



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Cartu (Re) 2021 ONSEC 14
Date: 2021-05-26
File No. 2020-14

**IN THE MATTER OF
JONATHAN CARTU, DAVID CARTU AND JOSHUA CARTU**

**REASONS FOR APPROVAL OF A SETTLEMENT
(Section(s) 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing: May 26, 2021

Decision: May 26, 2021

Panel: Wendy Berman
Garnet W. Fenn
Craig Hayman
Vice-Chair and Chair of the Panel
Commissioner
Commissioner

Appearances: Rikin Morzaria
Linda Fuerst
For Staff of the Commission
For David Cartu

REASONS FOR APPROVAL OF A SETTLEMENT

I. OVERVIEW

- [1] Staff of the Ontario Securities Commission (**Staff** of the **Commission**), and David Cartu have jointly submitted that it would be in the public interest for us to approve a settlement agreement entered into between Mr. Cartu and Staff dated May 18, 2021 (the **Settlement Agreement**) regarding allegations described in a Statement of Allegations dated May 4, 2020.
- [2] This matter concerns allegations that Mr. Cartu permitted two corporate entities, of which he was the sole beneficial owner, Greymountain Limited (**Greymountain**) and UKTVM Ltd. (**UKTVM**), to engage in activities that facilitated the sale of securities to Ontario investors without registration (or an exemption from such requirement) in contravention of Ontario securities laws.
- [3] After considering the Settlement Agreement and the submissions of the parties, we concluded that it would be in the public interest to approve the Settlement Agreement. These are our reasons.

II. SUMMARY OF THE FACTS

- [4] The underlying facts and the specific breaches of Ontario securities laws are fully set out in the Settlement Agreement, which has been filed with the Commission and is publicly available. Accordingly, we need not repeat them in detail here.
- [5] In summary, Mr. Cartu knowingly permitted Greymountain and UKTVM to engage in activities that facilitated trading in securities by merchants engaged in the sale of binary options to Ontario residents and admitted that he engaged in conduct that contravened Ontario securities laws and was contrary to the public interest as follows:
 - a. From July 2013 to April 2017, Greymountain and UKTVM provided payment processing and related services to merchants which indirectly facilitated payment for the sale of binary options to Ontario investors of approximately \$1.33 million;
 - b. Mr. Cartu, Greymountain and UKTVM have never been registered under Ontario securities laws in any capacity; and
 - c. The merchants' activities resulted in investor losses.
- [6] In their written submissions, Staff advised that Greymountain and UKTVM received commissions for the services provided to merchants, which totalled approximately \$90,600.
- [7] Mr. Cartu admitted that the services provided by Greymountain and UKTVM to the merchants were acts in furtherance of trading in securities, contrary to section 25(1) of the *Securities Act*¹ (the **Act**).
- [8] As part of the Settlement Agreement, the parties agreed to various sanctions as follows:
 - a. Mr. Cartu will pay an administrative penalty in the amount of \$300,000;

¹ RSO 1990, c S.5

- b. Mr. Cartu will pay the costs of the Commission's investigation in the amount of \$15,000; and
 - c. Mr. Cartu will be prohibited from trading in any securities and from acting as a director or officer of any issuer for a period of seven years.
- [9] Mr. Cartu agreed to pay the administrative penalty and costs, in the total amount of \$315,000, in advance of the hearing. Staff confirmed that he had done so.

III. LAW AND ANALYSIS

- [10] The Commission's role at a settlement hearing is to determine whether the terms of the settlement fall within a range of reasonable outcomes and whether the approval of the settlement is in the public interest.²
- [11] The Settlement Agreement is the result of negotiations between Staff and the Respondent, both ably represented by counsel. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.³
- [12] Settlements serve the public interest in resolving regulatory proceedings promptly, efficiently and with certainty. Settlements avoid the significant resources that would be incurred in a contested proceeding and promote timely statements regarding regulatory requirements and standards to all capital market participants.
- [13] We have reviewed the Settlement Agreement in detail and considered the submissions of counsel for the parties. We also conducted a confidential settlement conference with counsel for the parties during which we reviewed the proposed settlement agreement, asked questions of counsel and heard their submissions.
- [14] In assessing whether it is in the public interest to approve the settlement, we considered various aggravating and mitigating factors.
- [15] The breaches of Ontario securities law in this matter are serious and occurred over an approximate four-year period. Registration is a cornerstone of securities law designed to ensure that those who sell or promote securities are proficient and act with integrity.⁴ Facilitation of unregistered trading of securities defeats some of these necessary legal protections and undermines investor protection and the integrity of the capital markets.
- [16] Mr. Cartu knowingly permitted acts that facilitated the sale of binary options by unregistered merchants to Ontario investors, which caused harm to Ontario investors and undermined confidence in the capital markets.
- [17] We considered the following mitigating factors to be particularly relevant:
- a. Mr. Cartu was not the principal actor in the binary options trading program and did not induce the investors to enter into the trades;

² *Research in Motion Limited (Re)*, 2009 ONSEC 19, (2009) 32 OSCB 4434 (**Research in Motion**) at paras 44-46

³ *Katanga Mining Limited (Re)*, 2018 ONSEC 59, (2018) 41 OSCB 9987 at para 18; *Research in Motion* at para 45

⁴ *MRS Sciences Ltd.*, 2014 ONSEC 14 at para 88

- b. There was no evidence that Mr. Cartu received amounts from, had contact with, initiated or solicited any Ontario investor to purchase binary options, or that he engaged in acts of dishonesty with respect to Ontario investors;
- c. Greymountain ceased facilitating trading by merchants in binary options prior to the regulatory prohibition contained in Multilateral Instrument 91-102 *Prohibition of Binary Options* being declared in force;
- d. After Greymountain went into liquidation in July 2017, Mr. Cartu and employees of Greymountain assisted the liquidator in recovering funds from merchants for investors; and
- e. Mr. Cartu’s agreement to settle at this early stage of the proceedings will avoid the use of the significant Staff and Commission resources for a full merits hearing.

[18] As outlined above, we considered the totality of the circumstances, including the seriousness of the misconduct, the nature and duration of the misconduct, and the mitigating factors in our assessment of the proposed settlement terms.

IV. CONCLUSION

[19] In our view, the terms of the Settlement Agreement fall within a range of reasonable dispositions in the circumstances and will have a significant deterrent effect on Mr. Cartu, as well as act as a general deterrent to other like-minded persons or entities from engaging in similar misconduct.

[20] In our view, the administrative penalty and market access bans appropriately reflect the principles applicable to sanctions, including the importance of fostering investor protection and confidence in the market, recognition of the seriousness of the misconduct and the need for specific and general deterrence of such misconduct.

[21] For these reasons, we conclude that the Settlement Agreement is in the public interest. We approve the Settlement Agreement on the terms proposed by the parties and will issue an order substantially in the form requested.

Dated at Toronto this 26th day of May, 2021.

“Wendy Berman”

Wendy Berman

“Garnet W. Fenn”

Garnet W. Fenn

“Craig Hayman”

Craig Hayman