



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Yawrenko (Re), 2019 ONSEC 15
Date: 2019-05-15
File No. 2019-17

**IN THE MATTER OF
SHANE DAVID YAWRENKO and
UMBRELLA MERCHANT SERVICES INC.**

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

Hearing: In Writing

Decision: May 15, 2019

Panel: M. Cecilia Williams Commissioner

Submissions: Alvin Qian For Staff of the Commission

Patrick Robinson For Shane David Yawrenko and
Umbrella Merchant Services Inc.

REASONS AND DECISION

I. INTRODUCTION

- [1] On August 17, 2018, Shane David Yawrenko (**Yawrenko**) and Umbrella Merchant Services Inc. (**Umbrella**) (together, the **Respondents**) entered into a Settlement Agreement and Undertaking with the Alberta Securities Commission (**ASC**) (the **Settlement Agreement**).
- [2] Pursuant to the Settlement Agreement, the Respondents each agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta.
- [3] On May 2, 2019, Staff of the Ontario Securities Commission (**Staff**) elected to proceed with a hearing in writing¹ for an inter-jurisdictional enforcement proceeding under subsection 127(10) of the *Ontario Securities Act*, RSO 1990, c S.5 (the **Act**) to request that a protective order be issued in the public interest under subsection 127(1).
- [4] As set out in the Affidavit of Service of Lee Crann, sworn May 10, 2019,² on May 6, 2019, the Respondents were served by email with the Notice of Hearing issued May 6, 2019, the Statement of Allegations dated May 2, 2019, Staff's written submissions, hearing brief³ and book of authorities.
- [5] On May 6, 2019, counsel, representing both Respondents, sent an email informing the Registrar of the Ontario Securities Commission (**OSC**) that the Respondents consented to Staff's requested order in this matter. Correspondence was sent from the Registrar on May 10, 2019 asking that (1) each of the Respondents provide a signed written consent to Staff's order, and (2) the Corporation indicate who has signing authority on behalf of the dissolved corporation to consent to the order. Signed consents were provided by the Respondents by email on May 14, 2019.⁴
- [6] The issues for me to consider are whether one of the circumstances under subsection 127(10) of the Act applies to the Respondents, specifically, have they agreed with a securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements (s. 127(10)5), and if so, whether the OSC should exercise its jurisdiction to make a protective order in the public interest pursuant to subsection 127(1) of the Act.

II. ASC SETTLEMENT AND ORDER

- [7] In the Settlement Agreement, the Respondents acknowledged and admitted that they breached subsection 110(1) of the *Alberta Securities Act*, RSA 2000 c S-4 by distributing securities without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for some of those distributions.
- [8] The Respondents agreed to be subject to the following sanctions:

¹ Staff brought this inter-jurisdictional enforcement proceeding under the expedited procedure provided in Rule 11(3) of the OSC's *Rules of Procedure and Forms* (2017), 40 OSCB 8988.

² The Affidavit of Service of Lee Crann, sworn May 10, 2019 is marked as Exhibit 1.

³ Staff's Hearing Brief is marked as Exhibit 2.

⁴ The signed consents of the Respondents are marked as Exhibit 3.

- (a) Yawrenko agreed and undertook to refrain for a period of five years from the date of the Settlement Agreement from:
- i. trading in and purchasing securities or derivatives, except trades made through a registrant who has first been given a copy of the Settlement Agreement;
 - ii. using any of the exemptions contained in Alberta securities laws;
 - iii. becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager in Alberta or elsewhere in Canada and to resign any positions he has as a director or officer, or both, of any issuer, registrant, or investment fund manager;
 - iv. becoming or acting as a registrant, investment fund manager or promoter; and
 - v. acting in a management or consultative capacity in connection with activities in the securities market; and
- (b) Umbrella undertook and agreed to refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws for a period of five years from the date of the Settlement Agreement.

[9] In addition, the Respondents agreed and undertook to jointly and severally pay the ASC \$55,000 in settlement of all of the allegations against them.

[10] In the Settlement Agreement, the Respondents also acknowledged that the Settlement Agreement may form the basis for securities-related orders in other jurisdictions in Canada.

III. CONSENT ORDER

[11] Staff requests, and the Respondents consent to, an order in the public interest in Ontario that imposes terms similar to the non-monetary sanctions imposed by the ASC, to the extent possible under the Act.

IV. ORDER

[12] Since both Staff and the Respondents consent to the granting of an order under subsection 127(1) in the public interest, and the requirements of subsection 127(10) of the Act are satisfied, I will issue the following order against the Respondents:

- (a) against Yawrenko that:
- i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, trading in any securities or derivatives, or acquisition of any securities, by Yawrenko cease until August 17, 2023, except that he may trade in securities or derivatives through a registrant who has first been given copies of the Settlement Agreement and a copy of this Order;
 - ii. pursuant to paragraph 3 of subsection 127(1) of the Act, all exemptions contained in Ontario securities law do not apply to Yawrenko until August 17, 2023;

- iii. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Yawrenko resign any positions that he holds as a director or officer of any issuer or registrant;
 - iv. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Yawrenko is prohibited from becoming or acting as a director or officer of any issuer or registrant until August 17, 2023; and
 - v. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Yawrenko is prohibited until August 17, 2023 from becoming or acting as a registrant or promoter; and
- (b) against Umbrella that:
- i. pursuant to paragraph 3 of subsection 127(1) of the Act, all exemptions contained in Ontario securities law do not apply to Umbrella until August 17, 2023.

Dated at Toronto this 15th day of May, 2019.

"M. Cecilia Williams"

M. Cecilia Williams