



Ontario
Securities
Commission

Commission des valeurs mobilières de l'Ontario
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File Number 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

SETTLEMENT AGREEMENT

PART I – INTRODUCTION AND REGULATORY MESSAGE

1. Stephen Kelley assisted Harry Stinson and corporate entities owned and controlled by Stinson in the sale of securities related to the Buffalo Grand Hotel (the **Hotel**) from March 2018 to March 2020 (the **Material Time**).
2. Millions of dollars' worth of securities were sold to Hotel investors, mostly based in Ontario. Kelley improperly solicited and sold securities to various Hotel investors and made misleading statements to investors about the RRSP and TFSA eligibility of some of these Hotel investments.
3. In addition, Kelley breached Temporary Cease Trade Orders through his involvement with shares being issued to approximately nine investors after the Commission ordered that trading to stop.
4. Kelley has never been registered under the *Securities Act*, RSO 1990, c. S.5 (the **Act**) in any capacity and has no education, training, or experience in the securities industry.
5. Registration requirements serve an important gatekeeping function by 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.

6. By disregarding these cornerstone principles of Ontario securities law, and by breaching Temporary Cease Trade Orders, Kelley exposed investors to unacceptable risk and undermined confidence in the capital markets.
7. The settling parties will jointly file a request that the Commission's Governance & Tribunal Secretariat issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Capital Markets Tribunal to make certain orders against Kelley.

PART II – JOINT SETTLEMENT RECOMMENDATION

8. Kelley agrees to the making of an order in substantially the form attached as Schedule "A" (the **Order**) to this Settlement Agreement, based on the facts set out in this Agreement.
9. For the purposes of the proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Kelley agrees with the facts set out in Part III and the conclusions set out in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

(a) Purchase of the Hotel

10. Harry Stinson, a real estate broker and developer, 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 global profits from operations.
11. Stinson involved a series of corporations in the project, namely Buffalo Grand Hotel Inc. (**BGHI**), Stinson Hospitality Management Inc. (**SHMI**), Stinson Hospitality Corp. (**SHC**), Restoration Funding Corporation (**Restoration**), and Buffalo Central LLC (**BCLLC**) (collectively the **Stinson Entities**). Stinson was the sole officer, director, and directing mind of the Stinson Entities.
12. Leading up to 2018, Stinson and the Stinson Entities began actively soliciting investments in the Hotel, primarily from Ontario investors.

13. On or around July 10, 2018, Stinson purchased the Hotel through one of the Stinson Entities for approximately USD \$17 million.

(b) Kelley's Role in the Hotel

14. In or around March 2018, Stinson hired Kelley. Kelley's first title was "Investment Coordinator". Later, Kelley's title changed to Manager of Client Services. Kelley solicited investments in the Hotel.
15. Kelley has never been registered under the Act in any capacity and has no education, training, or experience in the securities industry.
16. During the Material Time, Kelley actively and regularly promoted investments in the Hotel through multiple channels. This included posting promotional content on social media, sending mass emails, hosting investment seminars, disseminating promotional flyers and brochures, meeting with potential investors, and giving tours of the Hotel.
17. The promotional material included statements such as:
 - a. "rapid, fixed returns";
 - b. "Fixed double-digit returns, no surprises";
 - c. "a fast flip on your investment funds";
 - d. "Earn 20+% (RRSP – and TFSA – eligible)";
 - e. "Fixed return, (not a 'projection')";
 - f. "A rare opportunity for investors to participate in a full-service luxury convention hotel";
 - g. "Investors share in ALL of the revenues, from all suites (not just their own) as well as from banquets, weddings, events, meetings, dining room, lobby, bar, room service, parking...from all of the revenue streams and departments of the hotel and conference centre"; and
 - h. "Cash and Registered Funds Accepted".

18. Throughout the Material Time, Kelley participated in raising capital from investors by causing investors to enter into three broad categories of subscription agreements (collectively, the **Subscription Agreements**) with certain Stinson Entities. Each of the investments offered through the Subscription Agreements was a 'security' as defined in subsection 1(1) of the Act:
- a. A 'Unit Purchase Agreement', in which an investor paid a fixed price for the purchase of a specific suite, with the transfer of title to take place upon the Hotel's conversion to a condominium structure. Under the Unit Purchase Agreement, once title to a suite had been transferred, the investor would lease the suite back to one of the corporate Respondents in exchange for a 'leaseback' payment typically of 5% per annum of the purchase price and a proportionate share of net profits (total income, less total expenses) from all Hotel suites and revenue streams. In the interim period between the investor's initial investment and the transfer of title, the investment agreement involved a promissory note in favour of the investor, under which the investor was typically entitled to receive 5% per annum interest payments, paid quarterly.
 - b. An 'Option to Purchase Agreement', in which an investor paid a fixed price for a promissory note with a fixed rate of interest payable to the investor quarterly. Upon conversion of the Hotel to a condominium structure, the investor has the option to convert the investment into the purchase of a suite in the Hotel. If the investor exercises that option, the investor leases the suite back to one of the corporate Respondents in exchange for a leaseback payment typically of 5% per annum of the purchase price and a proportionate share of net profits (total income, less total expenses) from all Hotel suites and revenue streams.
 - c. A 'Wholesale Room Block Agreement', in which an investor purchased a block of Hotel rooms, at reduced "wholesale prices" in a future month. In exchange, the investor would be paid a fixed return based on the higher, "retail price" of those rooms that Hotel patrons pay for their stay in that future month. The

investment was described as involving a promissory note. The wholesale room rate and the retail projected room rate are both specified in the Wholesale Room Block Agreement, as is the amount of the investor's total investment and the "retail payout" the investor will receive. Some of these agreements include an option for investors to roll-over their investment plus accrued profit into the purchase of a suite in the Hotel that would include a leaseback term substantially the same as those described in subparagraphs (a) and (b) above.

(c) Unregistered Trading

19. Throughout the Material Time, Kelley engaged in, or held himself out as engaging in, the business of trading in securities without being registered under subsection 25(1) of the Act as a dealing representative. In particular, at Stinson's direction, Kelley:
 - a. actively promoted investment opportunities in the Hotel on behalf of Stinson and the Stinson Entities;
 - b. regularly advertised investment opportunities in the Hotel on behalf of Stinson and the Stinson Entities; and
 - c. met and communicated with investors in the Hotel to facilitate investments. This included meeting and communicating with investors personally, including through appearances at investor seminars and conferences, having investors sign Subscription Agreements, and having investors make deposits for their investments.

20. Over \$10 million in securities were sold to more than 100 investors,¹ mostly based in Ontario. Kelley acted with repetition, regularity, and continuity over the Material Time, assisting Stinson and the Stinson Entities in soliciting and selling securities to various investors.

¹ Kelley is unaware of the precise amounts and number of investors.

False and Misleading Representations to Investors

21. Kelley made misleading statements to investors in personal interactions, and through his involvement with promotional material and Subscription Agreements.
22. In particular, Kelley provided investors with promotional material that stated or conveyed that all investments in the Hotel were qualified investments for Registered Retirement Savings Plans (**RRSPs**) and Tax-Free Savings Accounts (**TFSA**s). Kelley also personally confirmed to certain investors that all investments were qualified investments for RRSPs and TFSA.
23. An example of this representation included a promotional flyer that advertised investment in the Hotel being different by virtue of “individual real estate ownership” and the ability of investors to “use [their] RRSP or TFSA” for their investments in the Hotel.
24. Purchases of individually titled Hotel suites were not qualified investments for RRSPs or TFSA. As a result, Kelley’s representations regarding RRSP and TFSA eligibility of individually titled Hotel suites were false and omitted information necessary to prevent them from being misleading.
25. The representations were ones that a reasonable investor would consider relevant in deciding whether to enter or maintain a trading relationship with the Respondents. By making these false or misleading statements about matters that a reasonable investor would consider relevant and by omitting information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, Kelley breached subsection 44(2) of the Act.

(d) Breaches of the Temporary Cease Trade Order

26. In January and February 2021, after the Material Time, Kelley failed to comply with the terms of a March 20, 2020 Temporary Cease Trade Order (the **TCTO**) and the Tribunal’s orders extending the TCTO (collectively, the **TCTOs**).
27. The TCTO ordered that the following trading cease:

- a. trading in any securities by BGHI, SHMI, SHC, Restoration, and Stinson or by any person on their behalf; and
 - b. trading in securities related to the Hotel, including trading related to Hotel suites or 'units' and trading related to wholesale room blocks.
28. The Tribunal extended the TCTO on April 3, 2020, January 29, 2021, April 28, 2021, and October 29, 2021. The orders extending the TCTO similarly prohibited the trading described in subparagraphs 27(a) and (b) above.
29. In January and February 2021, while the TCTOs remained in effect, Stinson and Kelley caused SHC to issue approximately 45,140 shares in SHC to approximately nine investors. SHC issued the shares in lieu of interest payments owing to those investors, in breach of the Tribunal's orders.
30. Kelley, at Stinson's direction, facilitated the issuance of shares and share certificates, including through communications with investors and with third parties with custody of the certificates.
31. By engaging in the conduct described above, Kelley breached the terms of the TCTOs and thereby contravened Ontario securities law.

PART IV - CONDUCT CONTRARY TO ONTARIO SECURITIES LAW

32. Kelley admits and acknowledges that he contravened Ontario securities law by:
 - a. engaging in the business of trading in securities without registration and where no exemptions were available, contrary to subsection 25(1) of the Act;
 - b. making untrue, false, or misleading representations that a reasonable investor would have considered relevant in deciding whether to enter into or maintain a trading relationship, contrary to subsection 44(2) of the Act; and
 - c. engaging in trades of SHC securities in breach of the terms of the TCTOs, thereby contravening Ontario securities law.

PART V – RESPONDENT’S POSITION

33. Kelley intends to request, and the OSC does not object, that the panel at the Settlement Hearing consider the following mitigating circumstances:
- a. Kelley had no education, training, or experience with the requirements of the Act in relation to his activities;
 - b. Stinson advised Kelley on multiple occasions that Kelley did not need to be licenced or registered to perform his job or take the actions referred to in this Settlement Agreement;
 - c. Kelley and his wife personally invested in the Hotel using registered funds and cash. Kelley and his wife have not recovered their principal investment; and
 - d. Kelley sought Stinson’s advice about whether the issuance of SHC shares in January and February 2021 contravened the TCTOs. Stinson advised Kelley that the activity did not contravene the TCTOs and Kelley relied on this advice.

PART VI – TERMS OF SETTLEMENT

34. Kelley agrees to the terms of settlement listed below and consents to the order in substantially the form attached hereto as Schedule "A" (the **Order**), the terms of which include that:
- a. pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;
 - b. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Kelley shall resign all positions he holds as a director or officer of an issuer or registrant;
 - c. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Kelley shall be prohibited from becoming or acting as an officer or director of an issuer or registrant for a period of two years;
 - d. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Kelley shall cease for a period of two years;

- e. pursuant to paragraph 3 of subsection 127(1) of the act, any exemptions contained in Ontario securities law shall not apply to Kelley for a period of two years;
 - f. pursuant to paragraph 9 of subsection 127(1), Kelley shall pay an administrative penalty of \$15,000 by wire transfer to the Commission before the commencement of the Settlement Hearing,
 - g. notwithstanding any other provisions contained in the Order, Kelley is permitted to trade and/or acquire securities in any registered retirement savings plan, registered education savings plan, registered disability savings plan, registered retirement income fund, and/or tax-free savings account (as defined in the *Income Tax Act*, RSC 1985, c 1 (5th Supp.)) or any locked-in retirement account, in which Kelley has joint legal and beneficial ownership with his spouse, ex-spouse, or children, or sole legal and beneficial ownership, solely through a registered dealer, to whom Kelley must have given a copy of the Order.
35. Kelley will cooperate with the OSC in enforcement investigations, including testifying as a witness in any enforcement proceedings commenced or continued under Ontario securities law, which relate directly or indirectly to matters set out in this Settlement Agreement, including the within proceeding commenced against Stinson and the Stinson Entities bearing Tribunal File No. 2022-3, and meeting in advance of any such proceeding to prepare for that testimony.
36. Kelley agrees to attend at the hearing before the Tribunal to consider the proposed settlement by video conference or in person, as the Tribunal may direct.
37. Kelley acknowledges that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to Kelley. Kelley should contact the securities regulator of any other jurisdiction in which Kelley intends to

engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VII – FURTHER PROCEEDINGS

38. If the Tribunal approves this Settlement Agreement, no enforcement proceeding shall be commenced or continued against Kelley under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless Kelley fails to comply with any term in this Settlement Agreement.

39. If Kelley fails to comply with any term in this Settlement Agreement, enforcement proceedings under Ontario securities law may be brought against Kelley.

40. Kelley waives any defences to a proceeding referenced in paragraphs 38 and 39 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

41. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Tribunal, which shall be held on a date determined by the Tribunal in accordance with this Settlement Agreement and the Tribunal's *Rules of Procedure and Forms*.

42. Kelley will attend the Settlement Hearing in person or, if the Settlement Hearing is held by video conference, by video conference.

43. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

44. If the Tribunal approves this Settlement Agreement:

- a. Kelley irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and

- b. neither party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.
- 45. If the Tribunal does not approve this Settlement Agreement at the Settlement Hearing, the Commission shall return to Kelley all funds paid by Kelley to the Commission prior to the Settlement hearing within seven days of the Settlement Hearing or the Tribunal's decision not to approve this Settlement Agreement, whichever is later.
- 46. Whether or not the Tribunal approves this Settlement Agreement, Kelley will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Tribunal's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

- 47. If the Tribunal does not approve this Settlement Agreement or does not make an Order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:
 - a. this Settlement Agreement and all discussions and negotiations between the parties before the Settlement Hearing takes place will be without prejudice to either party; and
 - b. the parties will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations dated February 10, 2022. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.
- 48. The parties will keep the terms of this Settlement Agreement confidential until the Tribunal approves the Settlement Agreement, except as is necessary to make

submissions at the Settlement Hearing. If, for whatever reason, the Tribunal does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless the parties otherwise agree in writing or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

49. This Settlement Agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

50. An electronic copy of any signature will be as effective as an original signature.

DATED at *Niagara Falls* this *19th* day of March, 2023.

 "Jeffery MacDonald"
Witness:

 "Stephen Kelley"
STEPHEN KELLEY

Name: Jeffery MacDonald
Title: Mr.

DATED at Toronto, Ontario, this *20* day of March, 2023.
ONTARIO SECURITIES COMMISSION

By: *"Jeff Kehoe"*
Name: Jeff Kehoe
Title: Director, Enforcement Branch



Capital
Markets
Tribunal

Tribunal des
marchés
financiers

Schedule "A"

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

22e étage
20, rue queen Oeust
Toronto ON M5H 3S8

**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**

, Chair of the Panel
, Adjudicator

File No. 2022-3, , Adjudicator

[Date]

ORDER

(Section 127 of the
Securities Act, RSO 1990, c S.5)

WHEREAS on MONTH X, 2023, the Capital Markets Tribunal held a hearing by video conference to consider the request for approval of a settlement agreement between Stephen Kelly and Enforcement Staff of the Ontario Securities Commission (**Staff**) dated MONTH X, 2023 (the **Settlement Agreement**);

ON READING the Joint Application for Settlement Hearing, including the Statement of Allegations dated February 10, 2022 and the Settlement Agreement, and the written submissions, and on hearing the submissions of each of the parties, and on being advised by Staff that the Commission has received payment from Kelley in the amount of \$15,000 in accordance with the terms of the Settlement Agreement;

IT IS ORDERED THAT:

1. pursuant to subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), the Settlement Agreement is approved;
2. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Kelley shall resign all positions he holds as a director or officer of an issuer or registrant;

3. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Kelley is prohibited from becoming or acting as an officer or director of an issuer or registrant for a period of two years;
4. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Kelley shall cease for a period of two years, subject to the following exception:

Kelley is permitted to trade and/or acquire securities in any registered retirement savings plan, registered education savings plan, registered disability savings plan, registered retirement income fund, and/or tax-free savings account (each as defined in the *Income Tax Act*, RSC 1985, c 1 (5th Supp.)) or any locked-in retirement account, in which Kelley has joint legal and beneficial ownership with his spouse, ex-spouse, or children, or sole legal and beneficial ownership, solely through a registered dealer, to whom Kelley must have given a copy of this Order;

5. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Kelley for a period of two years; and
6. pursuant to paragraph 9 of subsection 127(1) of the Act, Kelley shall pay an administrative penalty of \$15,000 to the Commission.
- 7.

Adjudicator