



Ontario  
Securities  
Commission

Commission des  
valeurs mobilières  
de l'Ontario

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**IN THE MATTER OF  
DEREK F.C. ELLIOTT**

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

1. Staff of the Enforcement Branch (**Enforcement 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. OVERVIEW**
2. On August 27, 2014, Derek F.C. Elliott (**Elliott**) pleaded guilty to conspiracy to commit mail fraud in violation of Title 18 of the United States Code, Section 1349 before the Honourable Maxine M. Chesney of the United States District Court for the Northern District of California.
3. Elliott was convicted of an offence that arose from transactions, business or a course of conduct related to securities. The conduct for which Elliott was convicted took place between August 2006 and July 2008 (the **Material Time**).
4. On November 20, 2019, Elliott was sentenced to be imprisoned for a total term of 24 months. Elliott was also subsequently ordered to make restitution to harmed victims in the amount of US\$38,724,570.17 on February 24, 2020.
5. Elliott filed a motion on May 8, 2020 to allow him to serve his prison term in home confinement in light of the COVID-19 pandemic. This motion was denied by order of the court on May 11, 2020. This court order is subject to an ongoing appeal by Elliott.
6. Elliott is a resident of Ontario, Canada and Enforcement Staff seek an inter-jurisdictional enforcement order reciprocating Elliott's conviction, pursuant to paragraph 1 of subsection 127(10) of the *Securities Act*, RSO, c S.5 (the **Act**).

**B. FACTS**

Enforcement Staff make the following allegations of fact:

7. During the Material Time, Elliott was the President and Chief Executive Officer of a number of entities related to the hospitality business in the Dominican Republic (**DR**), including a resort in the DR called the Sun Village Juan Dolio resort (**Juan Dolio**).
8. Elliott had a 51.5% ownership interest in the Juan Dolio and his co-conspirator, James Catledge (**Catledge**), had a 37.5% ownership in the Juan Dolio.
9. Elliott worked with Catledge and his company, Impact, Inc. (**Impact**), to sell two types of investment products at the Juan Dolio during the Material Time:
  - (a) the Residence, where investors were told they invested in the Juan Dolio Corporation for a five-year period with a guaranteed interest rate of 8-12%, called Non-Use Fees (**NUF**); and
  - (b) the Passport, where investors were told that they invested, through a trust, in the Juan Dolio Corporation, received the option of using a room at the resort or collecting a share of room revenues, and could resell their investment at market rate.
10. During the Material Time, Elliott and Catledge received approximately \$91.3 million from investors for these two types of Juan Dolio investment products.
11. Instead of investing the investor funds into Juan Dolio and completing renovations to the property as Elliott and Catledge represented to investors, a substantial amount of money was diverted to pay sales commissions to Impact agents, to make NUF payments to other investors, and to fund other real estate development projects not connected to Juan Dolio.
12. For example, investors were either never told about commissions or were told that they would be 10-12% of the purchase price when, in fact, the full commissions were as high as 44%.
13. Elliott and Catledge also told investors in promotional materials that the Juan Dolio renovations were proceeding and that the resort would open in a reasonable time frame when, in fact, the renovations were never completed and the investor money was spent on, among other things, a different project.

14. Impact sales agents, acting under the direction of Elliott and Catledge, told investors that they could expect a guaranteed return of 8-12% for five years or that they would make a projected profit of up to 480% on their investments after five years, despite Elliott and Catledge knowing investors could not reasonably expect this return or profit.
15. Elliott, in agreeing with Catledge to make misleading material statements and omit material information from investors as detailed above, acted with the requisite intent to defraud.
16. Elliott and Catledge caused items to be deposited, sent, and delivered by the United States Postal Service and interstate carriers in furtherance of the above activities, including NUF payments to an investor in California as well as a letter regarding a Juan Dolio Residence investment and newsletter to an investor in California.

**C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION**

17. Pursuant to paragraph 1 of subsection 127(10) of the Act, Elliott's conviction for an offence arising from transactions, business or course of conduct related to securities or derivatives may form the basis for an order in the public interest made under subsection 127(1) of the Act.
18. Enforcement Staff allege that it is in the public interest to make an order against Elliott.

**D. ORDER SOUGHT**

19. Enforcement Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 1 of subsection 127(10) and subsection 127(1) of the Act against Elliott that:
  - (a) pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Elliott cease permanently;
  - (b) pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Elliott be prohibited permanently;
  - (c) pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Elliott permanently;
  - (d) pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Elliott resign any positions that he holds as a director or officer of any issuer or registrant;

- (e) pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Elliott be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;
  - (f) pursuant to paragraph 8.5 of subsection 127(1) of the Act, Elliott be prohibited permanently from becoming or acting as a registrant or promoter; and
  - (g) such other order or orders as the Commission considers appropriate.
20. Enforcement Staff reserve the right to amend these allegations and to make such further and other allegations as Enforcement Staff may advise and the Commission may permit.

**DATED** this 25th day of August, 2020.

**ONTARIO SECURITIES COMMISSION**

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