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Citation: *Uitvlugt (Re)*, 2022 ONCMT 19  
Date: 2022 07 19  
File No. 2022-12

**IN THE MATTER OF  
CHRISTOPHER UITVLUGT**

**REASONS AND DECISION**

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

**Adjudicator:** Timothy Moseley

**Hearing:** In writing; final written submissions received June 30, 2022

**Appearances:** Vincent Amartey                      For Staff of the Ontario Securities  
Commission

No submissions made by or on behalf of Christopher Uitvlugt

## REASONS AND DECISION

### 1. OVERVIEW

- [1] On November 11, 2018, the respondent Christopher Uitvlugt pled guilty before Justice Tranmer in the Ontario Superior Court of Justice to a charge of fraud. Uitvlugt admitted to having been the principal of a business that solicited funds from individuals, with promises of significant investment returns. Uitvlugt admitted that in fact, he carried out a Ponzi scheme through his business, whereby he used funds from new investors to pay returns to earlier investors.
- [2] Staff of the Ontario Securities Commission commenced this enforcement proceeding, which is known as an inter-jurisdictional enforcement proceeding because Staff relies principally on Uitvlugt's conviction in court. Staff asks for an order banning Uitvlugt from the capital markets permanently.
- [3] Uitvlugt was afforded an opportunity to participate in this proceeding, but did not. As I explain in more detail below, I conclude that it is in the public interest to make the order that Staff requests.

### 2. SERVICE AND PARTICIPATION

- [4] In this proceeding, Staff elected to use the expedited procedure for inter-jurisdictional enforcement proceedings as set out in Rule 11(3) of the Tribunal's *Rules of Procedure and Forms* (the **Rules**). Among other things, that procedure allows a respondent who is served with a Notice of Hearing to request an oral hearing, or to file a hearing brief and written submissions.
- [5] As is evident from the affidavit of Michelle Spain sworn on May 3, 2022,<sup>1</sup> Staff served Uitvlugt with the Notice of Hearing, Statement of Allegations and other written materials, on April 29, 2022. I am satisfied that Staff has complied with the service obligations set out in Rule 11(2) of the Rules.
- [6] Uitvlugt did not respond, either to request an oral hearing or by filing materials, or in any other way. Pursuant to the *Statutory Powers Procedure Act*<sup>2</sup> and the

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<sup>1</sup> Marked as exhibit 1 in this hearing

<sup>2</sup> RSO 1990, c S.22, s 7(2)

Rules,<sup>3</sup> the Tribunal may proceed in the absence of a party where that party has been given adequate notice of a proceeding. I am satisfied that Uitvlugt received adequate notice of this proceeding and that I may proceed in his absence.

### **3. ANALYSIS**

#### **3.1 Introduction**

[7] Subsection 127(1) of the *Securities Act*<sup>4</sup> (the **Act**) empowers the Tribunal to make various orders against an individual if in the Tribunal's opinion it is in the public interest to do so. Subsection 127(10) of the Act explicitly authorizes an order under s. 127(1) where a person has been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities or derivatives.

[8] Following his guilty plea, Uitvlugt was convicted of one charge of fraud over \$5,000, contrary to s. 380(1)(a) of the *Criminal Code*.<sup>5</sup> He was given a custodial sentence of five years less one day.

#### **3.2 Did Uitvlugt engage in a transaction, business or course of conduct related to securities or derivatives?**

[9] I must determine whether that offence arose from a transaction, business or course of conduct related to securities or derivatives. I conclude that it did, based on the facts admitted to the Court in support of Uitvlugt's guilty plea.<sup>6</sup>

[10] Uitvlugt was the CEO of Next Level Investments. He and his business offered a range of investment services, including analysis, planning and risk management. They solicited funds from individuals based in part on promises of up to a 550% return on three-month term investments. Through his business, Uitvlugt was to earn these significant profits by trading in the foreign exchange market. He promised that investors would receive one half of the profit earned.

[11] Next Level Investments received more than \$4 million of deposits from 874 investors. Some investors were repaid or earned what appeared to be profit, all

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<sup>3</sup> Rules, r 21(3)

<sup>4</sup> RSO, 1990, c S.5

<sup>5</sup> RSC, 1985, c C-46

<sup>6</sup> Contained in Staff's Hearing Brief, marked as exhibit 2 in this hearing

from funds received from later investors. Most investors lost their entire investment.

[12] Staff submits, and I agree, that the investments were securities (as that term is defined in s. 1(1) of the Act) because they were “investment contracts”, a term that is not itself defined in the Act but is used in clause (n) of the definition of “security” s. 1(1) of the Act, thereby making an investment contract a security.

[13] While “investment contract” is not defined in the Act itself, it is well established that an investment contract exists where:

- a. there is an investment of money;
- b. with an intention or expectation of profit;
- c. in a common enterprise in which the fortunes of the investor are interwoven with and dependent on the efforts and success of third parties; and
- d. where the efforts made by those other than the investor are significant and managerial, thereby affecting the failure or success of the enterprise.<sup>7</sup>

[14] The first two of those four elements are undeniably present. Investors invested money, hoping and expecting to receive a profit.

[15] The third element is established by the fact that the investors were dependent on Uitvlugt’s success in foreign exchange trading. The investors’ return was to be based on the profit earned while trading on their behalf, using their money.

[16] The fourth element is established by the relative degree of involvement by the investor on the one hand and by Uitvlugt and his business on the other. The investors did nothing other than provide funds. The efforts were all Uitvlugt’s, were managerial, and entirely dictated the failure or success of the common enterprise between the investors and Uitvlugt through his business.

[17] For these reasons, I conclude that the agreements between Uitvlugt’s business and the investors were investment contracts, and therefore securities. Through

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<sup>7</sup> *Furtak (Re)*, 2016 ONSEC 35 at para 66

his business, Uitvlugt entered into many such contracts with investors and thereby engaged in a course of conduct related to securities.

### **3.3 Appropriate sanctions**

[18] I turn now to consider whether it is in the public interest to grant the order requested by Staff, barring Uitvlugt from the capital markets permanently.

[19] I conclude that the requested order is in the public interest, for the following reasons:

- a. Uitvlugt's conduct was fraudulent, making it among the most egregious kinds of misconduct related to the capital markets;
- b. Uitvlugt was sentenced to five years in jail, reflecting the Court's view that his misconduct was serious;
- c. at least 678 investors lost all their investment, with an aggregate loss of approximately \$3.5 million;
- d. by his own admission in court, Uitvlugt was motivated by overwhelming greed; and
- e. Uitvlugt's misconduct had devastating effects on many victims.

[20] Uitvlugt did not appear in this proceeding to offer mitigating factors or to submit that Staff's request ought not to be granted.

[21] Uitvlugt has demonstrated by his conduct that he is not to be trusted. A permanent ban from the capital markets is necessary to protect investors by restraining future conduct by Uitvlugt that would be detrimental to the integrity of the capital markets. A permanent ban is also necessary to act as a general deterrent to other like-minded individuals who might be inclined to engage in similar conduct.

## **4. CONCLUSION**

[22] I agree with Staff's submission that Uitvlugt should be permanently banned from the capital markets as a result of his misconduct. Accordingly, I shall issue an order in reliance on paragraph 1 of s. 127(10) of the Act, that provides that:

- a. pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Uitvlugt shall cease permanently;

- b. pursuant to paragraph 2.1 of s. 127(1) of the Act, acquisition of any securities by Uitvlugt shall be prohibited permanently;
- c. pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Uitvlugt permanently;
- d. pursuant to paragraphs 7, 8.1 and 8.3 of s. 127 (1) of the Act, Uitvlugt shall immediately 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 s. 127(1) of the Act, Uitvlugt shall be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
- f. pursuant to paragraph 8.5 of s. 127(1) of the Act, Uitvlugt shall be prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 19<sup>th</sup> day of July, 2022

*"Timothy Moseley"*

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Timothy Moseley