



Ontario
Securities
Commission

Commission des
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de l'Ontario

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Citation: Re AAOption et al, 2017 ONSEC 20
Date: 2017-05-26

**IN THE MATTER OF
AAOPTION, GALAXY INTERNATIONAL SOLUTIONS LTD.
and DAVID ESHEL**

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

Hearing: In writing

Decision: May 26, 2017

Panel: Monica Kowal Vice-Chair

Appearances: Malinda Alvaro For Staff of the Commission
No one appearing for the Respondents

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REASONS AND DECISION

I. STAFF'S REQUEST

- [1] In this written hearing concerning a binary options trading platform, Staff of the Ontario Securities Commission seeks an enforcement order pursuant to subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the "**Act**"), imposing restrictions on the respondents: AAOOption, Galaxy International Solutions Ltd. ("**Galaxy**") and David Eshel ("**Eshel**").
- [2] The Financial and Consumer Affairs Authority of Saskatchewan (the "**FCAA**") has made an Order imposing sanctions, conditions and restrictions on AAOOption, Galaxy and Eshel (collectively, the "**Respondents**"). Accordingly, Staff relies on paragraph 4 of the inter-jurisdictional enforcement provision found in subsection 127(10) of the Act.
- [3] The Commission conducted a written hearing to consider Staff's request. These are the reasons granting Staff's requested order, which will be issued separately.

II. PROCEDURE

- [4] On October 26, 2016, Staff filed a Statement of Allegations against the Respondents. The Commission issued a Notice of Hearing in respect of that Statement of Allegations, setting a hearing date of November 23, 2016. Staff attended on that date and the hearing was adjourned to December 7, 2016, on which date the hearing was adjourned again to January 19, 2017. Throughout the period of adjournments, Staff took continued steps to serve the Respondents, who are all located outside of Canada, as is often the case with firms and individuals involved in binary options trading platforms. Staff's steps included service:
- a. by courier to a United Kingdom address provided on the Respondents' website, which courier was accepted and signed for;
 - b. by courier to another United Kingdom address listed on the "contact us" page of the Respondents' website, which courier package was refused and returned to Staff as undeliverable;¹
 - c. by courier to an Anguilla, British West Indies address reflected on the Whois Data search report for the Respondents' website, which courier package was also returned as undeliverable; and
 - d. by e-mail to three addresses that were used for service in the FCAA proceeding, that appeared on the Respondents' website, and that were reflected on the Whois Data search report for the Respondents' website. One of the e-mails returned a delivery failure report indicating that the e-mail account did not exist.
- [5] On January 19, 2017, the Respondents did not appear for the scheduled hearing. I found that service had been effected on all Respondents. They were properly served with the Statement of Allegations, the Notice of Hearing, Staff's

1 At para 17 of its Decision, the FCAA noted that this address was the same address that the FCAA Panel had seen in two other binary option hearing matters on which other FCAA panels had rendered decisions and determined that the binary option trading entities were in breach of securities laws.

disclosures and the Commission's preliminary Orders. Staff applied to continue the proceeding by way of written hearing. The Commission issued an Order granting Staff's request and setting a timetable (the "**January Order**"). Staff's materials were required to be served and filed no later than January 30, 2017. The Respondents were allowed until February 27, 2017 to serve and file responding materials, if any.

- [6] Staff's materials were served and filed in accordance with the January Order. None of the Respondents filed responding materials although they were properly served with the Commission's January Order and with Staff's hearing materials.
- [7] In March 2017, the Secretary to the Commission wrote to the parties to convey my request for additional submissions regarding the Commission's jurisdiction to make an inter-jurisdictional enforcement order against AAOption. In response, later that month, Staff filed and served supplemental materials. Again, there was no response from any of the Respondents.
- [8] The Commission can proceed in the absence of a party where that party has received notice of a written hearing and fails to act or participate.² I am therefore authorized to proceed with this written hearing in the absence of the Respondents.

III. FCAA PROCEEDINGS

- [9] The FCAA proceedings were commenced in November 2015. Staff of the FCAA filed a Statement of Allegations against the Respondents, alleging that they violated subsection 27(2) of *The Securities Act, 1988*, RSS 1988, c S-42.2 (the "**Saskatchewan Act**") by acting as dealers by engaging in the business of trading in securities or exchange contracts or holding themselves out as engaging in the business of trading in securities or exchange contracts in Saskatchewan. The Statement of Allegations stated that:
 - a. Galaxy was a corporate entity formerly registered with the Anguilla Corporations Branch and purported to be located in the United Kingdom;
 - b. AAOption was either an operating name used by, and therefore, one and the same as Galaxy, or alternatively, was an entity of unknown status or whereabouts related to Galaxy; and
 - c. Eshel was the individual behind Galaxy and an owner of the website "www.aaoption.com".
- [10] At the subsequent hearing in April 2016, the FCAA Panel received evidence from an FCAA investigator and heard submissions from counsel for FCAA Staff. The FCAA Panel also received a live presentation of the then active AAOption website, a binary options trading platform. There were no appearances by the Respondents or anyone on their behalf, though proper notice had been given.
- [11] After the hearing, the FCAA issued a Decision dated June 8, 2016 (the "**FCAA Decision**"). The FCAA Decision summarized the evidence presented to the FCAA Panel and found that the Respondents were engaging in the business of trading in securities, which required registration with FCAA, and that the Respondents had failed to register. The Panel noted that the matter was complicated by the

² *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(2) and *Ontario Securities Commission Rules of Procedure* (2014), 37 OSCB 4168, r 7.1.

appearance that the binary option trading in AAOption may not be a legitimate business. The FCAA characterized the facts as reprehensible and consistent with other binary option trading schemes, including a sophisticated on-line trading platform, a third party in a foreign country, and unsuccessful requests for refunds of initial investments and generated profits. The FCAA found that the Respondents should be permanently banned from the securities industry in Saskatchewan, pay a significant administrative penalty, reimburse investor losses and pay the FCAA's costs incurred because of the Respondents' wrongful acts.

- [12] The next month, in July 2016, the FCAA issued its consequential Order against the Respondents reflecting the operative provisions of the FCAA Decision. The FCAA's Order provided that:
- a. all of the exemptions in Saskatchewan securities laws do not apply to the Respondents, permanently;
 - b. the Respondents shall cease trading in any securities and derivatives in Saskatchewan, permanently;
 - c. the Respondents shall cease acquiring securities and derivatives, for and on behalf of residents of Saskatchewan, permanently;
 - d. the Respondents shall cease giving advice respecting securities and derivatives, for and on behalf of residents of Saskatchewan, permanently;
 - e. the Respondents shall pay an administrative penalty to the FCAA in the amount of \$25,000;
 - f. the Respondents shall pay compensation to each person or company found to have sustained a financial loss as a result of the Respondents' contraventions of the Saskatchewan Act, in an amount to be determined; and
 - g. the Respondents shall pay the costs of the matter.

IV. ANALYSIS

- [13] Under the subsection relied on by Staff (paragraph 4 of subsection 127(10) of the Act), the Commission may make an order under subsection 127(1) of the Act where a person or company is subject to an order made by a financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on the person or company. The subsection plays an important role, providing the Commission with a mechanism to issue protective and preventative orders to ensure conduct that took place in other jurisdictions will not be repeated in Ontario's capital markets.³
- [14] I find that Staff established the threshold criteria under subsection 127(10) of the Act. In light of the FCAA's findings, and to the extent that AAOption is a company (either as an alias of Galaxy or as an entity related to Galaxy), the Respondents are subject to an Order made by the FCAA in Saskatchewan, which Order imposed sanctions and restrictions on them.
- [15] In addition, I find that it is in the public interest to grant Staff's requested order. I am guided by the public interest mandate of the Act, to provide protection to

³ *Re Black* (2014), 37 OSCB 5847 at para 7.

investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets. While the Commission must make its own determination of what is in the public interest, it is also important that the Commission be aware of and responsive to an increasingly complex and interconnected cross-border securities industry. For comity to be effective and the public interest to be protected, the threshold for reciprocity must be low when the findings of a foreign jurisdiction qualify under subsection 127(10) of the Act.

[16] In my view, Staff's requested order is appropriate for the following reasons:

- a. Staff requested trading bans and registrant bans that mirror the bans imposed by the FCAA, to the extent possible under the Act. Appropriately, Staff does not seek an order in Ontario that would require the payment of an additional administrative penalty or additional disgorgement;
- b. The terms of Staff's 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;
- c. The sanctions proposed by Staff are prospective in nature, proportionate to the Respondents' conduct and will serve to deter similar wrongdoing in Ontario; and
- d. Staff provided no evidence to suggest that the Respondents were soliciting investors in Ontario. But, if the Respondents' conduct had occurred in Ontario, it is almost certain that it would have constituted a breach of subsection 25(1) of the Act in Ontario and would have been considered to be contrary to the public interest, such that it would have attracted similar sanctions.

[17] A specific nexus to Ontario is not a necessary pre-condition to the exercise of the Commission's jurisdiction under subsection 127(1), in reliance upon subsection 127(10). However, Staff submits that the Respondents' conduct warrants an order designed to protect Ontario investors from similar misconduct by the Respondents by preventing or limiting the Respondents' participation in Ontario's capital markets. I agree with that submission. The Commission is concerned about investor losses resulting from binary option trading and the requested inter-jurisdictional enforcement order will assist with efforts to stop illegitimate binary options schemes in Ontario.

V. DECISION

[18] Taking into consideration the evidence filed and the submissions of Staff and having found that it is in the public interest to do so, an Order will be issued imposing the following sanctions:

- a. against AAOption and Galaxy:
 - i. trading in any securities or derivatives by Galaxy and AAOption cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

- ii. trading in any securities of Galaxy and AAOption cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;
 - iii. the acquisition of any securities by Galaxy and AAOption be prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
 - iv. any exemptions contained in Ontario securities law do not apply to Galaxy and AAOption permanently, pursuant to paragraph 3 of subsection 127(1) of the Act; and
 - v. Galaxy and AAOption be prohibited permanently from becoming or acting as registrants, investment fund managers or promoters, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- b. against Eshel:
- i. trading in any securities or derivatives by Eshel cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;
 - ii. the acquisition of any securities by Eshel be prohibited permanently, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
 - iii. any exemptions contained in Ontario securities law do not apply to Eshel permanently, pursuant to paragraph 3 of subsection 127(1) of the Act; and
 - iv. Eshel be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act.

Dated at Toronto this 26th day of May, 2017.

“Monica Kowal”

Monica Kowal