



Capital
Markets
Tribunal

Tribunal
des marchés
financiers

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue Queen ouest
Toronto ON M5H 3S8

Citation: *Aitkens (Re)*, 2022 ONCMT 22
Date: 2022-08-24
File No. 2022-1

**IN THE MATTER OF
RONALD JAMES AITKENS and ROY JUERGEN BEYER**

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

Adjudicators: Cathy Singer (chair of the panel)

Hearing: In Writing; final written submissions received on August 8, 2022

Submissions: Sarah McLeod For Staff of the Ontario Securities
Commission

Roy Juergen Beyer On their own behalf

No submissions made by or on behalf of Ronald James Aitkens

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	SERVICE AND PARTICIPATION	2
3.	FACTUAL BACKGROUND	3
3.1	Conduct at Issue and ASC Findings.....	3
3.2	ASC Sanctions	5
4.	LAW AND ANALYSIS	8
4.1	Do any of the circumstances under subsection 127(10) of the <i>Act</i> apply?	9
4.2	Is it in the public interest to make an order under subsection 127(1) of the <i>Act</i> ?.....	9
4.3	Differences between the Alberta and Ontario Statutes	12
5.	CONCLUSION.....	12

REASONS AND DECISION

1. INTRODUCTION

- [1] Staff of the Ontario Securities Commission requests that an order be issued against the Respondents Ronald James Aitkens and Roy Juergen Beyer pursuant to the inter-jurisdictional enforcement provisions in subsection 127(10) of the Ontario *Securities Act*¹ (the **Act**).
- [2] The Respondents raised approximately \$33.6 million through offering memoranda for the Foundation Capital Group Trust (the **Trust**), between approximately January 2010 and November 2011, in order to fund a project relating to oil and gas exploration and development. Additionally, approximately \$31.6 million was raised for a land development project in Calgary, Alberta (the **SV Project**) between October 1, 2007 and August 24, 2012, and approximately \$16.1 million for a land development project on Vancouver Island, British Columbia (the **HV Project**) between February 1, 2009 and October 31, 2012.
- [3] On February 15, 2018, a panel of the Alberta Securities Commission (**ASC Panel**) found that Aitkens, Beyer, the Trust, 0865701 B.C. Ltd. and Harvest Capital Management Inc. each breached s. 92(4.1) of the Alberta *Securities Act*² (the **ASA**) by making materially misleading omissions in two of four Trust offering memoranda.
- [4] The ASC Panel further found that Aitkens, Stoney View Crossing Inc. and Harbour View Landing Inc. breached s. 93(b) of the ASA by perpetrating a fraud when they allowed these companies to misuse money raised from investors by diverting it to other entities with common ownership or management.
- [5] On October 2, 2019, the ASC imposed sanctions against Aitkens, Beyers and the corporate entities.
- [6] Staff is only proceeding against Aitkens and Beyer as the corporate entities, including the trustee and the administrator of the Trust, have all been dissolved and the applicable limitation period has expired.

¹ RSO 1990, c S.5

² RSA 2000, c S-4

- [7] The issues for me to consider are (1) whether one or more of the circumstances under subsection 127(10) of the *Act* apply to the Respondents, and (2) if so, whether the Capital Markets Tribunal should exercise its public interest jurisdiction to make an order pursuant to subsection 127(1) of the *Act*.
- [8] I find that the threshold under subsection 127(10) is met as the Respondents are subject to an order made by the ASC, and it is in the public interest to issue the order requested by Staff. My reasons are as set out below.

2. SERVICE AND PARTICIPATION

- [9] Staff elected to proceed with a hearing in writing using the expedited procedure for inter-jurisdictional enforcement proceedings set out in Rule 11(3) of the *Rules of Procedure and Forms (Rules)*.
- [10] Staff filed an affidavit of service³ setting out that it served the Respondents with the Notice of Hearing, Statement of Allegations, Staff's hearing brief,⁴ and Staff's written submissions and book of authorities by email and by sending copies via courier to the last known addresses of Aitkens and Beyer.
- [11] No request for an oral hearing was made and no materials were filed by Aitkens and Beyers by the deadline prescribed by Rule 11(3).
- [12] Rule 6(2)(a) of the *Rules* provides that service can be effected by electronic delivery. Rule 6(2)(d) of the *Rules* provides that service can also be effected by courier to a respondent's last known address. I find that Staff complied with the service requirements by using the email addresses which the ASC had previously used to communicate with Aitkens and Beyer and the last known mailing addresses provided by the ASC.
- [13] On May 30, 2022, Beyer made a request for an extension of time to file written submissions, as he stated that he was away at the time the materials were delivered to him and he was unable to review them until after the deadline to respond had expired. Staff did not oppose Beyer's request and I ordered on June

³ Exhibit 1, Affidavit of Service of Michelle Spain, sworn on February 11, 2022

⁴ Exhibit 2, Hearing Brief of Staff of the Ontario Securities Commission, dated January 27, 2022
[**Staff's Hearing Brief**]

7, 2022 that an extension of time be granted for Beyer to file written submissions.

[14] After receiving Staff's reply submissions, Beyer filed further submissions on July 25, 2022. My order did not contain a provision for Beyer to make further submissions in response to Staff's reply. Staff did not oppose the filing of Beyer's further submissions and did not have any further submissions to make, apart from addressing Beyer's limitation period argument, which was raised for the first time. I have considered Beyer's additional submissions dated July 25, 2022 and Staff's response.

[15] Aitkens did not make any request for an extension. Pursuant to s. 7(2) of the *Statutory Powers Procedure Act*⁵ and Rule 21(3) of the *Rules*, the Tribunal may proceed in the absence of a party who has been provided adequate notice of a proceeding. I am satisfied that Aitkens was provided with adequate notice of this proceeding and that I may proceed in his absence.

3. FACTUAL BACKGROUND

3.1 Conduct at Issue and ASC Findings

[16] The conduct for which the Respondents were sanctioned occurred between December 2009 and November 2011.

[17] The Trust was established to raise funds to engage in oil and gas exploration and development (the **Trust Project**), with 0865701 B.C. Ltd acting as trustee. The Trust issued four offering memorandums, two of which are at issue in this proceeding (**Trust OM1** and **Trust OM2**).

[18] The Trust Project was primarily focused on raising money from investors to acquire an interest in Neo Exploration Inc. (**Neo**), which held oil and gas interests.

[19] The SV Project contemplated that Stoney View Crossing Inc. would use the money raised from investors to purchase certain land in Calgary targeted for development. The two main SV Project companies were Stoney View Capital Inc. and Stoney View Crossing Inc., with Stoney View Capital Inc. raising the

⁵ RSO 1990, c S.22, s 7(2)

majority of the money and lending it to Stoney View Crossing Inc. The HV Project contemplated that Harbour View Landing Inc. would use the money raised from investors to purchase certain land in British Columbia targeted for development. The two main HV Project companies were Harbour View Capital Inc. and Harbour View Landing Inc., with Harbour View Capital Inc. raising the majority of the money and lending it to HV Landing.

- [20] Aitkens was the guiding mind of and controlled the decision-making entities involved with the Trust, including, 0865701 B.C. Ltd., Harvest Capital Management Inc. and Foundation Capital Corporation. He was also the guiding mind and controlled the decision-making of Harbour View Landing Inc. and Stoney View Crossing Inc.
- [21] Beyer was primarily involved in the marketing aspect of several entities. While the ASC Panel was not satisfied that Beyer was a guiding mind of any of the entities with which he was involved, he was a director and officer of various entities, including the trustee 0865701 B.C. Ltd.
- [22] The ASC Panel found that Aitkens and Beyer, along with other corporate entities, made materially misleading omissions in Trust OM1 and Trust OM2. Those materially misleading omissions were the failures to disclose information about the profit made by the entities which sold shares of Neo to the Trust. Specifically, the shares were purchased from Neo at a value of \$1.75 and sold to the Trust for prices ranging from \$1.75 to \$3.25. Trust OMs 1 and 2 did not include information about the profit made by the entities which sold the shares of NEO to the Trust.
- [23] The ASC Panel found that information about these transactions in Trust OMs 1 and 2 would have provided highly relevant data to a prospective reasonable investor in assessing the value of the shares of Neo and, consequently, in determining whether to buy securities of the Trust at the price offered. The ASC Panel found that Trust OMs 1 and 2 contained materially misleading omissions relating to the price of the shares of Neo.
- [24] The ASC Panel found that Aitkens and Beyer made those materially misleading omissions, knew or ought to have known that they were materially misleading, and knew or ought to have known that such omissions would reasonably have

been expected to have had a significant effect on the value of the securities of the Trust. Accordingly, the Panel found that:

- a. Aitkens, Beyer, the Trust, 0865701 B.C. Ltd. and Harvest Capital Management Inc. breached s. 92(4.1) of the *ASA*;
- b. Aitkens authorized, permitted or acquiesced in the s. 92(4.1) breaches by the Trust, 0865701 B.C. Ltd. and Harvest Capital Management Inc.; and
- c. Beyer authorized, permitted or acquiesced in the s. 92(4.1) breaches by the Trust and 0865701 B.C. Ltd.

[25] The ASC Panel also found that of the approximately \$47.7 million raised from investors – which was to be used for purchasing and developing land for the SV Project and the HV Project – approximately \$6.46 million was fraudulently used for other business purposes related to Aitkens.

[26] Aitkens, Harbour View Landing Inc. and Stoney View Crossing Inc. were responsible for this fraud, thus breaching what was then s. 93(b) of the *ASA*. Aitkens also authorized, permitted or acquiesced in the breaches by Harbour View Landing Inc. and Stoney View Crossing Inc.

3.2 ASC Sanctions

[27] On October 2, 2019, the ASC issued an order imposing the following sanctions, conditions, restrictions or requirements upon the Respondents:

- a. **Aitkens**
 - i. under s. 198(1)(d) of the *ASA*, he must resign all positions he holds as a director or officer (or both) of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
 - ii. with permanent effect:
 - (a) under s. 198(1)(b), he must cease trading in or purchasing any security or derivative;

- (b) under s. 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to him;
- (c) under s. 198(1)(c.1), he is prohibited from engaging in investor relations activities;
- (d) under s. 198(1)(e), he is prohibited from becoming or acting as a director or officer (or both) of:
 - i* any issuer or other person or company that is authorized to issue securities; or
 - ii* a registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
- (e) under s. 198(1)(e.2), he is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and
- (f) under s. 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- iii. under s. 199, he must pay an administrative penalty of \$600,000; and
- iv. under s. 202, he must pay costs in the amount of \$180,000.

b. **Beyers**

- v. under s. 198(1)(d) of the ASA, he must resign all positions he holds as a director or officer (or both) of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;

- vi. for a period of 10 years from the date of this decision or until the administrative penalty set out below is paid in full, whichever is the later:
 - (a) under s. 198(1)(b), he must cease trading in or purchasing any security or derivative;
 - (b) under s. 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to him;
 - (c) under s. 198(1)(c.1), he is prohibited from engaging in investor relations activities;
 - (d) under s. 198(1)(e), he is prohibited from becoming or acting as a director or officer (or both) of:
 - i* any issuer or other person or company that is authorized to issue securities; or
 - ii* a registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository, designated rating organization or designated benchmark administrator;
 - (e) under s. 198(1)(e.2), he is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and
 - (f) under s. 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- vii. under s. 199, he must pay an administrative penalty of \$75,000; and
- viii. under s. 202, he must pay costs in the amount of \$20,000.

- [28] The ASC Panel concluded that Aitken’s misconduct was “extremely serious” and that “Aitkens should not ever again be in a position to handle investors’ money.”⁶ The ASC Panel found that Beyer needed “to be removed from certain access to the Alberta capital market for a significant period of time...bans of 10 years are appropriate here.”⁷
- [29] The ASC Panel was “confident in concluding that the misconduct of the Respondents exposed identifiable investors and the Alberta capital market as a whole to considerable harm”⁸ and “warrants significant sanctions”.⁹
- [30] The ASC Panel acknowledged that “the Respondents accepted that the misconduct found against them was serious, despite their disagreement with our findings.” The ASC Panel found this to be a mitigating factor.¹⁰
- [31] The ASC Panel also found that the extensive involvement of professional advisers employed by the Respondents was a mitigating factor in determining the appropriate package of sanctions for the misrepresentations.¹¹ They also considered the fact that the Respondents “both tried to salvage parts of the companies and, therefore, some of the investors’ money,”¹² as a mitigating factor.

4. LAW AND ANALYSIS

- [32] Staff seeks an order imposing sanctions that substantially mirror those imposed by the ASC against Aitkens and Beyer.
- [33] The issues for the Panel to consider are:
- a. whether one or more of the circumstances under subsection 127(10) of the *Act* apply to the Respondents; and

⁶ Exhibit 2, Staff’s Hearing Brief, Tab 2 at para 43

⁷ Exhibit 2, Staff’s Hearing Brief, Tab 2 at para 117

⁸ Exhibit 2, Staff’s Hearing Brief, Tab 2 at para 53

⁹ Exhibit 2, Staff’s Hearing Brief, Tab 2 at para 54

¹⁰ Exhibit 2, Staff’s Hearing Brief, Tab 2 at para 80

¹¹ Exhibit 2, Staff’s Hearing Brief, Tab 2 at para 85

¹² Exhibit 2, Staff’s Hearing Brief, Tab 2 at para 90

b. if so, whether the Tribunal should exercise its public interest jurisdiction to make an order pursuant to subsection 127(1) of the *Act*.

4.1 Do any of the circumstances under subsection 127(10) of the Act apply?

[34] Subsection 127(10) of the *Act* does not itself empower the Tribunal to make an order; rather, it provides a basis for an order under subsection 127(1).

[35] Paragraph 4 of subsection 127(10) of the *Act* provides that the Tribunal may make an order under subsection 127(1) where the person or company is subject to 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 the person or company.

[36] The ASC is a securities regulatory authority and it has made an order imposing sanctions on Aitkens and Beyers. The threshold test under subsection 127(10) of the *Act* is therefore satisfied. I must now consider whether it is in the public interest to issue an order under subsection 127(1) of the *Act*.

4.2 Is it in the public interest to make an order under subsection 127(1) of the Act?

[37] Subsection 127(1) of the *Act* empowers the Tribunal to make various orders where it is in the public interest to do so. Orders made under subsection 127(1) of the *Act* are “protective and preventive” and are made to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets.¹³

[38] The findings made by another jurisdiction stand as a finding of fact for the purposes of the Tribunal’s considerations under subsection 127(10) of the *Act*, regarding whether an order is necessary in order to protect investors in Ontario and the integrity of Ontario’s capital markets.¹⁴

¹³ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

¹⁴ *JV Raleigh Superior Holdings Inc. (Re)*, 2013 ONSEC 18 (***JV Raleigh***) at para 16; *Euston Capital Corp et al (Re)*, 2009 ONSEC 23 at paras 45-46

- [39] In exercising its jurisdiction to make an order in reliance on subsection 127(10) of the *Act*, the Tribunal does not require that the underlying conduct have a connection to Ontario.¹⁵
- [40] Staff submits that the following factors establish that it is in the public interest to make a protective order which substantially mirrors the sanctions imposed by the ASC:
- a. the Respondents were found by the ASC Panel to have breached Alberta securities law;
 - b. the conduct for which the Respondents were sanctioned by the ASC would have likely constituted contravention of Ontario securities law, specifically contravention of subsections 126.2(1) and 126.1(1)(b) of the *Act*;
 - c. the terms of the proposed order are consistent with the fundamental principle that the Commission maintain high standards of fitness and business conduct to ensure honest and responsible conduct by market participants;
 - d. the terms of the proposed order align with the sanctions imposed in the ASC Order to the extent possible under the *Act*; and
 - e. the sanctions proposed by Staff are prospective in nature and would impact the Respondents only if they attempted to participate in the capital markets of Ontario.
- [41] In addition, Staff note that the ASC Panel found that there were references to Ontario investors in both the SV Project and the HV Project. The ASC Panel also found that Aitkens had a history of partnership with an Ontario corporation for business ventures.
- [42] Beyer submits that there is no need for “further” sanctions as the sanctions already imposed by the ASC are sufficient. He submits that the allegations of fraud (which he was not found guilty of) have been “conflated” with the allegations of misrepresentation resulting in damage to his reputation and that

¹⁵ *Biller (Re)*, 2005 ONSEC 15 at paras 32-35; *Lynne Rae Nickford (Re)*, 2018 ONSEC 24 at para 13; *Hable (Re)*, 2018 ONSEC 11 at para 8; *Cook (Re)* 2018 ONSEC 6 at para 9

he exercised due diligence by obtaining legal advice when acting, both factors mitigating the need for any “further” order to be made against him.

- [43] Beyer’s additional submissions dated July 25, 2022, largely repeated his positions set out above. However, he also raised for the first time an argument that the application should be dismissed due to the expiration of the applicable limitation period or undue delay. Beyer bases this submission on the fact that the “initial action” taken by the ASC against the Trust was a cease trade order issued in December 2011 and that Staff waited 27 months after the ASC sanctions decision to commence this application.
- [44] In response, Staff submits that Beyer is attempting to relitigate the ASC hearing, which is not appropriate at a subsection 127(10) hearing. Staff submits that all of the factors raised by Beyer were raised before the ASC and considered by the ASC when the sanctions were imposed. Staff submits that Beyer has failed to discharge his onus to show that the ASC Order should not be reciprocated, which requires him to establish that:
- i. there was no substantial connection between Beyer and the originating jurisdiction;
 - ii. the ASC Order was obtained by fraud; or
 - iii. there was a denial of natural justice by the ASC.¹⁶
- [45] Staff also submits that the triggering event for the running of the six-year limitation period is the date of the ASC Order that is being reciprocated and not the date of the underlying conduct.¹⁷
- [46] I agree with Staff’s submission that Beyer has failed to discharge his onus as none of the above defences to reciprocating the ASC Order have been made out. A proceeding under subsection 127(10) of the *Act* is not the proper forum to revisit the findings made in the originating jurisdiction,¹⁸ which is what Beyer’s submissions seek to do. The Tribunal’s task in a subsection 127(10) proceeding is to determine whether, based on those findings of fact in the foreign

¹⁶ *JV Raleigh* at para 26

¹⁷ *McLean v British Columbia (Securities Commission)*, 2013 SCC 67 at paras 51-59; *Act*, s 129.1

¹⁸ *JV Raleigh* at para 16; *Black (Re)*, 2014 ONSEC 16 at paras 14, 24-25

jurisdiction, the sanctions proposed would be in the public interest in Ontario. I also agree that the six-year limitation period under the *Act* for the purposes of this application commences on the date that the order is made by the originating jurisdiction and therefore this application is not statute-barred.

[47] It is important that the Tribunal impose sanctions that will protect Ontario investors by specifically deterring the Respondents from engaging in similar or other misconduct in Ontario, and by acting as a general deterrent to other like-minded persons. I accept Staff's submission that it would be in the public interest to order sanctions that are substantially similar to those imposed by the ASC.

4.3 Differences between the Alberta and Ontario Statutes

[48] The ASC imposed a sanction under subsection 198(1) of the *ASA* which prohibits the Respondents from acting "in a management or consultative capacity in connection with activities in the securities market".

[49] The *Act* does not use those terms. Accordingly, the sanction under subsection 198(1) of the *ASA* is not available under subsection 127(1) of the *Act* or otherwise under the *Act*. However, I am satisfied that such activities would largely be covered by prohibiting the Respondents from becoming or acting as a director or officer of a registrant.

5. CONCLUSION

[50] For the reasons set out above, I find that it is in the public interest to limit the Respondents' future participation in Ontario's capital markets by imposing the sanctions requested by Staff. I therefore order as follows:

- a. against Aitkens that:
 - i. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the *Act*, Aitkens resign any positions he holds as a director or officer of an issuer or registrant;
 - ii. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Aitkens cease permanently;

- iii. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Aitkens cease permanently;
 - iv. pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Aitkens permanently;
 - v. pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, Aitkens is prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, from becoming or acting as a registrant or promoter.
- b. against Beyer that:
- vii. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the *Act*, Beyer resign any positions he holds as a director or officer of an issuer or registrant;
 - viii. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by Beyer cease until October 2, 2029;
 - ix. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by Beyer cease until October 2, 2029;
 - x. pursuant to paragraph 3 of subsection 127(1) of the *Act*, any exemptions contained in Ontario securities law do not apply to Beyer until October 2, 2029;
 - xi. pursuant to paragraph 8, 8.2 and 8.4 of subsection 127(1) of the *Act*, Beyer is prohibited from becoming or acting as a director or officer of any issuer or registrant until October 2, 2029; and
 - xii. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, from becoming or acting as a registrant or promoter until October 2, 2029.

Dated at Toronto this 24th day of August, 2022.

"Cathy Singer"

Cathy Singer