



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queenouest
Toronto ON M5H 3S8

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

- AND -

**IN THE MATTER OF
HOWARD RASH**

**SETTLEMENT AGREEMENT
BETWEEN STAFF AND HOWARD RASH**

PART I - INTRODUCTION

1. By Notice of Hearing dated March 7, 2014, the Ontario Securities Commission (the “Commission”) announced that it proposed to hold a hearing, commencing on March 28, 2014, pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”), to consider whether it is in the public interest to make orders, as specified therein, against Howard Rash (“Rash”). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission (“Staff”) dated March 7, 2014.

2. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to subsections 127(1) and 127(10) of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Rash.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Staff agree to recommend settlement of the proceeding initiated by the Notice of Hearing dated March 7, 2014 against Rash (the “Proceeding”) in accordance with the terms and conditions set out below. Rash consents to the making of an order in the form attached as Schedule “A”, based on the facts set out below.

PART III – AGREED FACTS

Overview

4. On June 8, 2010, Staff commenced proceedings against Rash in the Ontario Court of Justice by Information alleging, *inter alia*, one count of fraud contrary to sections 122 and 126.1(b) of the Act and one count of contravening Ontario securities law by trading in securities at a time when he was prohibited from doing so by order of the Commission contrary to section 122 of the Act (the “Offences”).
5. On August 31, 2012, Rash pleaded guilty to the Offences. As part of his plea, Rash admitted the truth of a Statement of Facts for Guilty Plea (the “Statement of Facts”) that was filed as an exhibit in that proceeding. The Statement of Facts is attached as schedule “B” to this Settlement Agreement.
6. Rash’s guilty plea was accepted by the Court and he was convicted in the Ontario Court of Justice of the Offences.
7. A sentencing hearing was subsequently held in connection with Rash’s convictions before Justice Gorewich of the Ontario Court of Justice. Following the sentencing hearing, Justice Gorewich sentenced Rash to a period of imprisonment of nine months and probation for two years.
8. As is reflected in the Statement of Facts, Rash’s convictions for the Offences arose from transactions, business and a course of conduct relating to securities and constituted non-compliance with Ontario securities law.
9. As a result of his non-compliance with Ontario securities law, Rash obtained \$313,461.
10. In addition to the above facts, Staff and Rash admit the Statement of Facts attached as schedule “B” to this Settlement Agreement as agreed facts for the purposes of this Settlement Agreement.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

11. By engaging in the conduct described above and in the Statement of Facts, Rash admits and acknowledges that he contravened Ontario securities law during the Material Time. Rash further admits and acknowledges that his conviction for the Offences arose from transactions, business and a course of conduct related to securities.

12. Rash admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law and engaging in the conduct set out above and in the Statement of Facts.

PART V - TERMS OF SETTLEMENT

13. Rash agrees to the terms of settlement listed below.

14. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Rash cease permanently;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Rash is prohibited permanently;
- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Rash permanently;
- (e) pursuant to clause 6 of subsection 127(1) of the Act, Rash is reprimanded;
- (f) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Rash is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;

(g) pursuant to clause 8.5 of subsection 127(1) of the Act, Rash is prohibited permanently from becoming or acting as a registrant, as an investment fund manager or as a promoter; and

(h) pursuant to clause 9 of subsection 127(1) of the Act, in respect of his failure to comply with Ontario securities law, Rash shall pay an administrative penalty in the amount of \$313,461, such amount to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) (i) or (ii) of the Act.

15. Rash undertakes to consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in subparagraphs 14 (b) to (g) above.

PART VI - STAFF COMMITMENT

16. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against Rash in relation to the facts set out in Part III herein, subject to the provisions of paragraph 17 below.

17. If this Settlement Agreement is approved by the Commission, and at any subsequent time Rash fails to honour the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Rash based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

18. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Rash for the scheduling of the hearing to consider the Settlement Agreement.

19. Staff and Rash agree that this Settlement Agreement, including schedule "B", will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Rash's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

20. If this Settlement Agreement is approved by the Commission, Rash agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

21. If this Settlement Agreement is approved by the Commission, neither party will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

22. Whether or not this Settlement Agreement is approved by the Commission, Rash agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

23. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

- (a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Rash leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Rash; and
- (b) Staff and Rash shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Notice of Hearing and Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions/negotiations.

24. The terms of this Settlement Agreement will be treated as confidential by all parties hereto until approved by the Commission. Any obligations of confidentiality shall terminate upon approval of this Settlement Agreement by the Commission. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Rash and Staff or as may be required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

25. This Settlement Agreement may be signed in one or more counterparts which together will constitute a binding agreement

26. A facsimile copy of any signature will be as effective as an original signature.

Signed in the presence of:

“Matthew Shields”

“Howard Rash”

Witness:

Howard Rash

Dated this 18th day of June, 2014

“Tom Atkinson”

STAFF OF THE ONTARIO SECURITIES COMMISSION
per Tom Atkinson
Director, Enforcement Branch

Dated this 19th day of June, 2014

SCHEDULE "A"



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

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

- AND -

**IN THE MATTER OF
HOWARD RASH**

- AND -

**IN THE MATTER OF A SETTLEMENT AGREEMENT BETWEEN STAFF OF THE
ONTARIO SECURITIES COMMISSION AND HOWARD RASH**

**ORDER
(Subsection 127(1))**

WHEREAS by Notice of Hearing dated March 7, 2014, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, commencing on March 28, 2014, pursuant to subsections 127(1) and 127(10) of the Securities Act, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Howard Rash ("Rash"). The Notice of Hearing was issued in connection with the allegations as set out in the Statement of Allegations of Staff of the Commission ("Staff") dated March 7, 2014;

AND WHEREAS Rash entered into a settlement agreement with Staff dated _____, 2014 (the "Settlement Agreement") in which Rash agreed to a proposed settlement of the proceeding commenced by the Notice of Hearing dated March 7, 2014, subject to the approval of the Commission;

SCHEDULE "A"

AND WHEREAS on _____, 2014, the Commission issued a Notice of Hearing pursuant to subsection 127(1) of the Act to announce that it proposed to hold a hearing to consider whether it is in the public interest to approve a settlement agreement entered into between Staff and Rash;

AND UPON reviewing the Settlement Agreement, the Notices of Hearing, and the Statement of Allegations of Staff, and upon hearing submissions from counsel for Rash and from Staff;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

- (a) the Settlement Agreement is approved;
- (b) pursuant to clause 2 of subsection 127(1) of the Act, trading in any securities by Rash cease permanently from the date of this Order;
- (c) pursuant to clause 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Rash is prohibited permanently from the date of this Order;
- (d) pursuant to clause 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Rash permanently from the date of this Order;
- (e) pursuant to clause 6 of subsection 127(1) of the Act, Rash is reprimanded;
- (f) pursuant to clauses 8, 8.2, and 8.4 of subsection 127(1) of the Act, Rash is prohibited permanently from the date of this Order from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager;
- (g) pursuant to clause 8.5 of subsection 127(1) of the Act, Rash is prohibited permanently from the date of this Order from becoming or acting as a registrant, as an investment

SCHEDULE "A"

fund manager or as a promoter; and

- (h) pursuant to clause 9 of subsection 127(1) of the Act, in respect of his failure to comply with Ontario securities law, Rash shall pay an administrative penalty in the amount of \$313,461, such amount to be designated for allocation or for use by the Commission pursuant to subsection 3.4(2)(b) (i) or (ii) of the Act.

DATED AT TORONTO this day of , 2014.

Schedule "B"

FILED IN #202
AUGUST 31, 2012

Ontario Court

Regional Municipality of York

R vs RASH
File # 10000614
Exhibit # BETWEEN
Produced by CROWN
Date JAN 14 2013
MITCHELL J
Clerk

ONTARIO COURT OF JUSTICE
(Toronto Region)
CENTRAL EAST
ONTARIO SECURITIES COMMISSION

COURT REPORTER

SUSAN CLARK

- and -

JUSTICE

WILLIAM GEORGE

HOWARD RASH

STATEMENT OF FACTS FOR GUILTY PLEA

I. Overview

1. The following facts are presented by the Ontario Securities Commission (the "Commission") upon the plea of guilty by Howard Rash ("Rash") to one count of fraud contrary to section 126.1 of the *Securities Act* (Ontario), the "Act" and to one count of contravening Ontario securities law by trading in securities at a time when he was prohibited from doing so contrary to section 122(1)(c) of the Act.

2. All charges emanate from a course of conduct engaged in by Rash and other persons associated with a company called Global Energy Group, Ltd. ("Global Energy").

3. Rash was at all material times a sales representative of Global Energy and was never a directing mind of that company.

A. Overview of the Global Energy Fraud and Rash's Involvement

i) Overview of the Global Energy Fraud

4. Global Energy operated an unregistered securities sales office, commonly called a boiler room, trading units of a series of limited partnerships called New Gold LLP (the "New Gold Securities") to members of the public.

5. The Global Energy boiler room offices were located at units located at 2727 Steeles Avenue, West in Toronto, Ontario and on Tandem Road in Concord, Ontario (the "Ontario Offices").

6. From approximately June 1, 2007 to June 25, 2008 (the "Material Time"), primarily using telephone solicitations, Rash and other persons associated with Global Energy (the "Global Energy Agents"), sold at least \$14.75 million (U.S.) worth of New Gold Securities to approximately 200 members of the public (the "New Gold Investors"), the majority of whom lived in western Canada. The New Gold Securities purported to constitute ownership interests in Kentucky oil and gas leases.

7. Rash was employed at Global Energy from mid-September 2007 to mid-June 2008. During that time, 15 to 20 of the persons whom he approached ended up investing with Global Energy.

Rash did not raise \$14.75 million and does not know how much money Global Energy raised before or during his employment.

8. The operations of Global Energy in Ontario were supervised and directed by Vadim Tsatskin ("Tsatskin") and Christina Harper ("Harper").

9. Under the direction and supervision of Tsatskin and Harper, the Global Energy Agents, including Rash, sold the New Gold Securities to members of the public using deceit, falsehood and other fraudulent means.

10. The New Gold Investors were led to believe that the offices of Global Energy were in Kentucky and were instructed by the Global Energy Agents to send their investment funds to bank accounts in Kentucky in the name of American Oil & Gas Resources Inc. ("American Oil & Gas") controlled by Brian Coffman ("Coffman"), a Kentucky lawyer and one of the directing minds of Global Energy. These investor funds were then diverted to number of overseas bank accounts and were also sent back to Canada to the fund operations from the boiler rooms at the Ontario Offices.

11. While Rash was aware that some persons he persuaded to buy New Gold Securities received an invoice with instructions to wire money to American Oil & Gas,, he had no involvement in the design or implementation of these instructions. He further had no knowledge that any monies were sent or diverted overseas accounts as described in paragraph 10.

12. A significant amount of New Gold Investor Funds was transferred to accounts in the Bahamas, Panama, personal accounts controlled by Coffman and to accounts in Toronto linked to Tsatskin, Harper and others. Initially, the New Gold Investors did receive some minimal payments

or royalties in relation to their investments. This was done, in part, to persuade them to reinvest. However, by the time that the illicit scheme was detected by regulatory authorities including Staff, the New Gold Investors had suffered significant losses and received only nominal returns as compared to the returns promised by the Global Energy Agents. Rash was not aware that investor funds were being diverted overseas and to the personal accounts linked to Coffman, Tsatskin, Harper and others.

13. Rash did not own or operate an offshore account at any material time and does not do so at this time. He never received any funds by wire. Other sales staff received commission payments by wire, but Rash received cheques. Other than receiving inquiries from investors as to the quantum and delivery times of the royalty payments, Rash had no knowledge of these matters.

ii) Overview of Rash's Involvement

14. Rash clearly deceived investing members of the public in the following ways:

- i) Rash lied about his true identity by using the alias of David Wells;
- ii) Rash lied about where he was selling securities from, stating that he was in Kentucky when he was in Ontario; and
- iii) Rash improperly withheld from investors and potential investors that he was prohibited by Order of the Commission from trading in securities which would have prohibited him from selling New Gold Securities.

15. By engaging in the conduct set out in the previous paragraph, Rash prevented any members of the public from ascertaining his registration status with the Commission and the fact that he was prohibited from selling New Gold Securities to any member of the public from Ontario.

16. Further, during the course of his solicitations, Rash provided information to members of the public about Global Energy's prior business history, the expertise and qualifications of Global Energy's management, the oil production of the wells purportedly underlying the New Gold Securities and the use of the proceeds from the sale of the New Gold Securities that was false, untrue and/or misleading.

17. Rash primarily relied on information about Global Energy and its operations provided by Tsatskin, Coffman and Harper. While believed the information and made some inquiries, Rash failed to conduct sufficient due diligence to ensure the information being conveyed to investors was correct, in circumstances where he had reason to believe the information was inaccurate.

18. ~~In sum, Rash was willfully blind as to whether this information being conveyed about Global Energy and the investments in New Gold was false.~~

B. Sale of New Gold Securities: Badges of Fraud

19. The following points serve to demonstrate fraud linked to the sale of the New Gold Securities subject to the facts contained in paragraphs 14-¹⁷~~18~~ as they apply to Rash:

- i) There is no record of the registration of the New Gold Securities in Kentucky nor any legitimate evidence of their registration in the Bahamas (Coffman had prepared the Offering Memorandum that was

distributed to prospective investors and Rash had no role in preparing any materials provided to investors or potential investors);

- ii) Investors were told that the senior management of Global Energy had a long history of successful drilling in the oil and gas field. This was incorrect;
- iii) A significant amount of New Gold Investor funds were transferred to accounts in the Bahamas, Panama, personal accounts controlled by Coffman and to accounts in Toronto linked to Tsatskin, Harper, and other individuals involved in the sale of the New Gold Securities;
- iv) Global Energy Agents used aliases when selling the New Gold Securities, Rash used the alias David Wells;
- v) New Gold Investors were misled as to the true ownership and control of Global Energy;
- vi) New Gold Investors were informed or led to believe, by persons including Rash, that the Global Energy sales offices were in Kentucky when in fact they were in Toronto;
- vii) the New Gold Investors were informed by the Global Energy Agents that their funds were being used to fund drilling operations in Kentucky that would yield significant profits from oil and gas wells. This information was grossly exaggerated and fraudulent. **Although** the information was false and overstated, Rash was not aware of the extent of the falsehoods until the execution of the search warrants and until reading the allegations set out on the Commission website; and

- viii) The oil wells in Kentucky that were actually drilled produced little or no oil at all, contrary to the estimates and representations made by Global Energy Agents, Rash became aware of the falsehoods regarding these wells after Global Energy closed; that is, after the execution of the search warrants and the posting of the allegations on the Commission website.

C. Contraventions of the Act by Rash

Fraud

20. From approximately September 2007 up to approximately June 2008, Rash, a resident of Ontario, sold New Gold securities to members of the public from the Ontario Offices under the direction and supervision of Tsatskin and Harper.
21. Rash telephoned members of the public across Canada, from the Ontario Offices, for the purpose of selling the New Gold Securities. During these sales calls, Rash used the alias "David Wells" and represented that he was calling from Lexington, Kentucky.
22. By using an alias and lying about where he was calling from, Rash prevented any member of the public from ascertaining his registration status from the Commission. Rash used an alias because using his real name would have resulted in the discovery of his inability to trade in securities as the result of an existing Commission order. He had been diagnosed with cancer, believed that he did not have long to live and wanted to provide for his family.

23. Subject to the facts set out in paragraphs 13-17, Rash used deceit, falsehood and other fraudulent means when selling New Gold securities to members of the public by, among other things, misrepresenting Global Energy's prior business history, the experience and qualifications of Global Energy's management, the oil production of the wells purportedly underlying the New Gold Securities and the use of proceeds from the sale of the New Gold Securities.

24. Subject to the facts set out in paragraphs 13-17, as part of his solicitations, Rash also forwarded brochures and other promotional materials containing false, inaccurate and misleading information to members of the public for the purpose of convincing them to invest in the New Gold Securities. These materials were provided to Rash by Harper and Tsatskin.

25. Further, on at least one occasion, Rash contacted a New Gold Investor, using the alias "Ray Lewis", and under the pretense of being an investment banker from New York City who had purchased several units of the New Gold Securities. In this call, Rash (aka "Ray Lewis"), attempted to convince the investor about the legitimacy of the Global Energy operation to assist another salesman, Elliot Feder ("Feder") that was attempting to sell the investor additional New Gold Securities.

26. Rash received a commission of approximately 9.5 to 19% of his net sales of the New Gold securities. Some of these Commissions were split with Feder. Investors were not informed of this commission structure.

27. Rash received approximately \$313,461 in sales commissions from his sales of New Gold Securities to members of the public.

28. These actions of Rash in relation to the sale of the New Gold Securities constituted fraud contrary to section 126.1 of the Act.

Breach of Cease Trade Order

29. On July 23, 2007, the Commission made an order pursuant to subsection 127(1) of the Act that, *inter alia*, Rash permanently cease trading in securities (the "Cease Trade Order").

30. Subsection 1(1) of the Act defines "trade" or "trading" as including "any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, installment or otherwise, [...]" and "Ontario securities law" as, *inter alia*, "in respect of a person or company, a decision of the Commission or a Director to which the person or company is subject".

31. As outlined above, from approximately September 2007 to June 2008, Rash traded in New Gold Securities at a time he was subject to the Cease Trade Order and thereby contravened Ontario securities law by trading in securities at a time when he was prohibited from doing so contrary to section 122(1)(c) of the Act.