



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
ROBERT BRUCE RUSH and
BREAKTHROUGH FINANCIAL INC.**

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

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

I. OVERVIEW

1. Robert Bruce Rush (“Rush”) and Breakthrough Financial Inc. (“Breakthrough”) (collectively, the “Respondents”) are subject to an order made by the British Columbia Securities Commission (the “BCSC”) dated February 22, 2016 (the “BCSC Order”) that imposes sanctions, conditions, restrictions or requirements upon them.
2. In its findings on liability and sanctions dated February 22, 2016 (the “Findings”), a panel of the BCSC (the “BCSC Panel”) found that the Respondents perpetrated a fraud and engaged in unregistered trading. The BCSC Panel further found that Rush, as a director of Breakthrough, authorized, permitted and acquiesced in Breakthrough’s contraventions of British Columbia securities laws.
3. Staff are seeking an inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the “Act”).

II. THE BCSC PROCEEDINGS

The BCSC Findings

4. The conduct for which the Respondents were sanctioned took place between 2008 and 2012 (the “Material Time”).
5. As of the date of the Findings, Rush was a resident of British Columbia. Rush was previously registered as a mutual fund salesperson under the British Columbia *Securities Act*, RSBC 1996, c. 418 (the “BC Act”) from March 2005 and November 2007. Rush has not been registered in any capacity under the BC Act since November 2007.
6. Breakthrough was incorporated by Rush in British Columbia in January 2008. Breakthrough has never been registered under the BC Act. Rush was the sole officer and director of Breakthrough. Breakthrough was dissolved in August 2011 for failing to file Annual Reports.
7. During the Material Time, Rush advised an investor (“Investor G”), a former client, that she could re-invest her locked-in pension in higher return investments and do so on a tax-free basis. Investor G agreed to follow Rush’s advice, and entered into a series of transactions that resulted in her effectively borrowing against her pension and receiving the cash proceeds therefrom.
8. Rush told Investor G about certain investments that were being promoted by a third party and offered through an investment company (“RHI”), one of which was a foreign exchange trading account. Investor G agreed to make an investment in a foreign exchange trading account.
9. In July 2008, Rush instructed Investor G to write a cheque for \$73,200 (funds derived from Investor G’s borrowing against her pension) payable to Breakthrough, and that Rush would then forward the funds to RHI.
10. The BCSC Panel found, however, that Rush did not forward the \$73,200 to RHI as had been promised, and that further, it was clear from a review of Breakthrough’s and Rush’s banking records that the funds were used by Rush for personal expenses. Rush did not

tell Investor G that her funds had not been sent to RHI, or that he had spent her funds on his personal expenses.

11. In March 2009, Rush incorporated another company, Avellanas Capital Management Inc. (“Avellanas”), to carry on his financial consulting business. Investor G received sporadic payments from either Breakthrough or Avellanas, totalling \$12,790, purportedly as returns on her investment. Investor G did not receive any funds directly from RHI.
12. Between 2009 and 2011, Investor G received three account statements from Rush or Avellanas purporting to show growth on her investment. In 2010, Investor G asked Rush to withdraw her investment from RHI. Investor G’s funds were not returned to her, and Rush blamed RHI and its principal, FM, for the delay.
13. Investor G received a further two statements during 2011 and 2012, also reflecting investment growth, via emails she had started receiving from profxgrowth@gmail.com, an email address purportedly electronically signed by FM. The BCSC Panel found, however, that the emails sent to Investor G from profxgrowth@gmail.com were actually sent to her by Rush, not FM.
14. Investor G did not have any of her funds returned, except for the \$12,790 referred to above.
15. In its Findings, the BCSC Panel concluded that:
 - a. the Respondents perpetrated a fraud, contrary to section 57(b) of the BC Act on Investor G with respect to a trade in securities in the amount of \$73,200;
 - b. the Respondents traded in securities in contravention of section 34 of the BC Act with respect to the trade in securities to Investor G in the amount of \$73,200; and
 - c. Rush, pursuant to section 168.2 of the BC Act, is liable for the contraventions of sections 57(b) and 34 of the BC Act carried out by Breakthrough.

The BCSC Order

16. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements:

a. upon Rush:

i. under section 161(1)(b), (c), and (d)(i) to (v) of the BC Act,

1. Rush cease trading in, and be permanently prohibited from purchasing, any securities or exchange contracts;
2. the exemptions set out in the BC Act, the regulations or any decision as defined in the BC Act, do not apply permanently to Rush;
3. Rush resign any position he holds as, and is prohibited from becoming or acting as, a director or officer of any issuer or registrant;
4. Rush is permanently prohibited from becoming or acting as a registrant or promoter;
5. Rush is permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market; and
6. Rush is permanently prohibited from engaging in investor relations activities;

ii. under section 161(1)(g) of the BC Act, that Rush pay to the BCSC \$60,410; and

iii. under section 162 of the BC Act, that Rush pay to the BCSC an administrative penalty of \$200,000;

b. upon Breakthrough:

i. under sections 161(1)(b) and d(iii) and (v) of the BC Act,

- ii. all persons cease trading permanently, and be permanently prohibited from purchasing any of its securities;
- iii. Breakthrough cease trading in, and be prohibited from purchasing, any securities or exchange contracts, permanently;
- iv. Breakthrough be permanently prohibited from becoming or acting as a registrant or promoter; and
- v. Breakthrough is permanently prohibited from engaging in investor relations activities;
- vi. under section 161(1)(g) of the BC Act, that Breakthrough pay to the BCSC \$60,410; and
- vii. Rush and Breakthrough are jointly and severally liable with respect to the amounts owing to the BCSC pursuant to paragraphs 11(a)(ii) and 11(b)(vi).

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

- 17. The Respondents are subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements upon them.
- 18. Pursuant to paragraph 4 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 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 the Respondents.
- 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.