



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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

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

Citation: Currey (Re), 2018 ONSEC 47

Date: 2018-10-03

File No. 2018-48

**IN THE MATTER OF
JASON MICHAEL CURREY, THE HEALTHY RETIREMENT GROUP INC.,
SUNSET CREEK RESOURCES INC. and 1826487 ALBERTA LTD.**

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

Hearing: In Writing

Decision: October 3, 2018

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel

Submissions: Christina Galbraith For Staff of the Commission

No submissions made by or on behalf of Jason Michael Currey, The Healthy Retirement Group Inc., Sunset Creek Resources Inc. and 1826487 Alberta Ltd.

TABLE OF CONTENTS

I.	INTRODUCTION AND BACKGROUND.....	1
II.	ASC PROCEEDING AND FINDINGS	1
	A. Findings – Breach of sections 75(1)(a), 75(1)(b) and section 93(b) of the Alberta Act.....	1
	B. The ASC Order.....	2
III.	SERVICE AND PARTICIPATION	4
IV.	STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS.....	4
V.	ANALYSIS AND DECISION	4

REASONS AND DECISION

I. INTRODUCTION AND BACKGROUND

- [1] On February 27, 2018, a hearing panel of the Alberta Securities Commission (the **ASC**) found that Jason Michael Currey (**Currey**), The Healthy Retirement Group (**HRG**), Sunset Creek Resources Inc. (**Sunset**) and 1826487 Alberta Ltd. (**182 Alberta**) (collectively, the **Respondents**) dealt in securities without registration and perpetrated a fraud on investors, contrary to sections 75(1)(a) and 93(b) of the Alberta *Securities Act* (the **Alberta Act**).¹ Two of the Respondents, Currey and HRG, were also found to have acted as an adviser without being registered, contrary to section 75(1)(b) of the Alberta Act.
- [2] The ASC Order (the **ASC Order**)² imposed sanctions, conditions, restrictions and requirements on the Respondents, which are set out in Part II of these Reasons.
- [3] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) rely on the inter-jurisdictional enforcement provisions found in subsection 127(10) of the Ontario *Securities Act* (the **Act**)³ to request that a protective order be issued in the public interest under subsection 127(1) of the Act.
- [4] The issues for me to consider are:
- a. whether one of the circumstances under subsection 127(10) of the Act applies to the Respondents, namely, are the Respondents subject to an order made by a securities regulatory authority imposing sanctions, conditions, restrictions or requirements (s. 127(10)(4)); and if so
 - b. whether the Commission should exercise its jurisdiction to make a protective order in the public interest in respect of the Respondents pursuant to subsection 127(1) of the Act.

II. ASC PROCEEDING AND FINDINGS

A. Findings – Breach of sections 75(1)(a), 75(1)(b) and section 93(b) of the Alberta Act

- [5] On October 6, 2017, the Respondents entered into a Statement of Admissions and Joint Submission on Sanction (**Statement of Admissions**), in which they admitted to breaches of the Alberta Act.⁴
- [6] Currey, a resident of Calgary, Alberta, admitted that he held himself out as an investment dealer and adviser, while not registered under the Alberta Act. He also admitted that he committed fraud by directing investor funds to purposes other than those disclosed to investors, by using investor funds to repay principal amounts owing to prior investors and by misappropriating funds from investors for his personal use. Currey was the founder, guiding mind, and sole director, shareholder and employee of each of the three corporate Respondents.⁵

¹ RSA 2000 cS-4

² Exhibit 1, Tab 2, ASC Order dated February 27, 2018 (**ASC Order**)

³ RSO 1990 c S.5

⁴ Exhibit 1, Tab 1, Statement of Admissions and Joint Submissions on Sanction dated October 6, 2017 (**Statement of Admissions**)

⁵ Statement of Admissions at paras 3-6 and 16

- [7] HRG, an Alberta Corporation, purported to be a vehicle for insurance sales and was also Currey's primary marketing vehicle. HRG admitted to engaging in trading and advising in securities while not registered under the Alberta Act and to committing fraud.⁶
- [8] Sunset, an Alberta Corporation, was Currey's investment vehicle. Debentures and other securities in Sunset were sold to investors and the proceeds were then purportedly used to fund investments in resource development companies.⁷
- [9] Like Sunset, 182 Alberta was an Alberta Corporation that was used by Currey as an investment vehicle. The proceeds from the sale of 182 Alberta securities was purportedly used to fund investments in real estate and other securities.⁸
- [10] Each of the Respondents admitted to dealing in securities without registration, contrary to section 75(1)a of the Alberta Act. Between November 2013 and October 2014 (the **Material Time**) Currey and HRG used Sunset and 182 Alberta to raise approximately \$3.2 million from nine investors through the sale of promissory notes and debentures.⁹
- [11] Each Respondent also admitted to perpetrating a fraud on investors, contrary to section 93(b) of the Alberta Act. Investors were told that funds invested in Sunset and 182 Alberta would be directed to certain non-high risk investments.¹⁰ However, beginning in June 2014 funds began to be directed to other purposes, including repaying principal to prior investors and misappropriation by Currey for his personal use.¹¹ In total, approximately \$290,000 was used to repay principal to earlier investors and \$695,000 was misappropriated by Currey.¹²
- [12] Additionally, Currey and HRG admitted to advising without registration, contrary to section 75(1)(b) of the Alberta Act. Currey and HRG acted in an advisory capacity to the investors from whom they raised capital.¹³

B. The ASC Order

- [13] The ASC ordered:¹⁴
- a. Market-Access Bans
 - i. under s. 198(1)(d) of the Alberta Act, Currey must immediately resign all positions he holds as a director or officer of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system;

⁶ Statement of Admissions at para 4

⁷ Statement of Admissions at para 5

⁸ Statement of Admissions at para 6

⁹ Statement of Admissions at paras 7-8

¹⁰ Statement of Admissions at paras 15-16

¹¹ Statement of Admissions at para 17

¹² Statement of Admissions at paras 16 and 18

¹³ Statement of Admissions at para 12

¹⁴ ASC Order at para 94

- ii. for a period of 20 years from the date of the ASC Order or until the administrative penalty set out below is paid in full, whichever is the later:
 - (a) under s. 198(1)(b) of the Alberta Act, the Respondents must cease trading in or purchasing any securities or derivatives, except that the ASC Order does not preclude Currey from trading in or purchasing securities through a registrant (who has first been given a copy of the ASC Order) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of himself, his spouse or his dependent children;
 - (b) under s. 198(1)(c) of the Alberta Act, all of the exemptions contained in Alberta securities laws do not apply to the Respondents;
 - (c) under s. 198(1)(e) of the Alberta Act, Currey is prohibited from becoming or acting as a director or officer (or both) of any issuer (or other person or company that is authorized to issue securities), registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system, except that the ASC Order does not preclude Currey from becoming or acting as a director or officer (or both) of an issuer that is wholly owned by himself, his spouse, his parents, his siblings or his children, and which does not issue or propose to issue securities to the public;
 - (d) under s. 198(1)(e.1) of the Alberta Act, Currey and HRG are prohibited from advising in securities or derivatives;
 - (e) under s. 198(1)(e.2) of the Alberta Act, Currey is prohibited from becoming or acting as a registrant, investment fund manager or promoter; and
 - (f) under s. 198(1)(e.3) of the Alberta Act, Currey is prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
- b. Disgorgement
 - i. under s. 198(1)(i) of the Alberta Act, Currey must pay to the ASC \$120,200 obtained as a result of his non-compliance with Alberta securities laws;
- c. Administrative Penalty
 - i. under s. 199 of the Alberta Act, Currey must pay to the ASC an administrative penalty of \$200,000; and
- d. Cost Recovery
 - i. under s. 202 of the Alberta Act, Currey must pay to the ASC \$25,000 of the costs of the ASC's investigation and hearing.

III. SERVICE AND PARTICIPATION

- [14] Currey was served personally and on behalf of HRG, Sunset, and 182 Alberta with the Notice of Hearing, Statement of Allegations and Staff's Written Hearing Materials via email on August 15, 2018. The Respondents were also served with the same documents by courier on August 16, 2018.¹⁵
- [15] Pursuant to Rule 11(3) of the *Ontario Securities Commission Rules of Procedure and Forms (OSC Rules of Procedure)*¹⁶ the deadline for Currey and the corporate respondents to serve and file written submissions was Wednesday, September 12, 2018. No materials were filed on behalf of the Respondents.
- [16] I am satisfied that the Respondents were provided with adequate notice of this proceeding. Pursuant to the *Statutory Powers and Procedures Act* and the *OSC Rules of Procedure* the Commission may proceed in the absence of a party where that party has been given notice of the hearing.¹⁷

IV. STATUTORY AUTHORITY TO MAKE PUBLIC INTEREST ORDERS

- [17] Subsection 127(10) of the Act facilitates the inter-jurisdictional enforcement of judgements for breaches of securities law by providing the Commission with a mechanism to issue protective and preventative orders to ensure that conduct which took place in other jurisdictions will not be repeated in Ontario's capital markets.¹⁸
- [18] Subsection 127(10) of the Act does not itself empower the Commission to make an order, rather it provides a basis for an order under subsection 127(1). On receiving evidence that a respondent is subject to an order made by a securities regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company,¹⁹ the Commission must determine whether an order under subsection 127(1) of the Act should be made.
- [19] Orders made under subsection 127(1) of the Act are "protective and preventative" and are made to restrain potential conduct which could be detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.²⁰
- [20] In exercising its jurisdiction to make an order under subsection 127(10) of the Act, the Commission does not require a pre-existing connection to Ontario. However, it is a factor that can be considered by the Commission in exercising its discretion.²¹

V. ANALYSIS AND DECISION

- [21] The threshold has been met under paragraph 4 of subsection 127(10) of the Act, as the Respondents are subject to the ASC Order, which imposes sanctions, conditions, restrictions or requirements upon them. Since the threshold in

¹⁵ Affidavit of Service of Lee Crann, sworn August 20, 2018 at paras 2 and 5

¹⁶ *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988, r 11(3)(g) (**OSC Rules of Procedure**)

¹⁷ *Statutory Powers and Procedures Act*, RSO 1990 c S.22, s 7(2); *OSC Rules of Procedure*, r 21(3)

¹⁸ *Black (Re)*, 2014 ONSEC 16, (2014), 37 OSCB 5847 at para 7 (**Black**)

¹⁹ *Securities Act*, s. 127(1)4

²⁰ *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 26, [2001] 2 SCR 132 (SCC) at paras 42-43

²¹ *Biller (Re)* (2005), 28 OSCB 10131 at paras 32-35

subsection 127(10) has been met, it is now open to me to make one or more orders under subsection 127(1) if it is my opinion that it is in the public interest to do so.

- [22] The Commission may consider a number of factors in determining the nature and scope of sanctions, including the seriousness of the misconduct, the harm suffered by investors, specific and general deterrence and any mitigating factors.²²
- [23] The unregistered dealing, advising and fraud admitted to by Currey and the corporate Respondents would have been serious breaches of the Act in Ontario. The ASC Panel stated:
- We have no hesitation concluding that the Respondents' misconduct was very serious. We agree with Staff's submission that it "falls at the most serious end of the spectrum", as it involved fraud and "a substantial degree of deceit and dishonesty" – deliberate misconduct – over a sustained period with respect to a "significant amount of money".²³
- [24] The harm suffered by investors was also significant. Not only did investors suffer significant financial harm, the Respondents also deprived investors of their legal entitlement under the Alberta Act to have a qualified dealer and adviser who was registered with the ASC.²⁴
- [25] Staff of the ASC calculated that Currey was personally enriched from the personal use of approximately \$400,000 of investor funds.²⁵
- [26] The misconduct continued throughout the Material Time, a period of almost two years. Therefore, it involved persistent wrongdoing.
- [27] Several mitigating factors were cited by the ASC in their decision and the Panel found that Currey was "genuinely remorseful...and recognizes the seriousness of his misconduct and the impact it has had on the investors."²⁶
- [28] In the Statement of Admissions relied upon in the original proceeding, the Respondents acknowledged that the Statement of Admissions could be used for securities regulatory proceedings in other jurisdictions.²⁷
- [29] The sanctions imposed by the Commission in this case must deter Currey and other like-minded individuals from engaging in similar misconduct in Ontario.
- [30] Therefore, in considering the factors set out above, I find it appropriate to grant an order in the public interest pursuant to the authority provided in subsection 127(1) of the Act, and as requested by Staff. This order will protect the Ontario capital markets from the Respondents, as well as deter other persons who may wish to conduct similar misconduct in Ontario.

²² *Beltco Holdings Inc. (Re)* (1998), 21 OSCB 7743 at 7746-7747; *MCJC Holdings* (2002), 25 OSCB 1133 at 1136

²³ ASC Order at para 56

²⁴ ASC Order at para 57

²⁵ ASC Order at para 56

²⁶ ASC Order at para 75

²⁷ Statement of Admissions at para 31

[31] For the reasons provided above, I make the following order:

a. Against Currey that:

Until the until the later of February 27, 2038 or the date on which the administrative penalty ordered against Currey in paragraph 94 of the Alberta Securities Commission's Order dated February 27, 2018 (the **ASC Order**) has been paid in full:

- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by Currey shall cease, except that this order does not preclude Currey from trading in securities through a registrant in Ontario (who has first been given a copy of the ASC Order, and a copy of this Order) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of Currey, his spouse or his dependent children;
- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Currey shall cease, except that this order does not preclude Currey from purchasing securities through a registrant in Ontario (who has first been given a copy of the ASC Order, and a copy of this Order) in registered accounts or tax-free savings accounts maintained with that registrant for the benefit of one or more of Currey, his spouse or his dependent children;
- iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to Currey;
- iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Currey shall resign any positions that he holds as a director or officer of any issuer, registrant, or investment fund manager;
- v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Currey is prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager, except that this order does not preclude Currey from becoming or acting as a director or officer of an issuer that is wholly owned by Currey, his spouse, his parents, his siblings or his children, and which does not issue or propose to issue securities to the public; and
- vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Currey is prohibited from becoming or acting as a registrant, investment fund manager, or promoter.

b. against HRG, Sunset and 182 Alberta that:

until the later of February 27, 2038 or the date on which the administrative penalty ordered against Currey in paragraph 94 of the ASC Order has been paid in full:

- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by HRG, Sunset and 182 Alberta shall cease;
- ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by HRG, Sunset and 182 Alberta shall cease;
- iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to HRG, Sunset or 182 Alberta; and
- iv. pursuant to paragraph 8.5 of subsection 127(1) of the Act, HRG is prohibited from becoming or acting as a registrant or investment fund manager.

Dated at Toronto this 3rd day of October, 2018.

“D. Grant Vingoe”
D. Grant Vingoe