



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
DAVID TUAN SENG LIM and MICHAEL MUGFORD**

**STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)**

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. ORDER SOUGHT

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):
 - (a) against David Tuan Seng Lim (**Lim**) that:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Lim cease permanently, except that he may trade in securities and derivatives for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, who has been given a copy of the Order of the British Columbia Securities Commission dated October 23, 2017 (the **BCSC Order**) and a copy of the Order of the Commission in this proceeding, if granted;

- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lim cease permanently, except that he may purchase securities for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, who has been given a copy of the BCSC Order and a copy of the Order of the Commission in this proceeding, if granted;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Lim permanently;
 - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Lim resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
 - v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Lim be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that he may act as a director or officer of an issuer whose securities are solely owned by him or his immediate family members, namely Lim's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law or brother or sister-in-law; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Lim be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
- (b) against Michael Mugford (**Mugford**) that:
- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities by Mugford cease permanently, except that he may trade in securities and derivatives for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, who has been given a copy of the BCSC Order and a copy of the Order of the Commission in this proceeding, if granted;

- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Mugford cease permanently, except that he may purchase for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, who has been given a copy of the BCSC Order and a copy of the Order of the Commission in this proceeding, if granted;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Mugford permanently;
 - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Mugford resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;
 - v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Mugford be permanently prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Mugford be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
- (c) such other order or orders as the Commission considers appropriate.

B. FACTS

Staff make the following allegations of fact:

3. Lim and Mugford (collectively, the **Respondents**) are subject to the BCSC Order, which imposes sanctions, conditions, restrictions or requirements upon them.
4. The BCSC Order followed a decision of a panel of the BCSC (the **BCSC Panel**) dated June 5, 2017 finding that each of the Respondents engaged in

market manipulation contrary to section 57(a) of the British Columbia *Securities Act*, RSBC 1996, c 418 (the **BC Act**).

(i) The BCSC Proceedings

5. Following a contested hearing on the merits, the BCSC Panel made the following findings of fact (the **Findings**).

Background

6. The conduct for which the Respondents were sanctioned occurred between November 4, 2009 and February 28, 2010 (the **Material Time**).
7. Lim is a resident of Vancouver, British Columbia and was registered under the BC Act as an investment advisor during the Material Time.
8. Mugford is a resident of Lions Bay, British Columbia. Mugford was Lim's client through a company owned by Mugford and was a business associate of Lim.

The Escrow Agreement

9. The BCSC Panel found that Lim and Mugford were two of the four principals to an Escrow Agreement (the **Escrow Agreement**) which set out the "road map" for the Respondents' subsequent manipulation of the market for shares of Urban Barns Foods Inc. (**Urban Barns**).
10. The key terms of the Escrow Agreement included the following:
 - The parties were to be EHT Corporate Services SA (**EHT**), a Swiss wealth management firm, and four unnamed entities that were thereafter described in the agreement as the "principals";
 - EHT was to act as the escrow agent under the Escrow Agreement;
 - The principals were to deliver their shares in an unnamed shell company to EHT as escrow agent;

- The shell company shares were to be promoted;
 - The escrow agent (upon being given instructions to do so) would sell the shares of the shell company; and
 - The proceeds would be distributed to the principals after paying certain expenses.
11. The unnamed shell company referred to in the Escrow Agreement was Urban Barns (formerly known as HL Ventures Inc.). Most of the key terms of the Escrow Agreement were ultimately carried out, as described below.

Marketing Urban Barns

12. Lim provided direction and funding for an Urban Barns marketing campaign, which involved the publication of a tout sheet and a direct mailing campaign. The marketing campaign was conducted by CFM, a US direct marketer and tout sheet publisher for small public companies. CFM received approximately US \$1.2 million for its promotion of Urban Barns.
13. The tout sheet materials contained promotional language, including claims that Urban Barns had “just solved the global food crisis,” and that its shares would soon be worth \$7 per share. At the time, Urban Barns had not conducted any operations or generated any revenues, had spent approximately US\$12,000 on equipment and had no other material asset or unique proprietary technology.
14. Lim attempted to conceal his involvement in the marketing campaign by routing funding and instructions through a company known as EV. Mugford referred CFM to Urban Barns for the promotional campaign, reviewed early drafts of the tout sheet, and assisted in the payment of CFM.

Sale of Urban Barns Shares Beneficially Owned by the Principals to the Escrow Agreement

15. Between July 2009 and February 2010, 7.7 million shares of Urban Barns were routed through EHT to a custodial account at Brown Brothers Harriman & Co (**Brown Brothers**). These shares were beneficially owned by one or more of the four principals to the Escrow Agreement. Lim and Mugford were two of the four principals to the Escrow Agreement.
16. During the Material Time, 4,803,221 Urban Barns shares that had previously been deposited in the Brown Brothers custodial account were sold for proceeds of US\$4,756,663.
17. At the outset of the promotional campaign, the only Urban Barns shares available for sale were those held in the Brown Brothers custodial account. This created a constraint on the supply side of the Urban Barns shares, which assisted in creating an artificial price for the securities.

Acquisition of Urban Barns Shares by Lim and his Clients

18. Lim and Mugford took steps to help create the initial demand for Urban Barns shares. On November 4, 2009, the first day that the shares of Urban Barns were traded, Lim purchased 20,000 shares of Urban Barns at US\$0.85 per share through an offshore account. In the next few trading days, Lim purchased approximately 150,000 additional shares on behalf of his clients.
19. Mugford purchased 40,000 Urban Barns shares through Lim during the first days of the Material Time.

(ii) BCSC Findings – Conclusions

20. In its Findings, the BCSC Panel concluded that the Respondents contravened section 57(a) of the BC Act.
21. The BCSC Panel found that the Respondents created an artificial price for Urban Barns shares, and knew or reasonably ought to have known that the

promotional campaign would result in an artificial price for the Urban Barns shares. The Respondents both participated in the creation of the Urban Barns promotional materials, which contained fabrications designed to trick the reader into believing that they were worth far more than they actually were. Moreover, the Respondents created an artificial demand for Urban Barns shares through the purchase of the securities by Lim and his clients, including Mugford, at the outset of the promotional campaign, and created constraints on the supply side that assisted in creating an artificial price for Urban Barns shares.

(iii) The BCSC Order

22. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondents:

Lim

- i. under sections 161(d)(i) and (ii) of the BC Act, that Lim resign any position that he holds as a director or officer of any issuers or registrant, and is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant, except that he may act as a director or officer of an issuer whose securities are solely owned by him or his immediate family members (being: Lim's spouse, parent, child, sibling, mother or father-in-law, son or daughter-in-law or brother or sister-in-law);
- ii. under sections 161(1)(b), (c) and (d)(iii) to (v) of the BC Act:
 - a. that Lim cease trading in, and is permanently prohibited from trading in or purchasing securities, except that he may trade and purchase securities or exchange contracts for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, if he gives the registered dealer a copy of the BCSC Order;

- b. any and all exemptions set out in the BC Act, the regulations or a decision permanently do not apply to Lim;
 - c. that Lim is permanently prohibited from becoming or acting as a registrant or promoter;
 - d. that Lim is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
 - e. that Lim is permanently prohibited from engaging in investor relations; and
- iii. Lim pay to the BCSC an administrative penalty of \$800,000 under section 162 of the BC Act;

Mugford

- i. under sections 161(d)(i) and (ii) of the BC Act, Mugford resign any position that he holds as a director or officer of any issuer or registrant, and is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;
- ii. under sections 161(1)(b), (c) and (d)(iii) to (v) of the BC Act:
 - a. that Mugford cease trading in, and is permanently prohibited from trading in or purchasing securities, except that he may trade and purchase securities or exchange contracts for his own account (including one RRSP account, one TFSA account and one RESP account) through a registered dealer, if he gives the registered dealer a copy of the BCSC Order;
 - b. any and all exemptions set out in the BC Act, the regulations or a decision permanently do not apply to Mugford;

- c. that Mugford is permanently prohibited from becoming or acting as a registrant or promoter;
 - d. that Mugford is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
 - e. that Mugford is permanently prohibited from engaging in investor relations; and
- iii. Mugford pay to the BCSC an administrative penalty of \$375,000 under section 162 of the BC Act.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

- 23. The Respondents are subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements upon them.
- 24. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.
- 25. Staff allege that it is in the public interest to make an order against the Respondents.

26. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

DATED at Toronto this 27th day of March, 2018.

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