



Ontario
Securities
Commission

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de l'Ontario

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Citation: Vantooten (Re), 2018 ONSEC 36
Date: July 3, 2018
File No. 2018-29

**IN THE MATTER OF
KLAAS VANTOOREN**

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

Hearing: In Writing

Decision: July 3, 2018

Panel: Robert P. Hutchison Commissioner

Appearances: Christina Galbraith For Staff of the Commission

No hearing brief or written
submissions were filed by or on
behalf of Klaas Vantooten

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REASONS AND DECISION

I. INTRODUCTION

- [1] Staff of the Ontario Securities Commission (**Staff** of the **Commission**) requests that an order be issued against Klaas Vantooten (the **Respondent**) pursuant to the inter-jurisdictional enforcement provisions in subsection 127(10) of the Act.¹ Subsection 127(10) authorizes the Commission to make orders in the public interest under subsection 127(1) where a person or company has agreed with another securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements.²
- [2] The agreed facts in a settlement agreement with another securities regulatory authority stand as a determination of fact for the purposes of the Commission's considerations under subsection 127(1) of the Act. This principle applies whether or not the settlement has been made the subject of an order by a securities regulatory authority. However, the Commission is not required to make an order that mirrors the sanctions provided for in a settlement agreement. Rather, the Commission's task is to determine whether, based on the agreed facts, the sanctions proposed by Staff would be in the public interest in Ontario.³
- [3] On December 19, 2017, the Respondent and staff of the Alberta Securities Commission (the **ASC**) entered into a Settlement Agreement and Undertaking (the **Settlement Agreement**). In the Settlement Agreement, the Respondent admitted that he breached sections of the Alberta *Securities Act*, RSA 2000, c S-4 (the **Alberta Act**) and agreed to be subject to various sanctions by way of undertaking. The agreed sanctions included ten-year market-access bans and a \$10,000 payment to the ASC.⁴

II. SERVICE AND PARTICIPATION

- [4] Staff brought this proceeding under the expedited procedure provided in Rule 11(3) of the Commission's *Rules of Procedure*.⁵
- [5] The Respondent was served with the Notice of Hearing issued on May 25, 2018, the Statement of Allegations dated May 23, 2018 and Staff's written submissions, hearing brief and brief of authorities.
- [6] Although served, the Respondent did not file a hearing brief or make any written submissions in this proceeding. The Commission may proceed in the absence of a party where that party has been given notice of the hearing.⁶

¹ Ontario *Securities Act*, RSO 1990, s S.5 (the **Act**).

² Act, s 127(10)(5).

³ *JV Raleigh Superior Holdings Inc (Re)* (2013), 36 OSCB 4639, 2013 ONSEC 18 at para 16; *Elliott (Re)* (2009), 32 OSCB 6931, 2009 ONSEC 26 at paras 27 and 31.

⁴ *Vantooten (Re)*, 2017 ABASC 187 at para 27.

⁵ *Ontario Securities Commission Rules of Procedure and Forms* (2017), 40 OSCB 8988 (the **Rules of Procedure**).

⁶ *Statutory Powers Procedure Act*, RSO 1990 c S.22, s 7(2); *Rules of Procedure*, r 21(3).

III. SETTLEMENT AGREEMENT AND UNDERTAKINGS

A. Background

- [7] The Respondent was a resident of Alberta and was registered under the Alberta Act as a dealing representative for certain exempt market dealer (**EMD**) firms.⁷
- [8] The Respondent was a director and shareholder (through his corporation The Premier Financial Group Inc.) of Alberta corporations Kredo Ranch Ltd. (**Kredo Ranch**), 1740247 Alberta Ltd. (operating as "Summersaults of Bentley" – **Summersaults**), and National Flood Strategies Corp. (**NFSC**).⁸

B. Unregistered Trading in Breach of Paragraph 75(1)(a) of the Alberta Act

- [9] As a dealing representative, the Respondent was only registered to sell securities approved for sale by the EMD firms. EMD-approved securities are subject to extensive due diligence and all sales must be reported to the chief compliance officer at the EMD firm.⁹
- [10] From 2012 to 2015, the Respondent raised approximately \$657,000 from at least eight investors by selling securities of Kredo Ranch, Summersaults and NFSC to Alberta residents. The Respondent's activities constituted trading under the Alberta Act.¹⁰ While all of the investors were the Respondent's clients through EMD firms, none of the securities sold by the Respondent were approved for sale by any of the EMD firms.¹¹

C. Misrepresentations in Breach of Subsection 92(4.1) of the Alberta Act

- [11] In or around June 2013, the Respondent informed the Kredo Ranch investors that the project was not feasible and recommended that their Kredo Ranch funds be reinvested in Green Haven Estates Construction & Development Inc. (**Green Haven**). At least two Kredo Ranch investors agreed to reinvest in Green Haven on representations from the Respondent that all of their original investment in Kredo Ranch would be reinvested and that the Green Haven shares would provide a return of 8 percent.¹²
- [12] These representations were misleading or untrue, as only a portion of the original investment in Kredo Ranch was available for reinvestment in Green Haven and the rate of return on Green Haven shares was 6 percent. The representations made by the Respondent were intended to and did influence investors to purchase securities of Green Haven, and would reasonably be expected to have a significant effect on the market price or value of Green Haven securities.¹³

⁷ *Vantooren (Re)*, 2017 ABASC 187 at para 5.

⁸ *Vantooren (Re)*, 2017 ABASC 187 at para 6.

⁹ *Vantooren (Re)*, 2017 ABASC 187 at para 7.

¹⁰ *Vantooren (Re)*, 2017 ABASC 187 at para 21.

¹¹ *Vantooren (Re)*, 2017 ABASC 187 at paras 8-14.

¹² *Vantooren (Re)*, 2017 ABASC 187 at paras 15-16.

¹³ *Vantooren (Re)*, 2017 ABASC 187 at paras 17-18.

D. Illegal Distributions in Breach of Section 110 of the Alberta Act

[13] No preliminary prospectus or prospectus was filed with the ASC, nor was a receipt issued, for any of the Kredo Ranch, Summersaults, NFSC or Green Haven securities sold by the Respondent. The Respondent's trades in these securities were considered distributions under the Alberta Act.¹⁴

E. Undertakings

[14] In paragraph 27 of his Settlement Agreement with the ASC, the Respondent agreed and undertook to

- a. pay to the ASC the amount of \$10,000 in settlement of all allegations against him; and
- b. except as specifically outlined below, refrain for a period of 10 years from the date of the Settlement Agreement from
 - i. trading in and purchasing securities or derivatives, except trades that are made through a registrant (who has first been given a copy of the Settlement Agreement) in accounts maintained with that registrant for the benefit of one or more of himself and members of his immediate family, "immediate family" being understood to mean his spouse and dependent children,
 - ii. using any of the exemptions contained in Alberta securities laws,
 - iii. advising in securities or derivatives,
 - iv. becoming or acting as a registrant, investment fund manager or promoter,
 - v. acting in a management or consultative capacity in connection with activities in the securities market, and
 - vi. resign any positions he has as a director or officer, or both, of any issuer, registrant, or investment fund manager, and to refrain from becoming or acting in that capacity.¹⁵

IV. ANALYSIS AND DECISION

[15] Staff seeks an order pursuant to subsections 127(10) and (1) of the Act imposing trading and market-access bans that substantially mirror those in the Settlement Agreement.

[16] The issues for this Panel to consider are:

- a. whether one or more of the circumstances under subsection 127(10) of the Act apply to the Respondent; and, if so,
- b. whether the Commission should exercise its public interest jurisdiction to make an order pursuant to subsection 127(1) of the Act.

A. Subsection 127(10) of the Act

[17] 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). This

¹⁴ *Vantooren (Re)*, 2017 ABASC 187 at paras 20-21.

¹⁵ *Vantooren (Re)*, 2017 ABASC 187 at para 27.

provision facilitates the cross-jurisdictional enforcement of decisions by allowing the Commission to issue protective, preventive and prospective orders to ensure that misconduct that has taken place in another jurisdiction will not be repeated in Ontario's capital markets.

[18] Paragraph 5 of subsection 127(10) provides for inter-jurisdictional enforcement where a person or company has agreed with a securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements.

[19] Paragraph 3 of the Settlement Agreement provides as follows:

Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 27 and for no other use or purpose, Vantoren agrees to the facts and consequences set out in this Agreement.

[20] In the Settlement Agreement, including in paragraph 27, the Respondent agrees and undertakes to be made subject to "sanctions, conditions, restrictions or requirements." The Respondent also agrees that the ASC can enforce the Settlement Agreement in the Alberta court, and that the Settlement Agreement can form the basis for securities-related orders in other jurisdictions in Canada.¹⁶ Although the ASC did not make an order to reflect the terms agreed by the parties in the Settlement Agreement, the agreement itself is sufficient to meet the threshold set out in paragraph 5 of subsection 127(10) of the Act.

B. Subsection 127(1) of the Act

[21] The threshold having been met under paragraph 5 of subsection 127(10), the Panel must determine what sanctions, if any, should be ordered against the Respondents pursuant to subsection 127(1).

[22] Subsection 127(1) empowers the Commission to make orders where it is in the public interest to do so. The Commission is not required to make an order similar to that made by the originating jurisdiction. Rather, the Panel must first satisfy itself that an order for sanctions is necessary to protect the public interest in Ontario and then consider what the appropriate sanctions should be.

[23] Orders made under subsection 127(1) of the Act are "protective and preventive" and are made to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets.¹⁷

[24] 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 interconnected, inter-provincial securities industry. The threshold for reciprocity is low.¹⁸ A low threshold is supported by the principle found in section 2.1 of the Act, which 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."

¹⁶ *Vantoren (Re)*, 2017 ABASC 187 at paras 30-31.

¹⁷ *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, [2001] 2 SCR 132, 2001 SCC 37 at paras 42-43.

¹⁸ *JV Raleigh Superior Holdings Inc (Re)* (2013), 36 OSCB 4639, 2013 ONSEC 18 at para 21.

- [25] In determining the nature and scope of sanctions to be ordered, the Commission can consider a number of factors, including the seriousness of the conduct, specific and general deterrence, and any mitigating factors.¹⁹
- [26] The unregistered trading, illegal distributions and misleading statements admitted by the Respondent would have been serious breaches of the Act in Ontario and would have been contrary to the public interest in Ontario. Such breaches could attract similar sanctions in Ontario to what was agreed in the Settlement Agreement. The lengthy trading and market-access bans proposed by Staff will help ensure that the Ontario markets are protected from the Respondent, and that the Respondent and like-minded persons will be deterred from engaging in similar abuses in the future.
- [27] The Settlement Agreement also sets out mitigating factors, including that the Respondent had not previously been sanctioned by the ASC, and there was no evidence that he received a financial benefit as a result of his breaches of Alberta securities laws.²⁰

C. Differences between the Agreed Sanctions and the Proposed Order

- [28] Subsection 127(1) of the Act does not expressly authorize the Commission to prohibit “acting in a management or consultative capacity” or “advising,” both of which were included in the Settlement Agreement.²¹ The Alberta Act does not define “acting in a management or consultative capacity.”
- [29] The Commission has previously held that many, but not all, of these types of activities will be captured by bans from acting as a director or officer of an issuer or registrant and from acting as a registrant or promoter. Although the sanctions in the Settlement Agreement may be somewhat broader, the proposed order mirrors them to the extent possible under the Act and effectively prohibits the Respondent from engaging in activities relating to the securities market in Ontario like those identified in the Settlement Agreement.²²
- [30] Also, since the proposed order prohibits the Respondent from acting as a director or officer of a registrant, and the Commission has previously confirmed that the term “registrant” includes an “investment fund manager,”²³ prohibiting the Respondent from acting as a director or officer of an investment fund manager is unnecessary.

V. CONCLUSION

- [31] For the reasons provided above, the facts agreed to in the Settlement Agreement support the making of an inter-jurisdictional order with the following terms:
- a. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in securities or derivatives by the Respondent cease until December 19, 2027, except that the Order would not preclude the Respondent from trading in securities or derivatives through a registrant (who has first been given a

¹⁹ *Belteco Holdings Inc (Re)* (1998), 21 OSCB 7743 at 7746; *MCJC Holdings Inc* (2002), 25 OSCB 1133 at 1136.

²⁰ *Vantooren (Re)*, 2017 ABASC 187 at paras 23-24.

²¹ *Vantooren (Re)*, 2017 ABASC 187 at paras 27.2.3 and 27.2.5.

²² *McClure (Re)* (2017), 40 OSCB 8135, 2017 ONSEC 34 at paras 8-10.

²³ *Dhanani (Re)* (2017), 40 OSCB 4457, 2017 ONSEC 15 at para 14.

copy of the Settlement Agreement, and a copy of the Order of the Commission in this proceeding), in accounts maintained with that registrant for the benefit of one or more of himself and members of his immediate family, being the Respondent's spouse and dependent children;

- b. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by the Respondent cease until December 19, 2027, except that the Order would not preclude the Respondent from trading in securities or derivatives through a registrant (who has first been given a copy of the Settlement Agreement, and a copy of the Order of the Commission in this proceeding), in accounts maintained with that registrant for the benefit of one or more of himself and members of his immediate family, being Respondent's spouse and dependent children;
- c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to the Respondent until December 19, 2027;
- d. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, the Respondent resign any positions that he holds as a director or officer of any issuer or registrant;
- e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, the Respondent be prohibited until December 19, 2027 from becoming or acting as a director or officer of any issuer or registrant; and
- f. pursuant to paragraph 8.5 of subsection 127(1) of the Act, the Respondent be prohibited until December 19, 2027 from becoming or acting as a registrant or promoter.

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

"Robert P. Hutchison"

Robert P. Hutchison