal Act, farming is defined to include "livestock raising". Accordingly, the Limited Partnership should be considered to carry on farming operations for income tax purposes, provided the stallions have a substantial resale value at the end of the Stallion Services Purchase Agreement. Montebello Farms is of the view that the stallions should have such a resale value. Provided that the farming operations of the Limited Partnership are carried on with a reasonable expectation of profit, the Limited Partnership should be considered to be carrying on a farming business for income tax purposes. Losses shall only be deductible in the manner described below if the Limited Partnership is considered to carry on this farming business with a reasonable expectation of profit. Since the determination of when a business is carried on with a reasonable expectation of profit is essentially a question of fact, no assurance can be given in this regard.

APPENDIX B

MONTEBELLO EGYPTIAN BLOODSTOCK INVESTMENTS R AND COMPANY LIMITED PARTNERSHIP

Reconciliation of Net Loss per Financial Statements to Net Farming Loss for Income Tax Purposes

Period ended December 31, 1993

Net loss per financial statements	(1,500)
Add:	
Account payable and deferred charges at 31/12/93	1,500
Mandatory Inventory adjustment at 31/12/93 70%	280,000
Offering Cost - 80%	45,789
	325,789
Deduct:	
Accounting value of Inventory at 31/12/93	400,000
Prepaid Expenses at 31/12/93	107,000
Offering Cost	57,236
	(564,236)
Sub Total	(238,447)
Optional Inventory adjustment at December 31,1993	447
Farming loss for year ending December 31,1993	(238,000)
Number of units	25
FARMING LOSS PER UNIT	(9,520)

MONTEBELLO EGYPTIAN BLOODSTOCK R INVESTMENTS AND COMPANY LIMITED PARTNERSHIP
BALANCE SHEET-ROLL DATE

	BOOK VALUE Dec 31/93	BOOK VALUE Jan 15/94	F M V Jan 15/94
Cash	4,414	4,414	4,414
G S T	36,110	36,110	36,110
Prepaid Expenses	107,000	107,000	107,000
Livestock	400,000	400,000	490,000
Organization Expense			
TOTAL ASSETS	547,524	547,524	637,524
Note Payable	154,760	154,760	154,760
Due to Investment			
Due to Montebello			
Accounts Payable	1,500	1,500	
Interest		345	
Rollover			2,869
B & Care		500	
Insurance		195	
Management fees		329	
TOTAL LIABILITIES	156,260	157,629	157,629
NET ASSETS	391,264	389,895	479,895
Less due to G.P.			23,979
Net Assets			455,916
# of Units			25
Value of Preferred Shares			18,236

APPENDIX C

T5013 S(1)

MONTEBELLO EGYPTIAN BLOODSTOCK INVESTMENTS XIII AND COMPANY LIMITED PARTNERSHIP

Reconciliation of Net Loss per Financial Statements to Net Farming Loss for Income Tax Purposes

Period ended August 15, 1995

Net loss per financial statements	(26,500)
Add:	
Account payable and deferred charges at 15/08/95	26,500
Mandatory Inventory adjustment at 15/08/95 70%	420,000
Offering Cost - 60%	36,910
	456,910
Deduct:	
Accounting value of Inventory at15/08/95	600,000
Prepaid Expenses at 15/08/95	171,000
Offering Cost	61,517
	(832,517)
Sub Total	(375,607)
Optional Inventory adjustment at August 15, 1995	607
Farming loss for year ending August 15, 1995	(375,000)
Number of units	25
FARMING LOSS PER UNIT	($15,000.00)

BALANCE SHEET-ROLL DATE

MONTEBELLO EGYPTIAN BLOODSTOCK XIII INVESTMENTS AND COMPANY LIMITED PARTNERSHIP
BALANCE SHEET-ROLL DATE

	BOOK VALUE August 15,95	BOOK VALUE 1-Sep-95	F M V 1-Sep-95
Cash	-3325	-3325	-3325
G S T	30807	30807	30807
Prepaid Expenses	171000	171000	171000
Livestock	600000	600000	695000
TOTAL ASSETS	798482	798482	893482
Note Payable	360000	360000	360000
Due to Investment			
Due to Montebello			
Accounts Payable	26500	26500	26500
Interest		2071	
Rollover			
B & Care		3150	6938
Insurance		717	
Management fees		1000	
TOTAL LIABILITIES	386500	393438	393438
NET ASSETS	411982	405044	500044
Less due to G.P.			0
Net Assets			500044
# of Units			25
Value of Preferred Shares			20001.76

APPENDIX D

HORSE	DESCRIPTION	VILLASENOR	HENDERSON	
The Atticus	Stallion	$850,000.00 at 50%	$75,000.00 US	$101,250.00
		$425,000.00	at 50%	$50,625.00
MB Sehnari	Colt	$75,000.00	$10,000.00 US	$13,500.00
TOTAL		$500,000.00		$64,125.00
Ansata Zaahira	mare	$110,000.00	$20,000.00	$27,000.00
Imperial Mareesiy	mare	$110,000.00	$20,000.00	$27,000.00
Zandai Petra	mare	$110,000.00	$ 5,000.00	$6,750.00
Zandai Tabitha	mare	$110,000.00	$ 5,000.00	$6,750.00
Alliah	mare	$110,000.00	$ 5,000.00	$6,750.00
EAI Alikadheena	mare	$ 75,000.00	$20,000.00	$27,000.00
EAI Immareekha	mare	$ 60,000.00	$ 4,000.00	$ 5,400.00
TOTAL		$685,000.00		$106,650.00
Average		$ 97,800.00		$15,230.00

CITATION:	2011TCC22
COURT FILE NO.:	2005-1930(IT)G
STYLE OF CAUSE:	LLOYD M. TEELUCKSINGH AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	November 8 to 10, November 12, November 15 to 19, and December 14 and 15, 2010
REASONS FOR JUDGMENT BY:	The Honourable Justice Campbell J. Miller
DATE OF JUDGMENT:	January 13th, 2011

APPEARANCES:

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Counsel for the Respondent:	Roger Leclaire and George Boyd Aitken

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