



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: EagleMark Ventures, LLC (Re), 2017 ONSEC 33
Date: 2017-10-02

**IN THE MATTER OF
EAGLEMARK VENTURES, LLC, FALCON HOLDINGS, LLC,
RICHARD LIAN (also known as RICHARD TERRY RUUSKA) and
ENNA M. KELLER**

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

Hearing: In writing

Decision: October 2, 2017

Panel: Mark J. Sandler Chair of the Panel

Appearances: Keir D. Wilmut For Staff of the Commission

No submissions were made
by or on behalf of the
respondents

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REASONS AND DECISION

I. OVERVIEW

- [1] This is an application by Enforcement staff (**Staff**) of the Ontario Securities Commission (the **Commission**) for an order pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**) imposing certain sanctions on each of EagleMark Ventures, LCC (**EagleMark**), Falcon Holdings, LLC (**Falcon**), Richard Lian (also known as Richard Terry Ruuska) and Enna M. Keller.
- [2] Staff relies on paragraph 4 of subsection 127(10) of the Act to reciprocate the order of the British Columbia Securities Commission (the **BCSC**) dated February 14, 2017 (*Re Eaglemark*, 2017 BCSECCOM 42) (the **Order**).
- [3] In an earlier ruling in this proceeding, I held that each of the respondents had been properly served with notice of this application. I also granted Staff's unopposed request that the application be heard in writing in accordance with subsection 5.1(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 (the **SPPA**).
- [4] In deciding this matter, I have read the materials filed by Staff, including its helpful submissions. The respondents did not file any responding materials and have not otherwise participated in this proceeding.
- [5] Subsection 7(2) of the SPPA authorizes a tribunal to proceed in the absence of a party when such party has been given notice of a written hearing and does not participate in the hearing. I am satisfied that the respondents were properly served and have notice of the written hearing and that the matter may proceed in their absence.
- [6] In this written hearing, I must determine whether the respondents have been made subject to an order made by another securities regulatory authority in any jurisdiction that imposes sanctions, conditions, restrictions or requirements on them (**sanctions**) and whether it is in the public interest to make a reciprocal order in Ontario.
- [7] For the reasons that follow, I grant the application on the terms proposed by Staff.

II. THE BCSC DECISION AND ORDER

- [8] On August 22, 2016, a panel of the BCSC (the **BC panel**) found that each of the respondents had violated the British Columbia *Securities Act*, RSBC 1996, c 418 (the **BC Act**). More specifically, it concluded that Lian and Keller perpetrated a fraud, Keller traded in securities without registration and without any available exemptions and all respondents contravened a BCSC cease trade order and a BCSC temporary order, all in contravention of the BC Act. These findings are elaborated upon in the BC panel's Decision (*Re Eaglemark Ventures, LLC*, 2016 BCSECCOM 288). It is unnecessary for me to repeat that elaboration in these reasons.
- [9] In the Order, the BC panel imposed a number of sanctions on each of the respondents.

III. LAW AND ANALYSIS

- [10] Staff requests that the Commission impose sanctions similar to those imposed by the BC panel, to the extent possible under the Act. The precise terms of the inter-jurisdictional or reciprocal order requested by Staff are set out below at paragraph [19].
- [11] As already indicated, paragraph 4 of subsection 127(10) of the Act authorizes an order under subsection (1) where respondents are subject to an order made by another securities regulatory authority in any jurisdiction that imposes sanctions on them. I am satisfied that this precondition has been met.
- [12] Where the above precondition has been met, the Commission has the discretion whether to grant the application. In *Global 8 Environmental Technologies, Inc. (Re)*, 2017 ONSEC 31 at para 12 (**Global 8**), I summarized the applicable principles derived from the Act and the jurisprudence:
- a. The Commission must be satisfied that the requested order is in the public interest;
 - b. The Commission should consider, in determining whether the requested order is in the public interest, whether the order is necessary to protect investors in Ontario and for the integrity of Ontario's capital markets;
 - c. Any connection between respondents or their contraventions and Ontario may inform the Commission's discretion, but such a connection is not a precondition to the exercise of the Commission's authority under section 127;
 - d. The purpose of the Commission's public interest jurisdiction is "neither remedial nor punitive; it is protective and preventative"; the purpose of a subsection 127(1) order "is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets";
 - e. The purpose of a subsection 127(1) order "is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets";
 - f. Deterrence, both specific and general, is a relevant consideration in whether a protective and preventative order should be made and what that order should include. Deterrence "is prospective in orientation and aims at preventing future conduct";
 - g. Pursuant to subsection 127(10), the findings of fact made by another regulatory authority stand as determinations of fact for the purpose of the Commission's exercise of discretion under subsection 127(1) of the Act;
 - h. An important factor for the Commission's consideration is whether the respondent's conduct, if it had been committed in Ontario or otherwise came within Ontario's jurisdiction, would have constituted a breach of Ontario securities law, would have been regarded as contrary to the public interest and would have attracted the same or similar sanctions;
 - i. Paragraph 5 of section 2.1 of the Act provides that "[t]he integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes." In today's world, securities activities transcend provincial, territorial and,

indeed, national boundaries. This reality and section 2.1 of the Act reinforce the importance of inter-jurisdictional cooperation and comity, which include, in this context, identifying and reciprocating orders made in other jurisdictions so as to promote the effectiveness of regulatory authorities and protect the public interest; and

- j. In determining what sanctions are appropriate to incorporate into a section 127 order, subject to my comments contained in paragraph [14] below, the Commission must consider the particular circumstances as they relate to each respondent.
- [13] There is no diminished burden of persuasion, in law, on Staff who requests that an inter-jurisdictional order be made. The ordinary burden of persuasion applies. However, as the Commission held in *New Futures Trading International Corporation (Re)*, 2013 ONSEC 21 at para 27:
- Comity requires that there not be barriers to recognizing and reciprocating the orders of other regulatory authorities when the findings of the foreign jurisdiction qualify under subsection 127(10) of the Act as a judgment that invokes the public interest. For comity to be effective and the public interest to be protected, the threshold for reciprocity must be low.
- [14] Furthermore, comity supports an approach in which the Commission has due regard to the sanctions imposed by another regulatory authority when it considers whether or what appropriate sanctions should be imposed in Ontario.
- [15] Each of the respondents engaged in serious misconduct. Fraud, involving dishonest deprivation, constitutes egregious conduct. All of the respondents' misconduct involved contraventions of core statutory provisions specifically designed to protect the public and promote the integrity of the capital markets. Having regard to the totality of the circumstances, including the nature and extent of the misconduct, a failure to make an inter-jurisdictional order would be contrary to the public interest and the integrity of the capital markets. As stated in *Global 8* at para 42, such a failure "would undermine public confidence in the capital markets and the regulation of the securities industry. It would send the message that regulators are relatively powerless in their ability to restrain future misconduct when serious misconduct has occurred elsewhere."
- [16] The respondents' misconduct, if committed in Ontario, would have contravened the Act. This is not a precondition to the making of an inter-jurisdictional order. However, it reinforces, as stated in *Global 8* at para 43, "the desirability of deterring not only the respondents, but other like-minded individuals from violating comparable provisions of Ontario securities law. It signals that securities violators should not feel immunized from global or, in this instance, national regulatory scrutiny"
- [17] I am satisfied that the evidence strongly supports the imposition of the requested order to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. Staff is not required to prove that the misconduct is likely to occur in Ontario. In *Global 8*, I explained why this is so.
- [18] The proposed order generally tracks the Order of the BC panel. Moreover, it represents the kinds of sanctions imposed in Ontario for similar misconduct.

IV. DISPOSITION

[19] For the above reasons, the application is allowed, and an order is made in the following terms:

- a. with respect to Lian:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Lian cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lian cease permanently;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Lian permanently;
 - iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Lian resign any positions that he holds as a director or officer of any issuer or registrant;
 - v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Lian be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Lian be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter;
- b. with respect to Keller:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Keller cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Keller cease permanently;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Keller permanently;
 - iv. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Keller resign any positions that she holds as a director or officer of any issuer or registrant;
 - v. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Keller be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant; and
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Keller be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter;
- c. with respect to EagleMark:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of EagleMark cease permanently;
 - ii. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by EagleMark cease permanently;

- iii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by EagleMark be 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 EagleMark permanently; and
 - v. pursuant to paragraph 8.5 of subsection 127(1) of the Act, EagleMark be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter; and
- d. with respect to Falcon:
- i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of Falcon cease permanently;
 - ii. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Falcon cease permanently;
 - iii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Falcon be 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 Falcon permanently; and
 - v. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Falcon be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter.

Dated at Toronto this 2nd day of October, 2017.

"Mark J. Sandler"

Mark J. Sandler