Docket: 2006-2661(IT)G

BETWEEN:

LEONARD JOEL POLLOCK,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on common evidence with the appeals of
Barbara Ann Murray (2006-2663(IT)G) on February 7, 2008
at Edmonton, Alberta

Before: The Honourable Justice Diane Campbell

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Darcie Charlton

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2003 taxation year is dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of February 2008.

"Diane Campbell"

Campbell J.

Docket: 2006-2663(IT)G

BETWEEN:

BARBARA ANN MURRAY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on common evidence with the appeal of *Leonard Joel Pollock* (2006-2661(IT)G) on February 7, 2008 at Edmonton, Alberta

Before: The Honourable Justice Diane Campbell

Appearances:

Counsel for the Appellant:	Leonard Joel Pollock, Q.C.
Counsel for the Respondent:	Darcie Charlton

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2000, 2001, 2002 and 2003 taxation years are dismissed, with costs, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of February 2008.

"Diane Campbell"

Campbell J.

Citation: 2008TCC115
Date: 20080221
Dockets: 2006-2661(IT)G
2006-2663(IT)G

BETWEEN:

LEONARD JOEL POLLOCK,
BARBARA ANN MURRAY,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Campbell J.

[1] These appeals were heard together on common evidence and involve a husband and wife who jointly sold shares in seven types of stock on three separate occasions in the 2003 taxation year. The Appellants reported their losses in respect to the disposition of these shares as fully deductible business losses. Barbara Ann Murray applied $48,311 of her portion of these losses as non-capital loss carry-backs against her 2000, 2001 and 2002 taxable income. On Reassessment, the losses for both Appellants were reclassified as capital losses. In addition, the Minister of National Revenue (the "Minister") reversed Ms. Murray's carry-back amounts.

[2] The issue is whether the losses of $68,905 realized on the disposition of the shares was on account of capital or on account of income.

[3] The Appellants take the position that the transactions in 2003 were on account of income because the stocks were acquired with the intention of reselling them at a profit, making the stock sales an adventure in the nature of trade. Since a business, in accordance with the definition contained in section 248 of the *Income Tax Act* (the "*Act*"), includes an adventure in the nature of trade, then the losses realized on the sale of these stocks were losses from a business. Consequently, the

Appellants argue that they should be entitled to fully deduct the losses in computing their income in the 2003 taxation year.

[4] The Respondent's position is that the conduct of the Appellants is indicative of a share purchase for investment objectives and not as a trader in stocks. This means the losses are on account of capital.

[5] The parties filed the following Agreed Statement of Facts, together with an attached schedule showing the breakdown of shares sold in 2003:

2006-2661(IT)G

TAX COURT OF CANADA

BETWEEN:

LEONARD J. POLLOCK

Appellant

- and –

HER MAJESTY THE QUEEN

Respondent

2006-2663(IT)G

TAX COURT OF CANADA

BETWEEN:

BARBARA ANN MURRAY

Appellant

- and –

HER MAJESTY THE QUEEN

Respondent

AGREED STATEMENT OF FACTS

The parties accept as proven for the purposes of these Appeals the facts set out in this Agreed Statement of Facts. No evidence inconsistent with this Agreed Statement of Facts or any Schedules attached may be adduced at the hearing of these Appeals. Additional evidence not inconsistent with this Agreed Statement of Facts may be adduced by either party.

Unless otherwise specified, all facts relate to the 2003 taxation year.

The parties agree on the following facts:

The purchase and sale of the Shares

1. Leonard J. Pollock ("Pollock") and Barbara Ann Murray ("Murray") were each assessed capital losses of $68,089 (the "Losses") in the 2003 taxation year in respect of their disposition of shares in various corporations (the "Shares"). The subject matter of these appeals is whether the Losses were on account of capital or on account of income;
2. Pollock and Murray (the "Appellants") jointly purchased and sold the Shares, as set out in Schedule A (attached);
3. In 2003, the only shares the Appellants disposed of were the Shares;
4. The Appellants did not dispose of the shares at the first opportunity when the selling price would have exceeded the purchase price;
5. The Global Thermoelectric shares, as set out in Schedule A, paid a single dividend in 1999 of 0.000001 cents per share. The Adobe Systems shares, as set out in Schedule A, paid quarterly dividends of 0.00625 cents per share. Dividends on the Adobe shares occurred when Adobe merged with another corporation with which the Appellant had purchased shares in. No other dividends were paid out to the Appellants in respect of the Shares;

The Parties' Income Tax treatment of the Shares

6. Due to an error in the Appellants' 2003 Income Tax Returns, the Appellants each reported their Losses as $65,315;
7. The Appellants reported their Losses as fully deductible business losses;
8. In her 2003 Income Tax Return, Murray applied $48,311 of her Losses as non-capital loss carry-backs against her 2000, 2001 and 2002 taxable income (the "Carry-backs");
9. By way of Reassessment, the Minister of National Revenue reclassified the Appellants' Losses as capital losses. The Minister also reversed Murray's Carry-backs;

The Appellants' previous income tax treatment of shares

10. Prior to 2003, the Appellants reported gains and losses resulting from the sale and transfer of shares as capital gains and losses. They reported the gains and losses as follows:

Appellant	Taxation Year/ Description of Shares	Taxable Capital Gains/Allowable Capital Losses
Pollock	2000 (Hemosol, Canadian National Railways and Global Thermoelectric Inc.)	$11,793
Pollock	2002 (Goodyear Tire & Rubber and Marathon Foods Inc.)	($439)
Murray	1994	$2,464
Murray	1997 (Open Text security)	$9,939
Murray	2000 (Hemosol, CNR and Global Thermoelectric shares)	$11,793
Murray	2001 (Goodyear Tire & Rubber and Marathon Foods Inc.)	($439)

(the "Pre-2003 Shares");

11. Prior to 2003, the Appellants did not report gains and losses resulting from the sale and transfer of shares as gains and losses on account of income;

The Appellants' Backgrounds

12. At all material times, Pollock reported income as a lawyer;
13. Until 2002, Pollock also reported income as a Professor of Law at the University of Alberta, and began receiving pension income from the University of Alberta in 2002;
14. At all material times, Pollock's primary source of income was his income from the practice of law, his salary from the University of Alberta and, when applicable, his pension;
15. At all material times, Murray reported income as an employee of Pollock's practice;
16. At all material times, the Appellants' ordinary business did not involve purchasing and disposing of shares in corporations;
17. At all material times, the Appellants did not have any training or certification in stock trading and had no special knowledge akin to that of a stock trader;
18. The Appellants used a stock broker (the "Broker") to purchase and sell the Pre-2003 Shares and the Shares;
19. At all material times, the Appellants infrequently purchased and sold stock and had a minimal history of trading on the stock market;
20. At all material times, the Appellants did not spend any substantial amount of time studying the stock market;
21. The Appellants did not investigate market conditions prior to the purchase and disposition of the Pre-2003 Shares and the Shares;
22. Pollock did not investigate, monitor or research the Pre-2003 Shares and the Shares prior to their purchase and disposition;
23. Murray looked on the Internet and had discussions with her brother and the Broker prior to the purchase and disposition of the Pre-2003 Shares and the Shares; and

24. The Appellants relied on the advice and investigations of others with respect to when to purchase and dispose of the Shares. Specifically:
    a. Pollock relied on Murray; and
    b. Murray relied on the advice of her brother, the Broker and to some extent her accountant.

DATED at the City of Edmonton, in the Province of Alberta this 9th day of January, 2008.

Leonard J. Pollock, Q.C.
Appellant

"Leonard J. Pollock"
Leonard J. Pollock, Q.C.

DATED at the City of Edmonton, in the Province of Alberta this 9th day of January, 2008.

Barbara Ann Murray
Appellant

"Barbara Ann Murray"
Barbara Ann Murray

DATED at the City of Edmonton, in the Province of Alberta this 15th day of January, 2008.

John H. Sims, Q.C.
Deputy Attorney General of Canada
Solicitor for the Respondent

Per: "Darcie Charlton"
Darcie Charlton
Counsel for the Respondent

SCHEDULE A
BREAKDOWN OF SHARES SOLD IN 2003

Shares	Date Purchased	Price of Purchase	Date Sold	Gain or (Loss)	Pollock's Portion	Murray's Portion
1,000 Altarex	Jan. 25, 2002	$985.00	Feb. 6, 2003	($683.50)	($341.75)	(341.75)
72 Adobe Systems Inc.[1]	Jan. 27, 2000	$9,954.67	Feb. 11, 2003	($7,187.62)	($3,593.81)	($3,593.81)

[1] Adobe Systems Inc. ("Adobe") merged with Accello Corporation ("Accello") on April 22, 2002. Accello was formerly known as Jetform. The Appellants originally acquired 1000 shares of Jetform

1,000 Call-Loc. Inc.	April 7, 2000	$47,218.68	Feb. 6, 2003	($46,741.68)	($23,370.84)	($23,370.84)
1,500 Global Thermoelectric[2]	August 26, 1999 Dec. 30, 1999 Jan. 27, 2000	$27,600.96	Feb. 11, 2003	($8,108.65) ($16,217.31)	($4,054.33) ($8,108.66)	($4,054.33) ($8,108.66)
429 Roxio[3]	Sept. 29, 1997 Sept. 30, 1997 Feb. 11, 1998	$39,905.94	Feb. 6, 2003	($37,160.94)	($18,580.47)	($18,580.47)
1,000 Vision Wall Inc.[4]	Jan. 25, 2000	$1,185.00	Feb. 6, 2003	($942.00)	($471.00)	($471.00)
1,907 Hemosol Inc.[5]	Jan. 12, 2000	$20,048.29	May 7, 2003	($19,137.59)	($9,568.80)	($9,568.80)
TOTAL for 2003:				($136,179.29)	($68,089.65)	($68,089.65)

[6] I have reproduced the Agreed Statement of Facts, together with Schedule "A", because it has a direct bearing on my disposition of the issue in this appeal. It is essentially a question of fact whether the Appellants were carrying on a business in stock trading or whether their activities were for investment purposes only. It is interesting to note that, in this type of appeal where the onus is upon the Appellants to overcome the Assumptions of Fact relied upon by the Minister in the amended Replies, the Appellants conceded all but one of those Assumptions of Fact within the Agreed Statement of Facts. That one Assumption of Fact (11(i) in

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on January 27, 2000. When Accello and Adobe merged on April 22, 2002, the 1000 shares were converted into 72 shares of Adobe plus $33.94.

[2] The Appellants originally acquired 2500 shares in Global Thermoelectric Inc. for $46,001.60. 500 of the shares were acquired on August 26, 2000, 1,000 of the shares were acquired on December 30, 1999 and 1000 of the shares were acquired on January 27, 2000. 1000 shares were sold on March 15, 2000 for $18,400.00. The remaining 1500 shares were sold on February 11, 2003.

[3] The Appellants originally held 8,500 shares in MGI. 1,800 of the shares were acquired on September 29, 1997, 1,700 of the shares were acquired on September 20, 1997 and 5000 of the shares were acquired on February 11, 1998. The shares were converted to 429 shares of Roxio after a merger with MGI.

[4] The Appellants originally acquired 10,000 shares of Vision Wall Inc. on January 25, 2000. Those shares were consolidated and on November 7, 2001 the Appellants received 1000 new shares in exchange for the 10,000.

[5] The Appellants originally purchased 2000 shares of Hemosol Inc. ("Hemosol") for $21,026.00. On February 23, 2000, 93 Hemosol shares were transferred to an RRSP.

the Amended, Amended Reply respecting Leonard Pollock's appeal and 18(k) in the Amended Reply respecting Barbara Ann Murray's appeal) states:

> … the shares that were sold in 2003 were not highly leveraged as the Appellant and her spouse have sufficient means to purchase those shares without financing.

The wording in assumption 11(i) to Mr. Pollock's appeal added "and to hold them for long term investment". The concessions by the Appellants to all but one of the Assumptions of Fact relied on by the Minister is crucial because it means the Appellants essentially agreed with the Minister's basis for the reassessments.

[7] I heard evidence from both Appellants as well as Hugh Neilson, a chartered accountant, and Barry Gardiner, an investment advisor. Mr. Pollock, was admitted to the bar in 1962 and, in addition to practising law, taught several courses at the law school from 1972 to 2000. He testified that he had minimal experience in the stock market and relied primarily on his wife to handle the stocks and keep him apprised of choices made in this respect. His wife relied primarily on her brother for advice. They established a line of credit of $100,000 to support their market endeavours, which commenced in 1997. During this time his income varied from a low of $64,960 in 2003 to a high of $478,635 in 2001 (Exhibit R-2). On cross-examination, Mr. Pollock confirmed that prior to 2003 the Appellants reported gains and losses from the stock activities as capital gains and capital losses. His explanation for the change in reporting status was that they followed the advice of accountants in declaring and reporting sales. They followed Barry Gardiner's advice until he left the firm in 2000 at which time their file was handled by a number of different individuals. It was Hugh Neilson that recommended that they should change the way they were reporting these amounts. Mr. Pollock was unable to give any explanation for his decision in late 1999 to retain stock in MGI Software Corp. (later Roxio stock) and Global Thermoelectric when the market value had changed so that substantial profits could have been realized. Instead the stock was retained and between February 28, 2001 and January 31, 2003, it steadily declined until the profit situation became a loss situation. Mr. Pollock stated that they simply held onto it for too long a period and missed "the window" of opportunity.

[8] Barbara Murray's background is in medical technology. After she entered the stock market in 1997 she depended on her brother for advice. He was employed by MGI Software Corp. and had knowledge of that company's stock and the software product it sold. A large portion of the stock which the Appellants purchased was in MGI Software Corp. Ms. Murray testified that they purchased

the MGI shares so that when the proposed technology products entered the market they could sell their shares and earn a profit. She stated that, like MGI, the other stock purchases were also of a speculative nature and were not purchased with a view to dividends.

[9] Barry Gardiner testified that the Appellant, Barbara Murray, did not look to his firm for advice on purchasing and selling stock, but instead she instructed him on what stock was to be purchased or sold. He testified that the companies in which the Appellants purchased these shares were all technology corporations whose shares would not be purchased with an expectation of receiving dividends. Although I allowed Mr. Gardiner to give his evidence as an expert witness, I am not giving any weight to his evidence from the perspective of qualified expert opinion because he was not qualified as an investment advisor until 2000, at which time he had left the firm that was providing professional services to the Appellants, and, more importantly, his areas of expertise listed in his curriculum vitae do not include the area of the nature of stock purchasing.

[10] Hugh Neilson testified that he was consulted by the Appellants on a sporadic basis after Mr. Gardiner left the firm. In 2003 he had discussions with Barbara Murray respecting a change in the reporting treatment of the losses from being on capital account to income account.

Analysis

[11] The Appellants have the onus of proving that their losses are properly characterized as arising from an adventure in the nature of trade and not an investment. The decision in *M.N.R. v. Taylor*, 56 DTC 1125, canvassed some general positive as well as negative propositions for determining whether or not a transaction constitutes an adventure in the nature of trade. The Supreme Court, in *Irrigation Industries Ltd. v. M.N.R.*, 62 DTC 1131 (S.C.C.), relying on the decision in the *Taylor* case set out the following positive tests:

(1) Whether the person dealt with the property purchased by him in the same way as a dealer would ordinarily do; and

(2) Whether the nature and quantity of the subject matter of the transaction may exclude the possibility that its sale was the realization of an investment or otherwise of a capital nature, or that it could have been disposed of otherwise than as a trade transaction.

And set out the following negative tests:

(1) The singleness or isolation of a transaction cannot be a test of whether it was an adventure in the nature of trade--it is the nature of the transaction, not its singleness or isolation that is to be determined.

(2) It is not essential to a transaction being an adventure in the nature of trade that an organization be set up to carry it into effect.

(3) The fact that a transaction is totally different in nature from any of the other activities of the taxpayer and that he has never entered upon a transaction of that kind before or since does not, of itself, take it out of the category of being an adventure in the nature of trade.

(4) The intention to sell the purchased property at a profit is not of itself a test of whether the profit is subject to tax for the intention to make a profit may be just as much the purpose of an investment transaction as of a trading one. The considerations prompting the transaction may be of such a business nature as to invest it with the character of an adventure in the nature of trade even without any intention of making a profit on the sale of the purchased commodity.

[12] The Federal Court of Appeal in *The Queen v. Vancouver Art Metal Works Limited*, 93 DTC 5116, at page 5119, sets out a number of factors to be used in the determination of whether an individual is engaged in a trading business:

> I have no doubt that a taxpayer who makes it a profession or a business of buying and selling securities is a trader or a dealer in securities within the meaning of paragraph 39(5)(a) of the Act. As Cattanach, J. stated in *Palmer v. R.*, "it is a badge of trade that a person who habitually does acts capable of producing profits is engaged in a trade or business". It is, however, a question of fact to determine whether one's activities amount to carrying on a trade or business. Each case will stand on its own set of facts. Obviously, factors such as the frequency of the transactions, the duration of the holdings (whether, for instance, it is for a quick profit or a long term investment), the intention to acquire for resale at a profit, the nature and quantity of the securities held or made the subject matter of the transaction, the time spent on the activity, are all relevant and helpful factors in determining whether one has embarked upon a trading or dealing business.

[13] Rip J. in *Rajchgot v. The Queen*, [2004] T.C.J. 403, affirmed by the Federal Court of Appeal, [2005] F.C.J. 1514, also referenced these factors in determining the taxpayer's intention when the shares were acquired. At paragraph [18] he stated:

> … it is not the lack or presence of one or more factors that will determine whether a transaction is on capital or income account; it is the combined force of all of the factors that is important There is no magic formula to determine which factors are more or less important. Some factors compliment each other. Each case is different. A judge must balance all the factors. …

[14] The intention of the Appellants at the time of the acquisition of the shares is to be resolved within the framework of their entire course of conduct, having reference to these various factors.

[15] Desjardins, J. in the Federal Court of Appeal decision in *Robertson v. Canada*, [1998] F.C.J. 401, at paragraphs 25 and 26, referred to "badges of trade" which could assist in tracing the course of conduct of a taxpayer:

> 25 As noted by W.E. Crawford and R.E. Beam, an "adventure", by the nature of that word, is likely to be an isolated transaction. Many isolated transactions are not, however, "in the nature of trade". There must be some activity, some features of business in the transaction dealt with which makes it an adventure in the nature of trade. What must be looked for is whether there are "badges of trade" or behavioral factors which might assist in tracing the course of conduct of the taxpayer. From these, inferences might be drawn as to whether a taxpayer was engaged in an operation of trade or simply investing.
>
> 26 The decision of the Supreme Court of Canada in Irrigation Industries Limited v. M.N.R. makes it clear that the question of whether securities are purchased with the purchaser's own funds, or with borrowed money, is not a significant factor in determining whether the acquisition and subsequent sale is or is not an investment.

[16] Applying these principles to the facts in these appeals:

(a) Frequency of the Transactions

Prior to 2003, when the Appellants first entered the stock market, they reported gains and losses beginning in 1997 as capital gains and capital losses. Paragraph 10 of the Agreed Statement of Facts sets out the Appellants' pre-2003 income tax treatment of their share holdings. This reporting treatment changed in 2003 when they suffered substantial losses and reported them as business losses. This occurred

in the shares of both Global Thermoelectric Inc. and Hemosol where gains in 2000 were reported as capital gains while in 2003 losses were incurred and reported as business losses. The 2003 transactions were not distinguished in any way from the previous transactions. When taxpayers suddenly switch their reporting method from capital to income account as was done in these appeals, there must be some solid evidence to support this change. I was not provided any reasonable explanation except that there had been a change in accountants within the same firm. The accountant's evidence provided no basis that would distinguish the 2003 transactions from the prior transactions. There were six types of stock in which sales occurred on four different occasions between 1997 and 2002. According to Schedule "A" attached to the Agreed Statement of Facts, in 2003 the Appellants sold seven types of stock on three separate occasions, February 6, February 11 and May 7. I do not believe that the history of these transactions in 2003 or in the years leading up to 2003 could be characterized as frequent. Quite apart from my conclusion, the Appellants at paragraph 19 of the Agreed Statement of Facts confirmed one of the basic Assumptions of Fact upon which the Minister relied in reassessing, and, that is, they infrequently purchased and sold stock.

(b) Duration of Holdings/Intention to Acquire for Resale at a Profit (Motive)

All of the shares, which were sold in 2003, except for Altarex, were held for periods of three to five and one-half years. Even the Altarex shares were held for over a year. In 2000, the Appellants transferred 93 of the Hemosol shares to an RRSP. The history of the Roxio (previously MGI) shares disclosed that their market value rose dramatically and remained at the higher values for over a year. The Appellants, however, continued to retain these shares despite the lengthy window of opportunity to "flip" the shares for substantial profits. The evidence showed that eventually the value of these shares fell drastically. There is no doubt that traders would have taken advantage of this opportunity to make a quick and very large profit. Such actions do not support the Appellants' stated intention of being in the business of purchasing and selling shares to make a profit. It is clear from the decision in *Irrigation Industries* that even if the Appellants had the intention of disposing of the shares to make a profit at the first opportunity, this fact, alone, will be insufficient to colour the stock transactions as adventures in the nature of trade, without the presence of "badges of trade" or indicia of business attaching to the Appellants' stock trading activities. The lengthy duration of the share holdings, the transfer of some of the Hemosol shares to an RRSP and the continued holding of shares where the value rose dramatically are clearly not the actions of a trader in the business of buying and selling shares in the market to make a quick profit. Aside from my conclusions, the Appellants agreed in the Statement of Agreed Facts at paragraph

(4) that they did not dispose of shares at the first reasonable opportunity when a substantial profit could have been realized.

(c) Nature and Quantity of the Securities Held

Most of the shares sold in 2003 were "high tech" stock. However, I do not believe this fact alone eliminates them from the domain of the taxpayer who is looking to stock purchases for investment. Taxpayers may hold these types of shares and yet they may not necessarily be carrying on a business activity. The Appellants have agreed in the Agreed Statement of Facts that they infrequently purchased and sold stock and that they had a minimal history of trading on the stock market. As Rip J. stated at paragraph [29] of *Rajchgot*:

> …The evidence, however, does not reflect active and hectic purchases and sales …

Those remarks apply here. The nature and quantity of the shares (paragraphs 2, 3, 4, 5 and 10 of the Agreed Statement of Facts) and the manner in which the Appellants dealt with them are not indicative of an adventure in the nature of trade.

(d) The Time Spent on the Activity and Particular Knowledge Possessed

Mr. Pollock had no experience or training in the stock market. His focus was on teaching and practising law. Other than setting up a line of credit to support the activities, he relied on his wife and her brother for the decision making. His wife kept him apprised by showing him the activities on a computer screen. Barbara Murray had very little background or knowledge in securities either. She relied on her brother for advice but the role he played and the influence he had in her decisions were not fully canvassed in the evidence. She instructed a stock broker to complete the purchases and sales. Ms. Murray's source of income was as an employee of her husband's law practice. Her brother was an employee of MGI but again it was unclear from the evidence if this resulted in any advantage to the Appellants in the decision making. In summary, the Appellants possessed no special knowledge, certifications or training in the stock market, relying instead on Ms. Murray's brother, the broker and their accountant. Mr. Pollock spent no time or effort on researching or monitoring the market activities and while his wife spent more time tracking or checking on the internet, it was not nearly to the same degree that one would expect from a trader. All these facts were agreed to at paragraphs 12 to 24 of the Agreed Statement of Facts.

(e) Financing

The Appellants established a line of credit to support their stock market activities. However the evidence was that Mr. Pollock's income from teaching law, his legal practice and, when applicable his pension, ranged from a low of $69,000 to $478,635. He also testified that he was able to pay off the line of credit at one point from legal fees earned from a single legal case. The decision of the Supreme Court in *Irrigation Industries* makes it clear that this factor of whether the securities were purchased using the taxpayer's own funds or borrowed money is not a significant factor in determining if the activities are an adventure in the nature of trade. Although there were borrowed funds here, the Appellants' income appeared to be sufficient at times to pay off the line of credit.

Conclusion

[17] When I look at the evidence respecting all of these factors in the context of the Appellants' course of conduct surrounding the market activities, I can come to only one conclusion: that the Appellants purchased the shares for investment purposes and not as traders for quick profit. Although I accept that the Appellants' stated intention was to sell these shares for profit, which can be true of most business endeavours, their conduct does not support and in fact is contrary to this stated intention. The Appellants in the Agreed Statement of Facts conceded almost all of the Assumptions of Fact contained in the Reply. It is very difficult for them to rely on their stated intention alone when the evidence regarding their conduct in the stock market is indicative of investment activities. When I couple this with their concessions in the Agreed Statement of Facts, I have little choice but to dismiss their appeals with costs.

Signed at Ottawa, Canada, this 21st day of February 2008.

"Diane Campbell"

Campbell J.

CITATION:	2008TCC115
COURT FILES NO.:	2006-2661(IT)G 2006-2663(IT)G
STYLE OF CAUSE:	Leonard Joel Pollock and Barbara Ann Murray and Her Majesty the Queen
PLACE OF HEARING	Edmonton, Alberta
DATE OF HEARING	February 7, 2008
REASONS FOR JUDGMENT BY:	The Honourable Justice Diane Campbell
DATE OF JUDGMENT	February 21, 2008

APPEARANCES:

Counsel for the Appellants:	Leonard Joel Pollock, Q.C.
Counsel for the Respondent:	Darcie Charlton

COUNSEL OF RECORD:

Counsel for the Appellant:

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