



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
THE *SECURITIES ACT*, RSO 1990, c S.5**

- and -

**IN THE MATTER OF
SAILESHWAR RAO NARAYAN, PROSPERITY DEVELOPMENT GROUP LTD.,
and PROSPERA MORTGAGE INVESTMENT CORPORATION**

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

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

I. OVERVIEW

1. Saileshwar Rao Narayan (“Narayan”), Prosperity Development Group Ltd. (“Prosperity Development”) and Prospera Mortgage Investment Corporation (“Prospera Mortgage”) (collectively, the “Respondents”) are subject to an order made by the Alberta Securities Commission (“ASC”) dated August 11, 2016 (the “ASC Order”) that imposes sanctions, conditions, restrictions or requirements upon them.
2. In its findings on liability and sanctions dated August 11, 2016 (the “Findings”), a panel of the ASC (the “ASC Panel”) found that Prospera Mortgage acted as a dealer without the required registration, made prohibited representations to investors, failed to comply with an earlier written undertaking given to the ASC’s Executive Director, and engaged in an illegal distribution. The ASC Panel also found that Prosperity Developments made misleading statements, and that each of the Respondents perpetrated a fraud.

3. The ASC Panel further found that Narayan, as a director, officer, or both, of Prospera Mortgage and Prosperity Developments, authorized, permitted or acquiesced in each company's contraventions of Alberta securities laws.
4. Staff are seeking an inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990, c S.5 (the "Act").

II. THE ASC PROCEEDINGS

Statement of Admissions

5. At the outset of the ASC's hearing, the Respondents entered into evidence a Statement of Admissions dated January 15, 2016, containing admissions by each of the Respondents related to ASC Staff's allegations. A summary of the admissions and the ASC Panel's Findings is as follows.

Background

6. The conduct for which the Respondents were sanctioned took place between 2010 and 2012 (the "Material Time").
7. As of the date of the Findings, Narayan was a resident of Alberta. Narayan was previously registered as a mutual fund salesperson for a two and a half month period in 2005. Otherwise, Narayan has never been registered in any capacity under the Alberta *Securities Act*, RSA 2000, c S-4 (the "Alberta Act").
8. Prospera Mortgage was incorporated in Alberta in 2010. Prospera Mortgage has never been registered under the Alberta Act, and has never filed a prospectus with the ASC.
9. Prosperity Development was incorporated in Alberta in 2012. Prosperity Development has never been registered under the Alberta Act.
10. During the Material Time, Narayan was the directing mind, and an officer and director, of each of Prosperity Development and Prospera Mortgage.

11. During the Material Time, Narayan was also a director of Prospera Management Corp. (“Prospera Management”). Prospera Management was a respondent in the ASC’s proceedings, but no sanctions were ordered against the company by the ASC Panel.
12. Narayan used Prospera Management to provide management services to Prospera Mortgage and Prosperity Development. Prospera Management was the recipient, directly or indirectly, of investor funds raised by the two companies.

Prospera Mortgage

13. In 2010, Narayan began raising money from the public by selling preferred shares of Prospera Mortgage, relying on the offering memorandum exemption in National Instrument 45-106 (“NI 45-106”) (the “OM Exemption”).
14. An offering memorandum was filed with the ASC on November 17, 2010 (the “Prospera 2010 OM”). Pursuant to the Prospera 2010 OM, Prospera Mortgage’s business was to provide mortgage financing to developers and owners of real estate in Alberta and British Columbia, and the company intended to “pay out all of its net income and net realized capital gains as dividends,” so as to avoid income tax obligations. Investors were provided a “Financial Guarantee,” which guaranteed repayment of their principal investment.
15. A second offering memorandum was filed by Prospera Mortgage with the ASC on June 23, 2011, but was rejected by the ASC. In October 2011, Prospera Mortgage entered into an undertaking with the ASC (the “Undertaking”), agreeing to discontinue distributing securities in reliance on the OM Exemption, until an offering memorandum was filed that complied with Alberta securities law. No such offering memorandum was filed, and, contrary to the Undertaking, Prospera Mortgage continued to distribute securities in reliance on the OM Exemption, raising \$778,769 between November 2011 and January 2012.
16. Between June 29, 2010 and January 26, 2012, Prospera Mortgage raised \$2,343,000 from investors, with investor funds deposited into accounts controlled by Prospera Mortgage and Prospera Management. Contrary to the use of funds as described in the Prospera

2010 OM, monies raised from investors were not invested into mortgages. The only mortgage Prospera Mortgage ever owned was a \$120,000 mortgage linked to a business partner of Narayan, which secured repayment of a loan to her by Narayan.

17. The ASC Panel found that Prospera Mortgage's investors' funds were used for personal use by Narayan and his family, as well as by another Prospera Mortgage director, and to repay monies to other investors.

Prosperity Development

18. In the spring of 2012, Narayan began raising money to develop a recreational vehicle park near Pine Lake, Alberta, using Prosperity Development. The development was to include recreational vehicle lots, infrastructure and amenities.
19. Between April 12 and May 23, 2012, Prosperity Development raised over \$3,400,000 from investors, also using the OM Exemption available under NI 45-106. The securities offered were unsecured bonds of Prosperity Development.
20. An offering memorandum was filed by Prosperity Developments on March 26, 2012 (the "Prosperity OM"), which stated monies raised were to be used to acquire and develop land near Pine Lake. The Prosperity OM stated that the company had entered into a purchase agreement on January 11, 2012 to purchase the Pine Lake property for \$850,000 whereby \$5,000 was the deposit and \$845,000 was the balance of the purchase price.
21. The Prosperity OM also provided that the purchase was contingent on Prosperity Developments' obtaining confirmation of rezoning and development approval for the property from the County of Red Deer, otherwise the purchase agreement would be terminated. Further, the \$845,000 was not to be paid until after Prosperity Development received such confirmation of approval.
22. Contrary to the Prosperity OM, on or about May 15, 2012, 1677897 Alberta Ltd. ("167") purchased the Pine Lake property, using \$845,000 of Prosperity Developments' investors' funds. No application for development or re-zoning of the property was ever made. Narayan's brother is the sole shareholder and director of 167. Narayan authorized the advance of \$845,000 to 167.

23. At the time that the money was lent to 167, no mortgage was registered against the Pine lake property to protect the \$845,000 advanced. On August 26, 2012, Prosperity Developments filed a caveat on title to the Pine Lake property (the “Prosperity Caveat”). The Prosperity Caveat claimed Prosperity Developments loaned \$850,000 to 167 as “an unregistered mortgage,” contrary to the intended use of investors’ funds as stated in the Prosperity OM. At the time the Prosperity Caveat was registered, the Pine Lake property was not encumbered by any pre-existing mortgages. Subsequent to the registration of the Prosperity Caveat, three mortgages totalling \$900,000 were registered against title to the property. The Prosperity Caveat was postponed to each of these mortgages.
24. The ASC Panel found that none of the Prosperity Developments’ investors received any return on their principal investment.

The ASC Findings

25. In its Findings, the ASC Panel concluded that:
 - (a) Prospera Mortgage breached:
 - i. section 75(1) of the Alberta Act by acting as a dealer without the required registration;
 - ii. section 92(1) of the Alberta Act by making prohibited representations to investors;
 - iii. section 93.2 of the Alberta Act by failing to comply with a written undertaking given to the ASC’s Executive Director;
 - iv. section 110(1) of the Alberta Act by engaging in the distribution of securities without having filed a preliminary prospectus or a prospectus with the ASC’s Executive Director and receiving a receipt for same, and without an exemption from this requirement;
 - (b) Prospera Mortgage, Narayan, and Prospera Management breached section 93(b) of the Alberta Act by engaging or participating in an act, practice or course of

conduct relating to Prospera Mortgage securities that they knew or ought to have known perpetrated a fraud on Prospera Mortgage investors;

- (c) Prosperity Development breached section 92(4.1) of the Alberta Act by making statements to investors that it knew or reasonably ought to have known, in material respects, were misleading or untrue, or did not state facts that were required to be stated or necessary to make the statements not misleading;
- (d) Prosperity Development and Narayan breached section 93(b) of the Alberta Act by engaging or participating in an act, practice or course of conduct relating to Prosperity Development securities that they knew or ought to have known perpetrated a fraud on Prosperity Development investors; and
- (e) Narayan in his capacity as director, officer, or both, of Prospera Mortgage and Prosperity Development authorized, permitted or acquiesced to the breaches of the Alberta Act by those entities.

The ASC Order

26. The ASC Order imposed the following sanctions, conditions, restrictions or requirements:

- (a) upon Narayan:
 - i. under sections 198(1)(b) and (c) of the Alberta Act, he cease trading in or purchasing securities or derivatives, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently, except that these orders do not preclude him from trading in or purchasing securities through a registrant (who has first been given a copy of the ASC Order) in:
 - 1. registered retirement savings plans, registered retirement income funds, or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Narayan's benefit;
 - 2. one other account for Narayan's benefit; or

3. both, provided that:

(A) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

(B) Narayan does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

- ii. under section 198(1)(c.1) of the Alberta Act, he is prohibited from engaging in investor relations activities, permanently;
- iii. under sections 198(1)(d) and (e) of the Alberta Act, he resign all positions he holds as a director or officer of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer (or other person or company that is authorized to issue securities), registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system, permanently;
- iv. under section 198(1)(e.2) of the Alberta Act, he is prohibited from becoming or acting as a registrant, investment fund manager or promoter, permanently;
- v. under section 198(1)(e.3) of the Alberta Act, he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, permanently;
- vi. under section 198(1)(i) of the Alberta Act, he pay to the ASC \$880,951 obtained as a result of his non-compliance with Alberta securities laws;

- vii. under section 199 of the Alberta Act, he pay an administrative penalty to the ASC of \$300,000; and
 - viii. under section 202 of the Alberta Act, he pay to the ASC \$95,000 of the costs of the ASC's investigation and hearing;
- (b) upon Prospera Mortgage:
- i. under section 198(1)(a) of the Alberta Act, all trading in or purchasing of securities of Prospera Mortgage cease permanently;
 - ii. under section 198(1)(b) of the Alberta Act, Prospera Mortgage cease trading in or purchasing securities or derivatives permanently;
 - iii. under section 198(1)(c) of the Alberta Act, all of the exemptions contained in Alberta securities laws do not apply to Prospera Mortgage permanently; and
 - iv. under section 198(1)(c.1) of the Alberta Act, Prospera Mortgage is permanently prohibited from engaging in investor relations activities;
- (c) upon Prosperity Development:
- i. under section 198(1)(a) of the Alberta Act, all trading in or purchasing of securities of Prosperity Development cease permanently;
 - ii. under section 198(1)(b) of the Alberta Act, Prosperity Development cease trading in or purchasing securities or derivatives permanently;
 - iii. under section 198(1)(c) of the Alberta Act, all of the exemptions contained in Alberta securities laws do not apply to Prosperity Development permanently; and
 - iv. under section 198(1)(c.1) of the Alberta Act, Prosperity Development is permanently prohibited from engaging in investor relations activities.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

27. The Respondents are subject to an order of the ASC imposing sanctions, conditions, restrictions or requirements upon them.
28. 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.
29. Staff allege that it is in the public interest to make an order against the Respondents.
30. 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.
31. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the Commission's *Rules of Procedure*.

DATED at Toronto, this 29th day of September, 2016.