



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
MICHELLE DUNK**

**STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990 c S.5)**

1. Staff of the Enforcement Branch (**Staff**) of the Ontario Securities Commission (the **Commission**) elect to proceed using the expedited procedure for inter-jurisdictional proceedings as set out in Rule 11(3) of the Commission's *Rules of Procedure*.

A. ORDER SOUGHT

2. Staff request that the Commission make the following inter-jurisdictional enforcement order, pursuant to paragraph 1 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990 c S.5 (the **Act**):
 - (a) against Michelle Dunk (**Dunk** or the **Respondent**) that:
 - i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Dunk cease permanently;
 - ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Dunk be prohibited permanently;
 - iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Dunk permanently;

- iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Dunk resign any positions that she holds as a director or officer of any issuer or registrant;
 - v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Dunk be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;
 - vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Dunk be prohibited permanently from becoming or acting as a registrant or promoter; and
- (b) such other order or orders as the Commission considers appropriate.

B. FACTS

Staff make the following allegations of fact:

(i) Overview

3. On April 23, 2018, following a trial before the Honourable Justice Sopinka of the Ontario Court of Justice (the **OCJ**), Dunk was found guilty of one count each of unregistered trading, illegal distribution of securities, and fraud, contrary to sections 25(1), 53(1) and 126.1(1)(b), respectively, of the Act, and thereby committing an offence contrary to section 122(1)(c) of the Act.
4. Dunk was also found guilty of one count of contravening Ontario securities law by trading in securities at a time when she was prohibited from doing so by temporary order of the Commission, contrary to section 122(1)(c) of the Act.
5. A sentencing hearing was subsequently held before Justice Sopinka who issued Reasons for Sentence on October 17, 2018 (the **Reasons for Sentence**), sentencing Dunk to a custodial sentence of two years less a day.

6. The offences for which Dunk was convicted arose from transactions, business or a course of conduct related to securities.
7. Staff is seeking an inter-jurisdictional enforcement order reciprocating Dunk's conviction, pursuant to paragraph 1 of subsection 127(10) of the Act.
8. The offences for which Dunk was convicted took place between May 1, 2012 and May 30, 2016 (the **Material Time**).

(ii) The Respondent

9. Dunk is a resident of Ontario.
10. Dunk has never been registered with the Commission in any capacity.
11. During the Material Time, Dunk was subject to a temporary cease trade order issued by the Commission on July 27, 2011 (the **TCTO**) in relation to the *Ground Wealth Inc., et al.* (**GWI**) matter, an oil investment scheme that ran between October 2010 and April 2011.
12. Dunk subsequently entered into a Settlement Agreement with the Commission in January 2015 in relation to GWI, whereby she agreed, among other things, to be made subject to a cease trade order of the Commission dated January 6, 2015. That order prohibited Dunk from trading in, or acquiring securities, for a period of 8 years, with the exception that she could trade for her own account upon fulfillment of an administrative penalty and costs order.
13. Dunk previously pled guilty to breaching the TCTO by soliciting investments in another oil company. On March 4, 2016, Justice Hearn of the OCJ sentenced Dunk to 75 days in jail and two years of probation in relation to that breach of the TCTO.

(iii) The Ontario Court of Justice Proceedings

Conviction

14. By Information dated June 23, 2016 (the **Information**), Dunk was charged with one count each of unregistered trading, illegal distribution of securities, and fraud, contrary to sections 25(1), 53(1) and 126.1(1)(b), respectively, of the Act, and thereby committing an offence contrary to section 122(1)(c) of the Act.
15. Dunk was also charged with one count of contravening Ontario securities law by trading in securities while prohibited from doing so by the TCTO, contrary to section 122(1)(c) of the Act.
16. On April 23, 2018, Justice Sopinka of the OCJ found Dunk guilty of all counts as charged in the Information.

The Findings

17. During the Material Time, Dunk engaged in the sale and distribution of securities of Rocky Point Energy (**Rocky Point**) to four Ontario investors.
18. Three of the investments took the form of promissory notes whereby the investors' monies were to fund the closing costs of a joint venture between Rocky Point, a mineral rights company in the United States, and First Boston Global Custody and Trust Company (**First Boston**), a bank in England. In one instance, an investor signed a partnership agreement for an investment in Rocky Point and was told that he could profit from the appreciation in value of oil.
19. The promissory note investors understood that they were providing their funds to Dunk to facilitate the closing of the deal between Rocky Point and First Boston, including legal fees and closing costs. Once closed, the deal contemplated First Boston providing funds to Rocky Point for the

development and asset management of oil and gas well reserves located in the United States.

20. The three investors were told that they would receive their principal plus 15% interest on their investments within 45 days, and if the closing of the deal did not occur within 45 days, investors would then receive additional interest payments until the closing occurred.
21. Dunk led investors to believe that the investments were secure and without risk, as they were liened against oil in the ground. Dunk advised investors that the closing of the deal was imminent and that the investments were exclusive only to her friends and family and would provide a high rate of return within a short period of time.
22. Justice Sopinka found that Dunk made misrepresentations to investors by failing to disclose that she was subject to a TCTO at the time she solicited Rocky Point investments, and by retaining a portion of one investor's funds for her own use, unbeknownst to that investor. Further, Dunk made misrepresentations by characterizing the investments as no risk and liened against oil in the ground, when, at the time, Rocky Point had no formalized interest in the land leases pending closing of the deal with First Boston. As such, no asset existed against which the investors' money could be secured, creating a significant risk to those funds.
23. Justice Sopinka also found that Dunk fraudulently represented to one investor that he was investing in Rocky Point, when, in fact, his funds were instead directed to another entity.
24. Ultimately, aside from one investor being repaid a nominal portion of funds, none of the investors have recovered their investments.

The Sentence

25. A sentencing hearing was subsequently held on September 12 and 14, 2018 before Justice Sopinka of the OCJ. On October 17, 2018, Justice Sopinka

sentenced Dunk to a term of imprisonment of 2 years less a day for one count of fraud listed as count 4 on the Information.

26. Justice Sopinka found imposing concurrent sentences was appropriate with respect to counts 1 to 3 of the Information (trading in securities without registration, illegally distributing securities and trading in securities while prohibited to do so), given those offences arose out of the same events as the fraud charge against Dunk.
27. Justice Sopinka also ordered Dunk to pay restitution in the total amount of \$158,435 to the four investors, to be allocated amongst the investors as provided in the Reasons for Sentence.

C. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

28. Pursuant to paragraph 1 of subsection 127(10) of the Act, Dunk's convictions for offences arising from transactions, business or a course of conduct related to securities or derivatives 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 Dunk.
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.

DATED at Toronto this 4th day of December, 2018.

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