



Ontario
Securities
Commission

Commission des
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de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- AND -

**IN THE MATTER OF
GORDON MAK**

**REASONS AND DECISION
(Subsections 127(1) and (10) of the Act)**

Hearing: In writing

Decision: May 13, 2015

Panel: Alan J. Lenczner, Q.C. - Chair of the Panel
Timothy Moseley - Commissioner

Submissions by: Claire Devlin - For Staff of the Commission

Gordon Mak - For himself

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REASONS AND DECISION

I. STAFF'S REQUEST

- [1] Staff ("Staff") of the Ontario Securities Commission (the "Commission") has requested us to consider whether Gordon Mak ("Mak"), who entered into a Settlement Agreement and Undertaking (the "Settlement Agreement") with the Alberta Securities Commission (the "ASC") should be made subject to sanctions, conditions, restrictions or requirements in Ontario, pursuant to paragraph 5 of subsection 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act").
- [2] We conducted a written hearing to consider Staff's request, and these are our reasons for granting Staff's requested order.

II. THE ASC SETTLEMENT AGREEMENT

- [3] At the time of the Settlement Agreement, Mak was a resident of Calgary, Alberta. In the Settlement Agreement, Mak admitted to unregistered trading and advising, and engaging in an illegal distribution of securities of Goldenrod Resources Inc. ("Goldenrod") and Clean Power Technologies Inc. ("Clean Power"). Mak also admitted to concealing his activities with respect to Goldenrod and Clean Power from the ASC investigators during the course of the ASC's investigation.
- [4] Specifically, Mak agreed to the following breaches of the *Alberta Securities Act*, R.S.A. 2000, c. S-4, as amended (the "ASA"):
- a. section 75(1)(a) of the ASA by trading in securities of Goldenrod and Clean Power without registration;
 - b. section 75(1)(b) of the ASA by acting as an adviser with respect to the Goldenrod and Clean Power investments without registration;
 - c. section 110 of the ASA by engaging in a distribution of securities of Goldenrod and Clean Power without filing with the ASC, and receiving a receipt for, either a preliminary prospectus or prospectus; and
 - d. section 93.4(1) of the ASA by concealing or withholding information reasonably required for an investigation under the ASA.
- [5] Mak's unregistered sales to Albertans of, and advice in relation to, securities in Goldenrod and Clean Power, and his concealment and withholding of information reasonably required for an investigation under the ASA, constituted conduct contrary to the public interest.
- [6] Pursuant to the Settlement Agreement, Mak agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta, including:
- a. to pay the ASC the amount of \$80,000 in settlement of the allegations;
 - b. for a period of 6 years from the date of the Settlement Agreement:
 - i. to cease trading in or purchasing securities and derivatives, with the exception that Mak is permitted to trade in one personal: brokerage

account, Locked-In Retirement Account ("LIRA account"), and Tax Free Savings Account ("TFSA account"), provided that such trading is through a registrant who has been given a copy of the Settlement Agreement;

- ii. to refrain from using any of the exemptions contained in Alberta securities laws;
 - iii. to refrain from advising in securities or derivatives; and
- c. to pay to the ASC the amount of \$15,000 towards investigation costs.

III. MAK'S POSITION

[7] Mak provided correspondence to Staff on April 28, 2015 stating the following:

I confirm receiving the Notice of Hearing but take no position.

There is no intention on my part to carry on business in Ontario.

[8] We also received an affidavit of service of Lee Crann sworn on May 7, 2015, which stated that Staff:

- a. served Mak with the Commission's order of April 28, 2015 on April 30, 2015; and
- b. served Mak with Staff's written hearing materials by regular letter mail and courier on May 5, 2015 and May 6, 2015 respectively.

[9] By order of this Commission dated April 28, 2015, Mak was required to file any written submissions by June 5, 2015. Based on Mak's correspondence provided to Staff on April 28, 2015, we understand that Mak will not be providing any written submissions, as he has elected to take no position in this matter and he stated that he has no intention to carry on business in Ontario.

IV. DECISION

[10] In our view, it is in the public interest to grant the order requested by Staff.

[11] The threshold under paragraph 5 of subsection 127(10) of the Act has been met. Mak had agreed with a securities regulatory authority, the ASC, to be made subject to sanctions, conditions, restrictions or requirements. Specifically, the Settlement Agreement states at paragraphs 24 to 27 that:

Mak acknowledges that he has sought and received independent legal advice and that he has voluntarily made the admissions [in the ASC Settlement Agreement].

Mak waives any right existing under the [ASA], or otherwise, to a hearing, review, judicial review or appeal of this matter.

Mak acknowledges that this [Settlement] Agreement may be referred to solely for securities regulatory purposes in Alberta and elsewhere.

The [Settlement] Agreement resolves all issues involving Mak as described [in the Settlement Agreement], and [ASC]

Staff will take no further steps against him arising from these facts.

[emphasis added]

- [12] In the Settlement Agreement Mak acknowledges that the Settlement Agreement may be referred to by other securities regulators, (which includes this Commission), and Mak has provided correspondence stating that he has no intention to carry on business in Ontario and he will not take any position in this hearing. Mak has not provided us with any information that would persuade us that Staff's requested order is not appropriate in the circumstances.
- [13] The Settlement Agreement approved by the ASC stands as a determination of fact for the purpose of the Commission's considerations under subsection 127(10) of the Act. We are guided by the public interest mandate of the Act, to provide protection to investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets. While the Commission must make its own determination of what is in the public interest, it is also important that the Commission be aware of and responsive to an increasingly complex and interconnected cross-border securities industry. For comity to be effective and the public interest to be protected, the threshold for reciprocity must be low when the findings of the foreign jurisdiction qualify under subsection 127(10) of the Act.
- [14] In our view, Staff's requested order is appropriate for the following reasons:
- a. Staff has requested a trading ban (with a carve-out for one personal: brokerage account, LIRA account, and TFSA account) and registrant ban that mirror the bans imposed as a result of the Settlement Agreement approved by the ASC. The terms of Staff's requested order align with the sanctions imposed in the Settlement Agreement to the extent possible under the Act;
 - b. The terms of Staff's proposed order are consistent with the fundamental principle that the Commission maintain high standards of fitness and business conduct to ensure honest and responsible conduct by market participants;
 - c. The sanctions proposed by Staff are prospective in nature, they are proportionate to the conduct, and will provide both specific and general deterrence, and will protect the public in Ontario from similar misconduct by Mak; and
 - d. Mak admitted to his breaches of securities law in Alberta and has acknowledged in the Settlement Agreement that the Settlement Agreement may be referred to by other securities regulators.
- [15] Therefore, we find that it is in the public interest to make the following order:
- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Mak cease until December 2, 2020, with the exception that Mak is permitted to trade in one personal: brokerage account, LIRA account, and TFSA account, provided that such trading is through a registrant who has been given a copy of the Settlement Agreement, and a copy of the Order of the Commission in this proceeding;

- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Mak cease until December 2, 2020, with the exception that Mak is permitted to trade in one personal: brokerage account, LIRA account, and TFSA account, provided that such trading is through a registrant who has been given a copy of the Settlement Agreement, and a copy of the Order of the Commission in this proceeding;
- c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities laws do not apply to Mak until December 2, 2020; and
- d. pursuant to paragraph 8.5 of subsection 127(1), any registration granted to Mak under Ontario securities law be prohibited until December 2, 2020.

Dated at Toronto this 13th day of May 2015.

"Alan J. Lenczner"

Alan J. Lenczner, Q.C.

"Timothy Moseley"

Timothy Moseley