



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE *SECURITIES ACT*,
R.S.O. 1990, c. S.5, AS AMENDED**

- and -

**IN THE MATTER OF
RANDY ZENOVI CALMUSKY**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) allege:

I. OVERVIEW

1. Randy Zenovi Calmusky (“Calmusky”) is subject to an order made by the Alberta Securities Commission (“ASC”) dated January 12, 2016 (the “ASC Order”) that imposes sanctions, conditions, restrictions or requirements upon him.
2. In its findings on liability and sanctions dated January 12, 2016 (the “Findings”), a panel of the ASC (the “ASC Panel”) found that Calmusky engaged in a course of conduct that he knew or reasonably ought to have known would perpetrate a fraud, contrary to section 93(b) of the Alberta *Securities Act*, R.S.A. 2000 c. S-4 (the “Alberta Act”).
3. Staff are seeking an inter-jurisdictional enforcement order, pursuant to paragraphs 4 and 5 of subsection 127(10) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”).

II. THE ASC PROCEEDINGS

Agreed Statement of Facts and Joint Submission on Sanction

4. Prior to the commencement of the ASC proceedings, Calmusky and ASC Staff entered into an Agreed Statement of Facts and Joint Submission on Sanction (the “Statement”). Calmusky made admissions in the Statement concerning the allegation of fraud made against him by ASC Staff, and further admitted that his conduct was contrary to the public interest.

Background – Agreed Facts

5. The agreed facts contained within the Statement were accepted as accurate by the ASC Panel. A summary of the agreed facts is as follows.
6. Calmusky resides in Calgary. He has not previously been sanctioned by the ASC.
7. In or about October 2008, a company (910234 Alberta Ltd. (“910”)), of which Calmusky was sole voting shareholder, sole director, president and controlling mind, entered into an agreement to govern an interest-bearing loan (the “Loan”) to Lifestyle Homes Inc. (“Lifestyle”).
8. 910 entered into Mortgage Sale and Servicing Agreements (“MSSAs”) with various investors (the “Investors”) between approximately 2008 and 2009. The MSSAs involved 910 selling Investors portions of the Loan, which 910 would continue to “administer and service” for their benefit. Pursuant to the MSSAs, the Investors were to earn a specified rate of interest, which was less than what Lifestyle was to pay on the Loan, and 910’s only remuneration was the spread between the interest charged to Lifestyle and what was payable to the Investors, and certain out-of-pocket expenses. The MSSAs were to mature and be fully repaid at the same time as the Loan. 910 was to remit money to the Investors promptly upon its receipt of any payments from Lifestyle in respect of the Loan.
9. 910 advanced a total of \$1,750,000 to Lifestyle under the Loan in April and May 2011. At least \$1,093,600 of that was funded by the Investors. There was no evidence that Calmusky personally funded any portion of the Loan.

10. Lifestyle repaid the Loan in or around the spring of 2012. The amount of \$1,420,924.81 relating to this repayment made its way into a 910 trust account on May 15, 2012; however, “[r]ather than promptly remitting those funds to the Investors as required by the MSSAs, Calmusky caused \$798,101.99 to be transferred...to his personal line of credit...that same day.”
11. On May 29, 2012, “Calmusky caused another \$370,000 to be transferred from the [910 trust account] to his relatives,” part to his mother and part to his brother. Other than possibly two \$20,000 advances made by Calmusky’s mother in 2006, there is no evidence that she or Calmusky’s brother ever funded any portion of the Loan.
12. The transfers made on May 15 and May 29, 2012, totalling \$1,168,101.99, were not disclosed to the Investors (the “Undisclosed Transfers”).
13. Calmusky “had subjective knowledge” of the Undisclosed Transfers, and he “knew or ought to have known that [they] could deprive the Investors of some or all of their invested capital or increased the risk that some or all of such capital would be lost.” The Undisclosed Transfers indeed “caused the Investors to lose some or all of their invested capital or increased the risk that some or all of such capital would be lost.”
14. 910 went into receivership in December 2012. Bankruptcy followed in May 2013. Subsequent litigation culminated in an order (with Calmusky’s consent) that he pay \$966,319 to 910’s receiver.

The ASC Findings

15. In its Findings, the ASC Panel concluded that Calmusky engaged in a course of conduct that he knew or reasonably ought to have known would perpetrate a fraud, contrary to section 93(b) of the Alberta Act. The ASC Panel further found that Calmusky acted contrary to the public interest.

The ASC Order

16. The ASC Order imposed the following sanctions, conditions, restrictions or requirements upon Calmusky:

- a. under sections 198(1)(b) and (c) of the Alberta Act, Calmusky must cease trading in or purchasing securities or derivatives, and all exemptions contained in Alberta securities laws do not apply to him, in each case permanently;
- b. under sections 198(1)(c.1), (e.1), (e.2) and (e.3) of the Alberta Act, Calmusky is permanently prohibited from engaging in investor relations activities, 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;
- c. under sections 198(d) and (e) of the Alberta Act, Calmusky must immediately resign all positions he holds as, and he is permanently prohibited from becoming or acting as, a director or officer (or both) of any issuer, registrant or investment fund manager;
- d. under section 199 of the Alberta Act, Calmusky must pay an administrative penalty to the ASC of \$100,000; and
- e. under section 202 of the Alberta Act, Calmusky must pay to the ASC \$15,000 of the costs of the ASC's investigation.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

17. Calmusky is subject to an order of the ASC imposing sanctions, conditions, restrictions or requirements upon him.
18. Pursuant to paragraphs 4 and 5 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company, or an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.

19. Staff allege that it is in the public interest to make an order against Calmusky.
20. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.
21. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the *Ontario Securities Commission Rules of Procedure*.

DATED at Toronto, this 9th day of May, 2016.