



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: *Stinson (Re)*, 2023 ONCMT 13
Date: 2023-03-23
File No. 2022-3

**IN THE MATTER OF
HARRY STINSON, BUFFALO GRAND HOTEL INC., STINSON HOSPITALITY
MANAGEMENT INC., STINSON HOSPITALITY CORP., RESTORATION FUNDING
CORPORATION, BUFFALO CENTRAL LLC, and STEPHEN KELLEY**

**ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)**

Adjudicators: M. Cecilia Williams (chair of the panel)
William Furlong
Dale Ponder

Hearing: By videoconference

Appearances: Rikin Morzaria For Staff of the Ontario Securities Commission
Greg Temelini For Stephen Kelley

No one appearing for Harry Stinson, Buffalo Grand Hotel Inc.,
Stinson Hospitality Management Inc., Stinson Hospitality Corp.,
Restoration Funding Corporation, and Buffalo Central LLC

TABLE OF CONTENTS

1.	OVERVIEW	1
2.	FACTS	1
3.	SETTELEMENT AGREEMENT.....	2
	3.1 Approval is in the public interest	2
	3.2 Mitigating factors	3
	3.3 Sanctions.....	4
	3.3.1 Administrative penalty.....	4
	3.3.2 Non-monetary sanctions	5
4.	CONCLUSION.....	6

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

1. OVERVIEW

- [1] Enforcement Staff of the Ontario Securities Commission (**Staff**) alleged, amongst other things, that Stephen Kelley contravened the *Securities Act* (the **Act**) and Ontario securities law by engaging in unregistered trading, by trading in breach of a temporary cease trade order and by making untrue, false, or misleading representations.
- [2] Staff and Kelley have jointly submitted it is in the public interest to approve a settlement agreement dated March 20, 2023, executed by these two settling parties (the **Settlement Agreement**). We agree. These are our reasons for approving the Settlement Agreement.

2. FACTS

- [3] We begin with the factual background, which is set out in detail in the Settlement Agreement. In summary, the most important facts include that:
- a. Kelley actively promoted investment opportunities in the Buffalo Grand Hotel (the **Hotel**). He acted as “Investment Coordinator” and later the “Manager of Client Services” for Harry Stinson, a real estate broker and developer, who formed a plan to purchase and renovate the Hotel and convert it into a condominium structure in which investors would own individual units and share in a portion of the Hotel’s profits;
 - b. Kelley regularly advertised investment opportunities in the Hotel, and met with and communicated with investors to facilitate investment in the Hotel;
 - c. Kelley made misleading statements to investors by suggesting that all investments in the Hotel were qualified for registered retirement savings plans and tax-free savings accounts; and

d. Kelley failed to comply with the terms of the Tribunal's temporary cease trade orders prohibiting trading in specific securities.

[4] While Staff and Kelley have executed the Settlement Agreement, no settlement agreement has been entered into with the other respondents. The Settlement Agreement includes a summary of facts with which Kelley agrees, but which remain unproven against Stinson and the corporations that Stinson involved in the Hotel project. The allegations against the non-settling respondents remain the subject of ongoing proceedings and must be proven at the merits hearing that is scheduled to commence next week, on March 27, 2023.

3. SETTLEMENT AGREEMENT

3.1 Approval is in the public interest

[5] We reviewed the Settlement Agreement in detail and have had the benefit of a confidential settlement conference with counsel for Staff and for Kelley. We asked questions of counsel and heard their submissions.

[6] Our obligation at this hearing is to determine whether the negotiated result reflected in the Settlement Agreement falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the Settlement Agreement.¹

[7] The Settlement Agreement is the product of negotiation between Staff and Kelley. When considering settlements for approval, the Tribunal respects the negotiation process and accords significant deference to the resolution reached by the parties.²

[8] The terms under which Staff and Kelley have agreed to settle this matter are detailed in the Settlement Agreement and need not be repeated here. They include that Kelley shall pay an administrative penalty of \$15,000 and shall be subject to market participation bans. It is also agreed that Kelley will cooperate with Staff in its ongoing proceeding against Stinson and the corporations that

¹ *Research in Motion Limited (Re)*, 2009 ONSEC 19 at paras 44–46

² *Katanga Mining Limited (Re)*, 2018 ONSEC 59 at para 18

Stinson involved in the Hotel project. Kelley's cooperation includes testifying as a witness for Staff and meeting with Staff to prepare for that testimony.

- [9] In arriving at our decision, we have applied the relevant factors from the non-exhaustive list of factors the Tribunal has identified as relevant to sanctions orders in general.³ In our view, the administrative penalty and market participation bans appropriately reflect the principles applicable to sanctions, including the importance of fostering investor protection and confidence in the capital markets, recognition of the seriousness of the misconduct and the need for specific and general deterrence of such misconduct.
- [10] The Settlement Agreement sends a message to Kelley and like-minded individuals that disregarding the registration requirements under securities law, a cornerstone principle of the securities regulatory scheme, and breaching Tribunal temporary cease trade orders exposes investors to unacceptable risk and undermines confidence in the capital markets. Such misconduct is serious and will not be tolerated.

3.2 Mitigating factors

- [11] We have considered as mitigating factors in this case that:
- a. Kelley had no education, training or experience with the requirements of the *Act*;
 - b. Kelley was Stinson's subordinate and he relied on Stinson in arriving at the conclusion that his activities were legitimate and did not violate securities laws;
 - c. Kelley and his wife personally invested in the Hotel with registered funds and cash and have not recovered their principal investment;
 - d. Kelley agreed to cooperate with Staff in enforcement investigations, including testifying in proceedings that relate directly or indirectly to matters set out in the Settlement Agreement; and

³ *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at paras 23–26; *MCJC Holdings Inc (Re)*, (2002) 25 OSCB 1133 at paras 25–26

- e. As we've heard today, Kelley is remorseful with respect to the matters involved.

3.3 Sanctions

3.3.1 Administrative penalty

- [12] Staff cited several cases for our consideration. While previous decisions are helpful to our assessment of whether the Settlement Agreement falls within a reasonable range of outcomes, they are of limited value in determining the appropriate length of a market participation ban or the amount of an administrative penalty.⁴
- [13] The cases Staff cited involved respondents who had no previous experience with securities, which the Tribunal has considered to be the basis for reduced sanctions.⁵ These decisions assisted us in determining that the Settlement Agreement fell within a reasonable range of outcomes.
- [14] We conclude that the \$15,000 administrative penalty against Kelley is appropriate having regard to the totality of the circumstances. Although the scale of the misconduct here is significant (\$10 million raised from approximately 100 Ontario investors) Staff submitted that it was difficult to ascertain the extent of Kelley's personal involvement, but they were not alleging that he played a role in the full scope of the activity. The amount of this administrative penalty is within the range of the precedents we considered and reflects the role Kelley played as a subordinate with no experience in or knowledge of the securities industry.
- [15] We note that there is no agreement for payment of any disgorgement. Staff submits and we agree that taken as a whole, the administrative penalty and the non-monetary sanctions, in the context of the entire Settlement Agreement, place the agreement within the reasonable range. The Tribunal is to consider the terms of the Settlement Agreement in their totality, rather than considering each term in isolation.⁶ The settling parties have not proposed a disgorgement order

⁴ *Money Gate Mortgage Investment Corp (Re)*, 2021 ONSEC 10 at para 11

⁵ *MM Café Franchise Inc (Re)*, 2017 ONSEC 13; *Energy Syndications Inc (Re)*, 2013 ONSEC 40

⁶ *Cheng (Re)*, 2018 ONSEC 34 at para 8

in part because Staff and Kelley have not been able to arrive at a determination of 'amounts obtained' by Kelley as a result of his non-compliance with Ontario securities law. While the Tribunal may order a respondent to disgorge funds obtained in contravention of the *Act* regardless of whether that respondent personally obtained the funds,⁷ we agree that a disgorgement order is not necessary in the totality of these circumstances.

- [16] We also note that there is no agreement for payment of any costs. Staff submits that this Settlement Agreement will reduce the costs and time associated with the merits and sanctions hearings. In addition, Kelley's agreement to cooperate with Staff should reduce Staff's costs with respect to the ongoing proceedings. Taken as a whole, the administrative penalty and the non-monetary sanctions, in the context of the entire Settlement Agreement, place the agreement within the reasonable range without an additional order for Kelley to pay some or all of Staff's costs.

3.3.2 Non-monetary sanctions

- [17] With respect to the non-financial sanctions, Kelley will be banned from participating in Ontario's capital markets for a period of two years. There are limited carve-outs permitting Kelley to have a personal investment account.
- [18] We conclude the market participation ban is appropriate. The misconduct here was serious. Registration requirements serve an important gatekeeping function ensuring that only properly qualified and suitable persons engage in the business of trading in securities with the public, and registrants under the *Act* are subject to a robust regulatory regime and ongoing oversight. In addition, temporary cease trade orders protect the public and must be strictly observed. We conclude that Kelley should not hold positions of trust in the capital markets for a limited time. The market participation ban reflects the fact that, while the misconduct was serious, Kelley played a subordinate role, relied on his superior and is, by his own indication, unlikely to engage in anything other than real estate related activities in the future.

⁷ *Phillips (Re)*, 2015 ONSEC 36 at para 20

4. CONCLUSION

[19] In our view, the terms of the Settlement Agreement fall within a range of reasonable outcomes in the circumstances. The Settlement Agreement also properly reflects the principles applicable to sanctions, including recognition of the seriousness of the misconduct and the importance of fostering investor protection and confidence in the capital markets.

[20] For these reasons, we conclude that it is in the public interest to approve the Settlement Agreement. We will, therefore, issue an Order substantially in the form attached to the Settlement Agreement.

Dated at Toronto this 23rd day of March, 2023

"M. Cecilia Williams"

M. Cecilia Williams

"William Furlong"

William Furlong

"Dale Ponder"

Dale Ponder