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 26
Date: 2023-06-27
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

REASONS AND DECISION

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

Adjudicators:	Russell Juriansz (chair of the panel) Sandra Blake Cathy Singer	
Hearing:	By videoconference, March 27 and 29, 2023; final written submissions received May 8, 2023	
Appearances:	Rikin Morzaria	For Staff of the Ontario Securities Commission
	Macdonald Allen	For Harry Stinson, Buffalo Grand Hotel Inc., Stinson Hospitality Management Inc., Stinson Hospitality Corp., Restoration Funding Corporation, and Buffalo Central LLC

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REASONS AND DECISION

1. OVERVIEW

[1] From November 2016 to March 2020 (the **Material Time**) Harry Stinson, Buffalo Grand Hotel Inc. (**Hotel Inc.**), Stinson Hospitality Management Inc. (**Management Inc.**), Stinson Hospitality Corp. (**Hospitality Corp.**), Restoration Funding Corporation (**Restoration**) and Buffalo Central LLC (**Buffalo Central**) (collectively the **Stinson Entities**) raised approximately CAD 13.177 million and USD 364,000 from the sale of securities related to the Buffalo Grand Hotel (the **Hotel**).

[2] Enforcement Staff of the Ontario Securities Commission alleges that:

a. the respondents engaged in the business of trading in securities without registration, contrary to s. 25(1) of the *Securities Act* (***Act***)[1];

b. Stinson, Hotel Inc., Management Inc. and Buffalo Central distributed securities without filing a prospectus, contrary to s. 53(1) of the *Act*;

c. Stinson and Hotel Inc. made false and misleading statements to investors about matters that a reasonable investor would consider relevant to entering into or maintaining a trading relationship, contrary to s. 44(2) of the *Act*;

d. Stinson and Hospitality Corp. breached a temporary cease trade order which prohibited trading in securities related to the Hotel;

e. the respondents also engaged the Tribunal's public interest jurisdiction by failing to segregate investor funds, failing to maintain accurate records of funds received by investors, and failing to properly record the use of investor funds; and

f. Stinson as the sole officer and director of each of the Stinson Entities authorized, permitted or acquiesced in their breaches of ss. 25(1) and

[1] RSO 1990, c S.5

53(1) of the *Act* and of their breaches of Ontario securities law (the temporary cease trade orders).

[3] Prior to this hearing, Stephen Kelley reached a settlement with Staff in which he admitted that he engaged in unregistered trading, made false or misleading representations to investors and traded in breach of a temporary cease trade order. The Tribunal approved the settlement[2] and this matter proceeded against the remaining respondents. Throughout these reasons, our use of the term "the respondents" does not include Kelley.

[4] At the outset of the merits hearing, Staff and the respondents jointly filed an Agreed Statement of Facts. Neither Staff nor the respondents presented any other evidence with respect to Staff's allegations. Accordingly, we rely solely on the facts contained in the Agreed Statement of Facts. While the Agreed Statement of Facts also contained general admissions to breaches of the *Act* by the respondents, this does not displace the Tribunal's obligation to determine whether the facts satisfy the required elements for each of those breaches.

[5] For the reasons set out below, we find that:

a. Stinson, Hotel Inc., Management Inc. and Buffalo Central effected illegal distributions of securities by not filing a preliminary prospectus and a prospectus;

b. Stinson and Hospitality Corp. breached the temporary cease trade order and therefore breached Ontario securities law; and

c. the respondents engaged the Tribunal's public interest jurisdiction by:

   i. failing to segregate investor funds;

   ii. failing to maintain accurate records of funds received by investors; and

   iii. failing to properly record the use of investors' funds.

[6] We dismiss Staff's allegations that the respondents engaged in, or held themselves out to be in, the business of trading in securities without registration

[2] *Stinson (Re)*, 2023 ONCMT 13

and that they made false and misleading statements to investors that would be relevant to entering into or maintaining a trading relationship. Given our findings that Stinson directly breached the *Act*, we did not consider whether he is deemed to have breached the *Act* because he authorized, permitted or acquiesced in the corporate respondents' breaches.

2. THE RESPONDENTS

[7] Stinson is a real estate broker and developer. He founded the Stinson Entities, is their sole officer and director and controlled and operated the Stinson Entities during the Material Time.

[8] Hotel Inc. is the owner of the Hotel and carries on the hotel business. Hotel Inc. entered into subscription agreements with respect to the Hotel.

[9] Management Inc. was formed to conduct hotel-related business and entered into certain subscription agreements with respect to the Hotel.

[10] Hospitality Corp. is involved in hospitality operations at the Hotel. Hospitality Corp. received funds from Ontario residents, acts as a trustee for funds invested in the Hotel and in some cases issued common shares in exchange for those funds.

[11] Restoration received funds from Ontario residents, acts as a trustee for funds invested in the Hotel, and in some cases issued common shares in exchange for those funds.

[12] Buffalo Central entered into subscription agreements with respect to the Hotel.

3. MATERIAL FACTS

[13] Stinson planned a hotel-condominium project whereby the Hotel would be purchased, rebranded, remodeled, renovated, and ultimately converted into a hotel and condominium.

[14] Money was raised using three forms of agreement, a unit purchase agreement, an option to purchase agreement, and a wholesale room block agreement, all of which contained promissory notes. Depending on the category of subscription agreement, an investor could also have an obligation or option to acquire a suite in the Hotel on conversion, by rolling over their investment and receiving title to

a suite, and to further receive profit participation rights in connection with the leaseback of the suite. Certain subscription agreements involved profit participation rights through wholesale room block purchases of hotel rooms with, in some cases, an option to purchase a suite on conversion.

[15] In cases where investors made contributions through funds from Registered Retirement Savings Plans (**RRSP**s) or Tax-Free Savings Accounts (**TFSA**s), Stinson issued shares in Hospitality Corp. or Restoration to investors in exchange for their contributions.

[16] In or around November 2016, the respondents began actively and regularly soliciting investments in the Hotel including from individuals located in Ontario.

[17] On or around July 10, 2018, Hotel Inc. purchased the Hotel.

[18] The respondents encountered cash flow issues, and in March 2019 entered into forbearance agreements related to the purchase of the Hotel.

[19] On March 20, 2020, the Commission issued an order temporarily ceasing trading in any securities by Hotel Inc., Management Inc., Hospitality Corp., Restoration and Stinson and trading in securities related to the Hotel. The Tribunal extended the temporary cease trade order until the public release of the reasons and the decision at the conclusion of this merits hearing.

[20] A fire at the Hotel on December 30, 2021, disrupted operations.

[21] The conversion has not been completed and the legal authorizations and approvals necessary to complete the conversion have not been obtained.

4. ANALYSIS OF THE MERITS

4.1 Are the admissions to breaches of the *Act* in the Agreed Statement of Facts binding on the respondents and the Tribunal?

[22] The Agreed Statement of Facts contains a recital which states that the respondents "agree that they shall admit the breaches of Ontario securities law and conduct contrary to the public interest set out in this document."[3] Paragraph 37 of the Agreed Statement of Facts states "Throughout the Material Time, the

[3] Exhibit 1, Agreed Statement of Facts dated March 24, 2023 at 1

Stinson Respondents engaged in, or held themselves out as engaging in, the business of trading in securities without being registered under subsection 25(1) of the Act."[4]

[23] In oral submissions, which preceded written submissions, the Tribunal squarely put to Staff the question of whether the Tribunal was bound by general admissions or did it need to be satisfied that the general admissions were supported by facts. More specifically, the Tribunal, on its own initiative and referring to the *Threegold Resources Inc. (Re)*[5] decision, canvassed with Staff whether the respondents raised money strictly for the project or whether they were in the business of trading apart from this project.

[24] Perhaps heartened by the Tribunal's questions, the respondents made written submissions setting out why Staff did not meet its burden in establishing the breach of s. 25(1) of the *Act*. In written reply, Staff objected to the respondents' written submissions submitting the respondents had attempted to rely on facts not in the Agreed Statement of Facts, and to resile from the breaches of Ontario securities law and conduct contrary to the public interest they admitted in the Agreed Statement of Facts. Staff submits that to the extent the respondents' submissions are inconsistent with the admissions in the Agreed Statement of Facts, they should be disregarded.

[25] Clearly, we must ignore any assertions of fact that are not set out in the Agreed Statement of Facts. The Agreed Statement of Facts comprises all the evidence admitted at the Merits Hearing and we consider that the respondents are bound by the agreement they have made and have submitted to the Tribunal. The matter is, however, more complicated than that.

[26] It is our view that general admissions of breaches of the *Act*, without more, are insufficient to satisfy Staff's burden of proving those breaches. Where an agreed statement of facts contains nothing more than a general admission of a particular breach of the *Act* without setting out the acts done by the respondent, can the Tribunal conclude the *Act* has been breached? We think not. Before concluding that the *Act* has been breached, we must first find the specific facts

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[4] Exhibit 1, Agreed Statement of Facts dated March 24, 2023 at para 37

[5] 2021 ONSEC 30 (***Threegold***)

necessary to establish the essential ingredients of the alleged breach. Consequently, in a case where the only evidence is an agreed statement of facts, it is our statutory duty to consider whether that agreed statement of facts sets out the specific facts necessary to establish each breach alleged. In carrying out that duty, the Tribunal is bound by the facts to which the parties have agreed. As noted, those facts are the only evidence before the Tribunal. The Tribunal, however, is not bound by what are, in effect, legal conclusions in the Agreed Statement of Facts. The parties, by agreement, cannot displace the Tribunal's obligation to make legal conclusions that the *Act* has been breached.

4.2 Were the investments "securities"?

[27] The term "security" is defined in s. 1(1) of the *Act* and includes a "bond, debenture, note or other evidence of indebtedness" and therefore includes a promissory note. In addition, the term "security" includes in subsection (n) of the definition, an "investment contract".[6]

[28] Promissory notes entered into as investments rather than as loans qualify as securities both as "evidence of indebtedness" and as "investment contracts."[7]

[29] An "investment contract" will be found where:

> a. there is an investment of money;
>
> b. with an intention or expectation of profit;
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> 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
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> d. where the efforts made by those other than the investor are significant and managerial, thereby affecting the failure or success of the enterprise.[8]

[30] We find that all three categories of subscription agreements are securities as each category of agreement contains a promissory note which acts as evidence of indebtedness during the interim period between the investor's initial

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[6] *Act*, s 1(1)

[7] *2196768 Ontario Ltd. (Rare Investments) et al*., 2014 ONSEC 17 (***Rare Investments***) at para 94

[8] *Pacific Coast Coin Exchange*, 1977 CanLII 37 (SCC) at p 128

investment and the transfer of title and/or the expiry of the note. In addition, all three categories of agreement involved future profit participation rights. The Hotel profits would be dependent solely on the efforts of the respondents. Therefore, we find that the subscription agreements also qualify as securities by virtue of being investment contracts.

4.3 Did the respondents engage in, or hold themselves out as engaging in, the business of trading securities?

[31] Subsection 25(1) of the *Act* requires that a person or company must be registered to engage in, or hold themselves out to be engaged in, the business of trading in securities unless an exemption applies.

[32] The registration requirement is one of the cornerstones of securities regulation. It acts as an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity and solvency on those who seek to be engaged in the business of trading in securities with or on behalf of the public.[9]

[33] During the Material Time, none of the respondents were registered in any capacity under the *Act*, and they admit that no exemptions from the registration requirements applied to their activities.

[34] We must determine whether the respondents engaged in the business of trading in securities rather than trading that was permissible capital raising activities for their business.

[35] The respondents, in words that mirror s. 25(1) of the *Act*, admitted in the Agreed Statement of Facts that during the Material Time they "engaged in, or held themselves out as engaging in, the business of trading in securities without being registered under subsection 25(1) of the Act."[10] Despite this general admission, as explained above, we must determine whether the specific facts set out in the Agreed Statement of Facts establish that the respondents engaged in

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[9] *Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40 (***Money Gate***) at para 140, citing *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11 at para 81

[10] Exhibit 1, Agreed Statement of Facts dated March 24, 2023 at para 37

the business of trading in securities rather than permissible capital raising activities, or whether they held themselves out as doing so.

[36] In determining whether the respondents were engaged in the business of trading, we look for guidance to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the **Policy**), which sets out criteria to be considered in determining whether a person or company is engaged in a business when trading or advising in securities.

[37] While the Policy is not part of Ontario securities law, and therefore is not binding on the respondents or the Tribunal, the business purpose test in s. 1.3 (also referred to as the "business trigger") includes various factors on which Staff relies and which the Tribunal has adopted in other proceedings.[11] These factors include whether:

a. the respondent undertook activities similar to a registrant;

b. the respondent directly or indirectly solicited securities transactions;

c. the respondent received or expected to receive compensation for the activity; and

d. the respondent carried on these activities with repetition or regularity, whether or not the trading was the sole or primary endeavour.

[38] Similar to the findings in *Threegold*[12] the respondents engaged in the following activities:

a. ongoing efforts to solicit investors to purchase subscription agreements;

b. preparing and modifying the documents setting out the terms of Subscription Agreements; and

c. receiving funds from investors.

[39] In *Threegold*, the Tribunal found that while the factors of the business trigger test in the Policy are useful, a holistic view must be taken to determine if the respondent was acting like a securities dealer in the business of trading

[11] *Meharchand (Re),* 2018 ONSEC 51 at para 111; *Money Gate* at paras 144-145

[12] *Threegold* at paras 44-45

securities or was seeking to raise capital for the advancement of an underlying business.[13]

[40] It was determined that Threegold was pursuing a strategy to further its mineral exploration business activities and the capital raising was ancillary to these activities.[14] In this case, the respondents were pursuing a strategy to acquire, renovate, convert, and operate the Hotel.

[41] Staff relies on the admitted facts that the respondents entered into Subscription Agreements totalling approximately CAD 19 million and USD 208,000 and received cash of approximately CAD 13.177 million and USD 364,000 from the sale of securities related to the Hotel. These transactions establish only that the respondents engaged in trading. More is needed to establish the respondents engaged in the business of trading.

[42] As we read the Agreed Statement of Facts, the respondents raised money to finance the Project, as defined in the Agreed Statement of Facts. The Project was to purchase, rebrand, remodel, renovate and ultimately convert an existing hotel into a hotel and condominium. It seems to us that the Project was the underlying business of the respondents and their capital raising activities were ancillary to the advancement of that underlying business. The fact situation is similar to that in *Threegold*.

[43] Staff seek to distinguish *Threegold* on the basis that it had an underlying mining exploration business and lacked sufficient funds to conduct ongoing business activities. By contrast, Staff submit that the respondents engaged in capital raising activities for 17 months before Hotel Inc. purchased the Hotel. During that 17-month period there was no other underlying business.

[44] While Hotel Inc. did not purchase the Hotel until mid-2018, like most large-scale real estate projects the process to acquire the Hotel began much earlier. The plan was formulated, and in or around November 2016 Stinson began to receive funds towards the acquisition, renovations, conversion and operations of the Hotel. We note that the Policy provides similar examples of businesses that are

[13] *Threegold* at para 40

[14] *Threegold* at paras 45, 48-49, 50, 57

in the start-up phase who have not yet begun to produce a product or deliver a service, but who have a *bona fide* business plan to do so. We find that the respondents had a *bona fide* business plan in place with respect to the Hotel during the start-up phase.

[45] In *Blue Gold Holdings Ltd. (Re)*,[15] the panel held that raising capital while the respondent attempted to conduct a legitimate business of manufacturing water treatment equipment may not have crossed the line but over time that business no longer existed and instead the respondents' efforts were devoted primarily to capital raising which crossed the line.[16] In this case, there is no evidence that the underlying business ceased to exist while funds were being raised. Instead, the redevelopment of the Hotel was underway and then the business ran into financial challenges due in part to the COVID-19 pandemic and later a fire that disrupted the Hotel's operations.

[46] In *Money Gate Mortgage Investment Corporation (Re)*, the respondents' activities were found to have met the business trigger test. The principal basis for that conclusion was the Tribunal's finding that the respondents "were simultaneously engaged in the business of trading in securities and the business of investing the proceeds in mortgages".[17] The Tribunal also found that the respondents' "capital-raising activities were not confined to a start-up phase" but were continuous.[18] In this case Stinson did not engage in capital-raising activities other than to redevelop the Hotel, which was still in the start-up phase.

[47] We further distinguish *Money Gate* as there were multiple individuals with the core responsibility to promote securities which was a large part of Money Gate's overall business. The same cannot be said in this case as the funds raised were used for the acquisition, ancillary acquisition costs and operational costs of the Hotel. At its core the business was the redevelopment and operation of the Hotel.

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[15] 2016 ONSEC 24 (***Blue Gold***)
[16] *Blue Gold* at paras 20-21
[17] *Money Gate* at para 160
[18] *Money Gate* at para 163

[48] Staff points out that the Agreed Statement of Facts indicates that the respondents failed to properly segregate the Project's funds and keep appropriate records. The Agreed Statement of Facts, however, does not state that any of the funds raised were used for any purpose other than the Project.

[49] We note, further, that the Agreed Statement of Facts does not state that any of the respondents received, or expected to receive, compensation for trades they made in the course of raising funds for the redevelopment and operation of the Hotel.

[50] Staff submits that for the purpose of the business trigger test, compensation includes the receipt of investor funds through capital raising. In support of this submission Staff cites *Miner Edge Inc (Re)*,[19] where the Tribunal held that by accepting investor funds for the purchase of profit participation rights, the respondents received financial compensation, being the funds from investors.[20]

[51] We do not accept this interpretation on the facts of this case, otherwise this factor for the business trigger test would always be met where a respondent engages in capital raising. In *Miner Edge* the investment that was offered related to a purported cryptocurrency mining company that never existed and a purported right to participate in profits in the form of shares, tokens or initial coin offerings.[21] In this case, the funds received were for an underlying business and any potential profit participation rights (which were contingent upon the conversion occurring) were directly related to revenues generated by the underlying Hotel business.

[52] We therefore find that on a holistic view the respondents did not cross the line from capital raising for a specific underlying business to engaging in the business of trading.

[53] We employ the same reasoning in relation to the general admission in the Agreed Statement of Facts that the respondents held themselves out as engaging in trading. Specific facts are required to support this legal conclusion. The Agreed Statement of Facts sets out no specific act or communication of the

[19] 2021 ONSEC 31 (***Miner Edge***)
[20] *Miner Edge* at para 27
[21] *Miner Edge* at paras 7-8

respondents by which they held themselves out as engaging in the business of trading. The Agreed Statement of Facts recounts that the respondents actively and regularly promoted investments in the Hotel, posted on social media, sent mass emails, hosted investment seminars, disseminated promotional flyers and brochures, met with potential investors, and gave tours of the Hotel. The representations listed in the Agreed Statement of Facts relate to soliciting investments in the Hotel business and establish that the respondents clearly held themselves out as ready and eager to engage in trades to finance their underlying business. Those facts fall short of establishing the respondents held themselves out as engaging in the business of trading.

4.4 Did Stinson, Hotel Inc., Management Inc. and Buffalo Central engage in an illegal distribution of securities?

[54] A person or company must not distribute a security without a prospectus, unless an exemption applies.[22]

[55] The prospectus requirement is another cornerstone of Ontario's securities regulatory regime. It is important because it seeks to ensure that investors are properly equipped to assess the risks of an investment and to make an informed investment decision.[23]

[56] The term "distribution" is defined in s. 1(1) of the *Act* and includes "a trade in securities of an issuer that have not been previously issued."

[57] Each issuance of a subscription agreement by Hotel Inc., Management Inc. and Buffalo Central constituted the issuance of a security that had not been previously issued. As a result, the trades constituted distributions. The Tribunal reached a similar finding in *Rare Investments.*[24]

[58] Stinson prepared the subscription agreements, modified them over the Material Time and was a party to the agreements, which constitute acts in furtherance of a trade.

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[22] *Act,* s 53(1)

[23] *Money Gate* at para 168

[24] *Rare Investments* at para 130

[59] Stinson, Hotel Inc., Management Inc. and Buffalo Central admit that they distributed subscription agreements without filing a preliminary prospectus or a prospectus and without an applicable exemption available.

[60] We find that the Stinson, Hotel inc., Management Inc. and Buffalo Central engaged in distributions of securities without filing a preliminary prospectus or prospectus, and without an applicable exemption from the prospectus requirement, and therefore contravened s. 53(1) of the *Act*.

4.5 Did the Stinson and Hotel Inc. make false or misleading statements that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship?

[61] A person or company must not make a false or misleading statement about a matter that a reasonable investor would consider relevant in deciding whether to enter into or maintain a trading relationship.[25]

[62] Stinson and Hotel Inc. admit they made false or misleading statements. They specifically admit that:

a. Stinson drafted and/or approved promotional material that stated or conveyed that the investments were qualified investments for RRSPs and TFSAs and that not all of the investment were qualified (in particular, the individually titled suites in the Hotel);

b. certain early Subscription Agreements stated that investor funds would be collectively secured by a USD 40 million mortgage against the Hotel property but such security did not exist; and

c. some of the early Subscription Agreements stated that one or more of the Stinson Entities would maintain an interest reserve equal to 10% of the value of investor funds in the Hotel but no interest reserve was created.

[63] The representations that existed in the early subscription agreements were removed from later versions once it became apparent that financial circumstances would not allow for those measures to be taken.

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[25] *Act,* s 44(2)

[64] The next question is whether a reasonable investor would consider any of the false representations as relevant in deciding whether to enter into or maintain a trading relationship with the respondents. In *Solar Income Fund (Re),*[26] the Tribunal noted that a "trading or advising relationship" under s. 44(2) "is of a nature typically provided by registrants, *i.e.*, to act on behalf of investors to assist with their trading, and to advise investors on investment decisions they may make."[27]

[65] The Tribunal went on to find "that it would take something more than a trade, and associated administrative and information-conveying steps, to create a trading relationship."[28] Further, "if s. 44(2) were to apply in the circumstances of this case, then every issuer might be said to be in a trading relationship with every holder of that issuer's securities. That cannot be the correct interpretation of s. 44(2)."[29]

[66] Applying the reasoning in *Solar Income Fund*, we find the facts before us do not establish the existence of a trading relationship between the respondents and investors.

[67] We acknowledge that in *Solar Income Fund*, investors purchased securities of the issuer through an exempt market dealer. The only case in which a non-registrant has successfully been found to have breached s. 44(2) of the *Act* is *Black Panther (Re).*[30] However, the respondents in *Black Panther* had effectively taken the place of a dealer and were found to have been carrying on the business of trading or advising without being properly registered.[31] In the proceeding before us, we have not found the respondents to have been carrying on the business of trading.

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[26] 2022 ONSEC 2 (***Solar Income Fund***)
[27] *Solar Income Fund* at para 51
[28] *Solar Income Fund* at para 68
[29] *Solar Income Fund* at para 40
[30] 2017 ONSEC 1 (***Black Panther***)
[31] *Black Panther* at paras 110-112

[68] To be found liable for making false or misleading statements, the respondents would need to be held liable under other provisions of Ontario securities law more relevant to issuers.

4.6 Did Stinson and Hospitality Corp. breach the cease trade order?

[69] The temporary cease trade order was first effective on March 20, 2020, has remained in effect through subsequent extensions and will continue in effect until the conclusion of this merits hearing. The temporary cease trade order prohibits trading by Hotel Inc., Management Inc., Hospitality Corp., Restoration and Stinson and prohibits trading in securities related to the Hotel.

[70] In January and February 2021, Stinson signed share certificates in his capacity as President of Hospitality Corp. and Hospitality Corp. issued approximately 50,944 shares to approximately nine individuals.

[71] The respondents submit that the nine individuals were existing investors who had a contractual right to receive shares in lieu of interest payments. That may be so, but it does not change the fact that trades were made. The Agreed Statement of Facts acknowledges that Hospitality Corp. issued shares to these individuals in January and February of 2021 while the temporary cease trade order was in effect.

[72] While the trading was limited and there may not have been active solicitation, the issuance of further shares while the temporary cease trade order is in effect constitutes a breach of the temporary cease trade order. We find that Stinson and Hospitality Corp. breached the temporary cease trade order and therefore contravened Ontario securities law, which by definition includes a decision of the Commission or Tribunal to which the person or company is subject.[32]

4.7 Did the respondents engage the Tribunal's public interest jurisdiction?

[73] The opening words of s. 127 of the *Act* give the Tribunal broad authority to make "orders if in its opinion it is in the public interest to make the…orders".

[74] The Tribunal may exercise its jurisdiction to find that conduct, which does not constitute a breach of Ontario securities law, nevertheless attracts the Tribunal's

[32] *Act*, s 1(1)

public interest jurisdiction. The Tribunal has done so where it finds that the conduct is abusive of the capital markets or engages an animating principle of the *Act*.[33]

[75] The fundamental animating principles of securities regulation, set out in s. 2.1 of the *Act*, include:

a. requirements for timely, accurate and efficient disclosure of information;

b. restrictions on fraudulent and unfair market practices and procedures; and

c. requirements for the maintenance of high standards of fitness and business conduct to ensure honest and responsible conduct by market participants.

[76] The Agreed Statement of Facts affirms that the respondents failed to:

a. segregate funds related to this project from funds related to Stinson's other real estate projects or from Stinson's own bank accounts or credit card accounts;

b. maintain accurate records of funds received from investors; and

c. properly record the use of investors' funds.

[77] We find that these important record-keeping failures by the respondents offend the animating principles of the *Act* and the conduct in this regard engages the Tribunal's public interest jurisdiction.

4.8 Did Stinson authorize, permit or acquiesce in the respondents' misconduct?

[78] Because we have found that Stinson directly breached s. 53(1) of the *Act* and breached the temporary cease trade order, we do not need to consider whether he authorized, permitted or acquiesced in the respondent's misconduct and we decline to do so.

[33] *Agueci (Re)*, 2015 ONSEC 2 at paras 121-126, 174-175, 715-717

5. CONCLUSION

[79] For the above reasons we do not find that the respondents breached s. 25(1) or s. 44(2) of the *Act*, nor do we make a finding that Stinson authorized, permitted or acquiesced in the respondent's misconduct. However, we find that:

a. Stinson, Hotel Inc., Management Inc. and Buffalo Central distributed securities without a prospectus, and without any applicable exemptions from the prospectus requirement, contrary to s. 53(1) of the *Act*;

b. Stinson and Hospitality Corp. breached a temporary cease trade order and therefore breached Ontario securities law; and

c. the respondents engaged the Tribunal's public interest jurisdiction by:

i. failing to segregate investor funds;

ii. failing to maintain accurate records of funds received by investors; and

iii. failing to properly record the use of investors' funds.

[80] We therefore require that the parties contact the Registrar by 4:30pm on July 12, 2023 to arrange an attendance, the purpose of which is to schedule a hearing regarding sanctions and costs, and the delivery of materials in advance of that hearing. The attendance is to take place on a mutually convenient date that is fixed by the Governance & Tribunal Secretariat, and that is no later than August 4, 2023.

[81] If the parties are unable to present a mutually convenient date to the Registrar, each party may submit to the Registrar, for consideration by a panel of the Tribunal, a one-page written submission regarding a date for the attendance. Any such submission shall be submitted by 4:30pm on July 12, 2023.

Dated at Toronto this 27th day of June, 2023

"*Russell Juriansz*"

Russell Juriansz

"*Sandra Blake*"

Sandra Blake

"*Cathy Singer*"

Cathy Singer