



Ontario
Securities
Commission

Commission des
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de l'Ontario

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Citation: Daley (Re), 2020 ONSEC 26

Date: 2020-10-19

File No. 2019-28

**IN THE MATTER OF
SEAN DALEY; and SEAN DALEY carrying on business as the ASCENSION
FOUNDATION, OTO.Money, SilentVault, and CryptoWealth; WEALTH DISTRIBUTED
CORP.; CYBERVISION MMX INC.; KEVIN WILKERSON;
and AUG ENTERPRISES INC.**

**REASONS AND DECISION
(Subsections 127(8) and 127(1) the *Securities Act*, RSO 1990, c S.5)**

Hearing: September 14, 2020

Decision: October 19, 2020

Panel: Lawrence P. Haber Commissioner and Chair of the Panel

Appearances: Sean Daley For himself

Hanchu Chen For Staff of the Ontario Securities Commission

No one appearing for Sean Daley carrying on business as the Ascension Foundation, OTO.Money, SilentVault, and CryptoWealth; Wealth Distributed Corp.; Cybervision MMX Inc.; Kevin Wilkerson; or Aug Enterprises Inc.

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REASONS AND DECISION

I. OVERVIEW

- [1] This was a hearing before the Ontario Securities Commission (the **Commission**) pursuant to section 127(8) of the *Securities Act*¹ (the **Act**) to consider whether it is in the public interest to extend a temporary cease trade order against the respondents Sean Daley, Sean Daley carrying on business as the Ascension Foundation, OTO.Money, SilentVault and CryptoWealth, Wealth Distributed Corp., Cybervision MMX Inc., Kevin Wilkerson, and Aug Enterprises Inc. (collectively, the **Respondents**).
- [2] This is the fourth extension motion brought by Staff of the Commission (**Staff**) in this proceeding.
- [3] Daley contests the extension. Daley appeared on his own behalf and made submissions. No other respondents attended the hearing or made submissions.
- [4] At the conclusion of the hearing on this matter on September 14, 2020, I ordered that the temporary order be extended until the Commission releases its decision and reasons or until further order of the Commission.
- [5] After hearing the submissions from Staff and Daley, and considering the evidence submitted in this matter, I am ordering that the temporary cease trade order against the Respondents is extended until the end of the merits hearing in a separate but related proceeding involving Daley and Wilkerson. These are the reasons for my decision.

II. BACKGROUND

- [6] Staff began an investigation in July 2018 (the **Investigation**) against Daley, Ascension Foundation, OTO.Money, SilentVault and CryptoWealth. Staff became aware of Wealth Distributed Corp., Cybervision MMX Inc., Kevin Wilkerson, and Aug Enterprises Inc. as the Investigation continued.
- [7] A temporary cease trade order was issued on August 6, 2019, pursuant to s.127(5) of the Act (the **Temporary Order**).² In the original request for a temporary order, Staff stated that it appears that the Respondents may have:
 - a. traded in securities without registration and without an exemption to the registration requirement contrary to s.25 of the Act; and
 - b. traded securities without a prospectus having been received by a Director contrary to s.53 of the Act.
- [8] The Temporary Order provides that trading in all securities by the Respondents cease; all trading in 'overcome the odds' vouchers, also known as OTO Vouchers, and Lyra shall cease; and that the exemptions contained in Ontario securities law do not apply to the Respondents for the period of time as specified in the order, unless it is extended by order of the Commission.
- [9] On August 6, 2019, Staff applied to the Commission to extend the Temporary Order pursuant to s.127(8). The Temporary Order was extended August 16, 2019, September 24, 2019 and November 6, 2019.

¹ RSO 1990, c S.5

² (2019), 42 OSCB 6630

- [10] The extension request at issue now was initially filed by Staff on January 31, 2020, and the extension hearing was adjourned a number of times, in part because of the COVID-19 pandemic. The Temporary Order was extended on February 12, 2020, March 20, 2020, and July 10, 2020 on the consent of Staff and Daley. None of the other respondents attended or made any submissions for each of these extension requests.
- [11] Staff have not commenced an enforcement proceeding against the Respondents relating to the Investigation giving rise to the Temporary Order, and the Investigation is ongoing. However, on November 18, 2019, Staff filed a Statement of Allegations in a separate, but related proceeding against Daley and Wilkerson only, alleging that Daley and Wilkerson obstructed Staff's Investigation (the **Related Matter**).

III. ISSUES

- [12] This temporary order extension request presents the following issues:
- a. Should the Temporary Order be extended?
 - b. What is the appropriate length of time that the Temporary Order should be extended for?

IV. LAW AND ANALYSIS

- [13] Subsection 127(8) of the Act provides that the Commission may extend a temporary order "for such period as it considers necessary if satisfactory information is not provided to the Commission within the fifteen-day period."
- [14] A temporary order is issued before any determination is made of whether a party has breached Ontario securities law or acted contrary to the public interest. The authority to issue and extend a temporary cease trade order is important in enabling the Commission to achieve its mandate of protecting investors and the capital markets.³
- [15] Staff must satisfy the Commission that there is sufficient evidence of conduct that may be harmful to the public interest.⁴ The evidence presented "may fall short of what would be required in a hearing on the merits" but must be "more than mere suspicion or speculation."⁵
- [16] Staff provided two affidavits of Staff forensic investigator Kevin Dusseldorp dated January 31, 2020 and September 4, 2020 for this extension request, which provides updated evidence from the initial affidavit provided by Staff in support of its first extension request. Based on the evidence provided, I find that Staff has shown sufficient evidence of conduct that may be harmful to the public interest.
- [17] Once Staff has met this initial burden, the onus shifts to a respondent to provide satisfactory information that the Temporary Order should not be extended, absent which the Commission is justified in extending the Temporary Order.⁶ Daley submitted no evidence in this hearing, but cross-examined Staff's affiant, Kevin Dusseldorp, and provided oral submissions.

³ *Watson et al (Re)*, 2008 ONSEC 2 (**Watson**) at para 31

⁴ *Shallow Oil & Gas Inc. et al (Re)*, 2008 ONSEC 5 (**Shallow Oil**) at para 33

⁵ *Watson* at para 41

⁶ *Shallow Oil* at para 36

- [18] I was not persuaded by Daley's cross-examination or submissions that Staff's evidence was not sufficient to warrant the extension of the Temporary Order.
- [19] I find that there is sufficient evidence of conduct that may be harmful to the public interest to permit the Commission to extend the Temporary Order, but now must determine whether it is appropriate to extend the Temporary Order as requested by Staff in light of all of the relevant circumstances as they currently exist.

A. Should the Temporary Order be extended?

- [20] A temporary order is "an extraordinary remedy" and this remedy exists because it is "essential that the Commission be able to act quickly, at an early stage of an investigation, to protect investors from ongoing harm."⁷
- [21] The justification for this extraordinary remedy may decline over time as an investigation progresses.⁸ When considering whether to extend a temporary order, the Commission must have regard to the relevant circumstances as they exist at the time of the request and must determine what the public interest comprises in the context of the temporary order request.
- [22] This extension request is unique in that a Statement of Allegations has been issued in a separate, but related, proceeding which alleges Daley and Wilkerson, only, obstructed Staff's Investigation. This presents two questions: (1) should the Temporary Order be extended for all parties when not all of the parties subject to the Temporary Order have been named in a Statement of Allegations in the Related Matter; and (2) should the Temporary Order be extended for any of the Respondents when the conduct alleged as the basis for the Temporary Order differs from that in the Statement of Allegations?
- [23] When determining whether a temporary order should be extended, the panel can balance a number of factors, as described in *Kotton*. This includes, amongst others, the complexity of the investigation, the investor protection purpose of the temporary order, the transparency of Commission proceedings, and the longevity of temporary cease trade orders.
- [24] *Kotton* was a temporary order extension request that was contested by the respondents in that matter. The panel in *Kotton* expressed concerns that a long time had elapsed since the temporary order was first issued and Staff had not yet initiated an enforcement proceeding by filing a Statement of Allegations. The balancing factors, as discussed above, were considered in light of these concerns. The temporary order was extended for a period of time, but the panel cautioned that if circumstances were not changed in the future it would be more difficult for Staff to justify a further extension of the temporary order.
- [25] Staff distinguishes the case here from *Kotton* in that the investor protection aspect is still present, whereas in *Kotton*, the respondents were under receivership and insolvent, and basically had no ability to carry out any capital raising or any function in the capital markets.
- [26] Staff submits that the asymmetry presented by the Statement of Allegations in the Related Matter does not present an obstacle to extending the current

⁷ Shallow Oil at para 33

⁸ *Kotton et al (Re)*, 2016 ONSEC 36 at para 14

Temporary Order. Further, Staff submits that the asymmetry between both the allegations made in the Related Matter and the parties is caused by Daley and Wilkerson, in that Staff alleges they encouraged others not to comply with Staff's summonses and have not themselves cooperated with Staff's Investigation.

- [27] Staff submits that there are no concerns with transparency here because while the alleged conduct isn't the same, the substance of the allegations have been made fully transparent.
- [28] Daley did not provide any submissions with respect to the balancing factors that the Commission can take into account when deciding whether to extend the Temporary Order.
- [29] I have considered the factors as outlined in *Kotton*. This is a complex investigation, which Staff states has been affected by the conduct alleged in the Statement of Allegations filed in the Related Matter. Further, unlike in *Kotton*, the investor protection concerns are still present and have not dissipated. The investor protection concerns are not mitigated because of the asymmetry between the named respondents in the Temporary Order and the Statement of Allegations in the Related Matter.
- [30] For the purpose of extending the Temporary Order, I am satisfied that Staff have shown a sufficient connection between Daley and Wilkerson, and the other named Respondents in the Temporary Order to warrant an extension against all of the named Respondents.
- [31] I find that it is appropriate to extend the Temporary Order at this time.

B. What is the appropriate length of time to extend the Temporary Order?

- [32] I must now determine the appropriate length of time to extend the Temporary Order.
- [33] Staff submits that the Temporary Order should be extended until the end of the merits hearing in the Related Matter against Daley and Wilkerson. They submit that, pending the merits hearing, the Respondents should not stand to benefit, and Ontario investors should not stand to be jeopardized by the alleged actions of Daley and Wilkerson.
- [34] Daley did not make any submissions with respect to the appropriate length for extending the Temporary Order if the Temporary Order was to be extended.
- [35] The investor protection concerns are still present. The Investigation is ongoing but has been frustrated by the alleged conduct of Daley and Wilkerson. In these circumstances, I find that it is appropriate to extend the Temporary Order until the end of the merits hearing in the Related Matter, for which a Statement of Allegations has been issued.

V. CONCLUSION

- [36] At this time, I find that it is appropriate to extend the Temporary Order until the end of the merits hearing in the Related Matter against Daley and Wilkerson.
- [37] A temporary order should not be tantamount to a permanent order. Any changes in circumstance, particularly around transparency of the proceeding, investor protection, or complexity of the investigation, may affect the considerations of a

future panel that is asked to further extend the Temporary Order. Similarly, cooperation in the Investigation by the Respondents, new information learned in the course of the Investigation, the issuance of a Statement of Allegations in this proceeding, or a change in circumstance involving the Related Matter may affect whether the Temporary Order may be extended in the future, subject to the panel's discretion.

Dated at Toronto this 19th day of October, 2020.

"Lawrence P. Haber"
Lawrence P. Haber