



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
THE *SECURITIES ACT*, RSO 1990, c S.5**

- AND -

**IN THE MATTER OF
OPTAM HOLDINGS INC., INFINIVEST MORTGAGE
INVESTMENT CORPORATION and WADE ROBERT CLOSSON**

**REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*)**

Hearing: In writing

Decision: February 28, 2017

Panel: Monica Kowal – Vice-Chair

Appearances: Malinda Alvaro – For Staff of the Commission
Evan Rankin, Student-at-Law

– No one appearing for the Respondents

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REASONS AND DECISION

I. STAFF'S REQUEST

- [1] In this written hearing, 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 sanctions and restrictions on the Respondents: Optam Holdings Inc. ("**Optam**"), Infininvest Mortgage Investment Corporation ("**Infininvest**") and Wade Robert Closson ("**Closson**"). Closson is an officer and director of Optam and Infininvest, which are both Alberta corporations.
- [2] The Alberta Securities Commission (the "**ASC**") made orders imposing sanctions, conditions and restrictions on 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 18, 2016, Staff of the Commission filed a Statement of Allegations against the Respondents. On October 19, 2016, the Commission issued a Notice of Hearing in respect of that Statement of Allegations. The Commission set November 16, 2016 for a hearing of Staff's application to continue this proceeding in writing.
- [5] On November 16, 2016, the Respondents did not appear although properly served with the Statement of Allegations and Notice of Hearing. Staff made submissions and applied to continue by way of written hearing. The Commission issued an Order granting Staff's request and setting a timetable. Staff's materials were required to be served and filed no later than November 28, 2016. The Respondents were allowed until January 16, 2017 to serve and file responding materials.
- [6] Staff's materials were served and filed in accordance with the ordered schedule. None of the Respondents served or filed responding materials although they were properly served with the Commission's Order and with Staff's materials.
- [7] Subsection 7(2) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 and Rule 7.1 of the *Ontario Securities Commission Rules of Procedure* (2014), 37 OSCB 4168 permit the Commission to proceed in the absence of a party where that party has received notice of a written hearing and fails to act or participate. I am therefore authorized to proceed with this written hearing in the absence of the Respondents.

III. ASC PROCEEDINGS

- [8] On November 2, 2015, the Respondents entered into a Statement of Admissions with the ASC (the "**Admissions**") with respect to allegations made in a Notice of Hearing issued by the ASC on December 18, 2014. In the Admissions, the Respondents admitted to unregistered trading and illegal distribution and further admitted that their conduct was contrary to the public interest. Closson also admitted to fraud. Specifically, the Respondents' admissions included the following:
- a. the Respondents traded in securities of Optam and Infininvest without being registered in accordance with Alberta securities laws and without an exemption from that requirement for some or all of those trades, in breach of subsection 75(1)(a) of the Alberta *Securities Act*, RSA 2000, c S-4 (the "**Alberta Act**");
 - b. the Respondents traded in distributions of securities without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for some or all of those distributions, in breach of section 110 of the Alberta Act;
 - c. Closson directly or indirectly engaged or participated in "an act, practice, or course of conduct relating to a security that he knew or ought to have reasonably known would perpetrate a fraud on a person or company", in breach of subsection 93(b) of the Alberta Act; and
 - d. the misconduct described in the above breaches of the Alberta Act also constituted conduct that was contrary to the public interest.
- [9] According to the Admissions, Infininvest "was ostensibly in the business of mortgage lending as a mortgage investment corporation". The Admissions presented alternatives regarding business administration: either Closson administered Infininvest's ostensible business through Optam, or "the investment funds were provided to Optam through Infininvest and other entities controlled by" Closson. Investors also apparently "transfer[red] registered accounts to Closson's control" via Infininvest.
- [10] At the hearing on November 23, 2015, the ASC received evidence, including the Admissions (which the ASC accepted as accurate), and heard submissions from counsel for Staff and counsel for the Respondents. Counsel's submissions included the parties' shared position as to appropriate orders. With the parties' agreement, the ASC proceeded to decide both the merits of the allegations and the appropriate orders in a single decision.
- [11] The ASC issued a decision dated December 29, 2015 (the "**ASC Decision**"). The ASC Decision found that, from January 1, 2009 to April 2, 2013, Closson raised a total of some \$10.8 million for Optam and Infininvest from as many as 125 investors. In exchange, investors received either promissory notes issued by Closson and Optam (the "**Optam Scheme**") or preferred shares in Infininvest (the "**Infininvest Scheme**"). Investors in the Optam Scheme were to earn a return from the profits of the purported mortgage investment operation to which their pooled money was supposedly directed, while investors in the Infininvest Scheme were to receive dividends from the same purported operation.

- [12] The ASC Decision found that the reality was different. Almost no investor money was used to fund mortgages. The investments under the Optam Scheme and the Infininvest Schemes (collectively, the "**Schemes**") were not secured by any encumbrance on any real estate in favour of the investors. Instead, Closson diverted money to uses not authorized by investors, including using approximately \$5.6 million of investor money to pay returns to other investors, approximately \$3.9 million for projects outside the scope of the purpose of the investments, and at least \$800,000 for Closson's own use. The ASC held that the Schemes continued at a time when Closson knew or ought to have known that one or more of himself, Optam and Infininvest was insolvent or on the cusp of insolvency. Though investors in the Schemes received some payments of dividends, interest and principal, many reinvested with Optam or Infininvest, such that almost all of the principal invested in the Schemes remained outstanding to investors at the time of the ASC Decision.
- [13] The ASC found that Closson had subjective knowledge that his representations were false and that investor money was being diverted to unauthorized purposes. Closson also had subjective knowledge of the risk of resulting harm to investors' pecuniary interests. Therefore, the *mens rea* of fraud was established.
- [14] The ASC found that the case warranted significant sanctions, sufficient in breadth and extent to deliver clear and robust deterrence, both to the Respondents and others. After providing detailed reasons, the ASC Decision ordered the following:
- a. under subsection 198(1)(a) of the Alberta Act, all trading in or purchasing in respect of any security or derivative of Optam or Infininvest must cease, permanently;
 - b. under subsections 198(1)(b) and (c) of the Alberta Act, the Respondents are each permanently prohibited from trading in and purchasing all securities or derivatives, and all exemptions contained in Alberta securities laws do not apply to them, permanently;
 - c. under subsections 198(1)(e.1), (e.2) and (e.3) of the Alberta Act, the Respondents are each permanently prohibited from advising in securities or derivatives, becoming or acting as a registrant, investment fund manager or promoter, or acting in a management or consultative capacity in connection with activities in the securities market;
 - d. under subsections 198(d) and (e) of the Alberta Act, Closson must immediately resign all positions he holds as, and he is permanently prohibited from becoming or acting 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;
 - e. under section 199 of the Alberta Act, Closson must pay an administrative penalty of \$1 million to the ASC; and
 - f. under section 202 of the Alberta Act, Closson must pay \$30,000 of the costs of the ASC's investigation.

IV. ANALYSIS

- [15] At paragraph 4 of subsection 127(10), the Act provides for inter-jurisdictional enforcement where another securities regulatory authority has imposed “sanctions, conditions, restrictions or requirements on the person or company”. The Commission must determine whether, based on any such finding by another securities regulatory authority, an order should be made under subsection 127(1) of the Act.
- [16] I find that Staff established the threshold criteria under paragraph 4 of subsection 127(10) of the Act. 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 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.
- [17] 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 ASC. The terms of Staff’s requested bans align with the sanctions imposed in the ASC Decision, 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;
 - 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;
 - d. The Respondents admitted to their breaches of securities law in Alberta and acknowledged that the Admissions could be used for securities regulatory proceedings in other jurisdictions; and
 - e. 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 breaches 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.
- [18] A 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.

V. DECISION

[19] 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 Optam and Infininvest:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of Optam or of Infininvest shall cease permanently;
 - ii. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Optam or by Infininvest shall cease permanently;
 - iii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Optam or by Infininvest is prohibited permanently;
 - iv. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Optam or to Infininvest permanently; and
 - v. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Optam and Infininvest are each prohibited permanently from becoming or acting as registrants, investment fund managers or promoters;
- b. against Closson:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Closson shall cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Closson is prohibited permanently;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Closson permanently;
 - iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Closson 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, Closson is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

- vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Closson is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter.

DATED at Toronto this 28th day of February, 2017.

"Monica Kowal"

Monica Kowal, Vice-Chair