



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue Queen Ouest
Toronto ON M5H 3S8

Citation: Nikoo (Re), 2019 ONSEC 38

Date: 2019-11-27

File No. 2019-36

**IN THE MATTER OF
FARHANG (FRED) DAGOSTAR NIKOO**

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

Hearing: In Writing

Decision: November 27, 2019

Panel: Heather Zordel Commissioner and Chair of the Panel

Appearances: Vivian Lee For Staff of the Commission

No submissions made by or on behalf of Farhang (Fred) Dagostar Nikoo

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REASONS AND DECISION

I. OVERVIEW

- [1] The respondent, Farang (Fred) Dagostar Nikoo, entered into a Settlement Agreement and Undertaking with the Alberta Securities Commission (**ASC**) on February 15, 2019 (the **ASC Settlement Agreement**). Mr. Nikoo admitted to breaching the Alberta *Securities Act* (the **Alberta Act**)¹ and to acting as an adviser without registration. He agreed to pay the ASC a monetary settlement and costs, and also to be prohibited from advising in securities and from acting as a registrant for a period of 10 years, within the province of Alberta.
- [2] In this inter-jurisdictional enforcement proceeding, Staff of the Commission (**Staff**) requests a protective order in the public interest pursuant to ss. 127(10) and 127(1) of the Ontario *Securities Act* (the **Act**).² More particularly, Staff relies on the section of the Act that provides for the Commission to make an order in the public interest against a person who has agreed with a securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements.³ Staff submits that this precondition has been met by virtue of the ASC Settlement Agreement and that it is in the public interest to make an inter-jurisdictional enforcement order against Mr. Nikoo in Ontario. Staff requests that Mr. Nikoo be prohibited from becoming or acting as a registrant in Ontario for the same time period as he agreed to in the ASC Settlement Agreement.
- [3] There are two issues for my consideration:
- a. Has Mr. Nikoo agreed with a securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements?
 - b. If so, should the Commission exercise its jurisdiction to make the requested protective and preventative order in the public interest?
- [4] Based on the written submissions, hearing brief and supporting legal authorities filed by Staff, I find that the answer is “yes” to both questions. I am satisfied that the precondition for the proposed order has been met and that it is in the public interest to issue the requested order. These are my reasons.

II. SERVICE AND PARTICIPATION

- [5] Staff filed a Statement of Allegations dated October 2, 2019, naming Mr. Nikoo as the sole respondent in this proceeding and electing to proceed with a hearing in writing. The next day, the Commission issued a Notice of Hearing commencing this proceeding and posted it on the Commission’s website.
- [6] Staff served Mr. Nikoo with the Statement of Allegations, the Notice of Hearing, and Staff’s written submissions, hearing brief and brief of authorities on October 7, 2019, via courier. Staff filed an Affidavit of Service sworn the same day. I find that Staff properly effected service on Mr. Nikoo.

¹ RSA 2000, c S-4 (the **Alberta Act**).

² RSO 1990, c S.5 (the **Act**).

³ The Act, s 127(10), para 5.

- [7] In accordance with the *Ontario Securities Commission Rules of Procedure and Forms*, the deadline for the respondent to serve and file written submissions was November 4, 2019.⁴ That deadline has passed.
- [8] Mr. Nikoo chose not to participate in the proceeding. Although properly served, Mr. Nikoo filed no materials by the deadline, or at any point. The Commission may proceed in the absence of a party where that party has been given notice of the hearing.⁵ I am satisfied that Mr. Nikoo had adequate notice of this written hearing and that it is appropriate to proceed in his absence.

III. ASC PROCEEDING AND SETTLEMENT AGREEMENT

- [9] Mr. Nikoo was a financial planner. In 2012, he began selling securities of Bluforest, Inc. (**Bluforest**) to Alberta residents. Approximately \$1,000,000 was raised from the sale of Bluforest securities by Mr. Nikoo and others. Several of the Bluforest investors were existing or former clients of Mr. Nikoo's financial planning business. He promoted the sale of Bluforest securities to investors, representing that investors would double their money and that the securities would be listed on the NASDAQ. He also handled funds and share transfer documents, and delivered share certificates. Mr. Nikoo was not compensated directly for activities in furtherance of the sale of Bluforest securities, but did receive a \$30,000 payment from another individual who sold Bluforest securities.
- [10] The ASC commenced a proceeding against Mr. Nikoo and two other respondents in February 2018. One year later, in February 2019, Mr. Nikoo executed the ASC Settlement Agreement. Therein, Mr. Nikoo admits that he breached ss. 75(1)(a), 92(4.1) and 92(3)(b)(i) of the Alberta Act by:
- a. acting as an adviser without registration in accordance with Alberta securities laws;
 - b. making a statement he knew or reasonably ought to have known was misleading or untrue, and that would reasonably be expected to have a significant effect on the market price or value of Bluforest securities; and
 - c. representing without the written permission of the Executive Director that Bluforest securities would be listed on an exchange.
- [11] In the ASC Settlement Agreement, Mr. Nikoo agreed to be prohibited for a period of 10 years from advising in securities and from acting as a registrant. In addition, Mr. Nikoo agreed to pay the ASC \$50,000 as a monetary settlement of all allegations against him, plus \$20,000 in costs. He also acknowledged that the ASC Settlement Agreement may form the basis for securities-related orders in other jurisdictions in Canada.

IV. LAW AND ANALYSIS

A. Has the respondent agreed with a securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements?

- [12] Subsection 127(10) of the Act facilitates the inter-jurisdictional enforcement of orders following breaches of securities law. It allows the Commission to issue

⁴ *I.e.*, 28 days after service, pursuant to *Ontario Securities Commission Rules of Procedure and Forms* (2019), 42 OSCB 6528 (**OSC Rules of Procedure**), r 11(3)(g).

⁵ *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(2); *OSC Rules of Procedure*, r 21(3).

protective and preventative orders to ensure that misconduct that takes place in another jurisdiction will not be repeated in Ontario's capital markets. Subsection 127(10), paragraph 5, provides that the Commission may make an order under s. 127(1) if a person has agreed with a securities regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements. Subsection 127(10) of the Act does not itself empower the Commission to make an order; rather, if the threshold criterion in s. 127(10) is met, then it provides a basis for a potential order under s. 127(1).

- [13] The ASC is a securities regulatory authority. The agreed upon prohibition, monetary settlement and costs set out in the ASC Settlement Agreement constitute sanctions, conditions, restrictions or requirements. Accordingly, I find that Mr. Nikoo has agreed with a securities regulatory authority to be made subject to sanctions, conditions, restrictions or requirements. The threshold test under s. 127(10) of the Act is therefore satisfied.

B. Should the Commission exercise its jurisdiction to make the requested order in the public interest?

- [14] I must now consider whether it is in the public interest to issue an order under s. 127(1) of the Act. Orders made under s. 127(1) of the Act are "protective and preventative" and are made to restrain potential conduct that could be detrimental to the integrity of the capital markets and therefore prejudicial to the public interest.⁶ The Commission does not require a pre-existing connection to Ontario before exercising its jurisdiction to make an order in reliance on s. 127(10) of the Act.⁷
- [15] Staff submits that Mr. Nikoo's conduct warrants an order designed to protect Ontario investors by limiting Mr. Nikoo's ability to act as an adviser in Ontario's capital markets. The Commission may consider a number of factors in determining the nature and scope of sanctions to be ordered under s. 127(1) of the Act, including the seriousness of the misconduct, and specific and general deterrence.
- [16] Mr. Nikoo admitted to promoting the sale of securities and to not being registered as an adviser in accordance with Alberta securities laws. He had been, until October 2016, registered as a mutual fund salesperson. Registration requirements serve as core protections for investors. Registration requirements play a key role in Ontario securities law by ensuring that only properly qualified and suitable individuals are permitted to be registrants. It is important that the Commission impose sanctions that will protect Ontario investors by specifically deterring the respondent from engaging in similar or other misconduct in Ontario, and by providing a general deterrent to other like-minded persons. I accept Staff's submission that the sanctions requested are proportionate to Mr. Nikoo's level of misconduct, and serve to protect Ontario investors and Ontario's capital markets from potential misconduct by Mr. Nikoo.
- [17] The language of the sanction I will impose in Ontario differs from that agreed to in the ASC Settlement Agreement, but it has the same effect. In the ASC

⁶ *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43.

⁷ *Biller (Re)*, 2005 ONSEC 15, (2005) 28 OSCB 10131 at paras 32-35; *Michaels (Re)*, 2019 ONSEC 22, (2019) 42 OSCB 5757 at para 19.

Settlement Agreement, the respondent agreed to be prohibited from advising in securities and from acting as a registrant. In Ontario, the distinction between a “registrant” and “adviser” is unnecessary, given that the definition of “registrant” in s. 1(1) of the Act includes a person required to be registered as an adviser, by virtue of s. 25(3) of the Act.⁸ The Ontario prohibition will only expressly refer to acting as a registrant, since acting as an adviser is implicitly included.

V. CONCLUSION

[18] For the reasons set out above, I find that it is in the public interest to impose Staff’s requested sanction, which effectively mirrors the relevant non-monetary provision of the ASC Settlement Agreement. I will therefore order that, until February 15, 2029, Mr. Nikoo be prohibited from becoming or acting as a registrant.

Dated at Toronto this 27th day of November, 2019.

“Heather Zordel”
Heather Zordel

⁸ See the similar analysis applied in *Germeil (Re)*, 2019 ONSEC 34, (2019) 42 OSCB 8433 at para 35, citing *Inverlake Property Investment Group Inc (Re)*, 2018 ONSEC 35, (2018) 41 OSCB 5309 at para 39 and *Vantooren (Re)*, 2018 ONSEC 36, (2018) 41 OSCB 5603 at para 30.