



Ontario
Securities
Commission

Commission des
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Citation: Syed Saad Aziz (Re), 2021 ONSEC 32
Date: 2021-12-31
File No.: 2021-35

**IN THE MATTER OF
SYED SAAD AZIZ**

**REASONS AND DECISION FOR APPROVAL OF A SETTLEMENT
(Sections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)**

Hearing: In writing

Decision: December 31, 2021

Panel: Lawrence Haber Commissioner and Chair of the Panel

Appearances: Dihim Emami For Staff of the Commission

Carlo Di Carlo For Syed Saad Aziz

REASONS AND DECISION

I. OVERVIEW

- [1] Staff of the Ontario Securities Commission (**Staff**) and Syed Saad Aziz (the **Respondent**) have jointly submitted that it would be in the public interest to approve a settlement agreement among the parties dated December 21, 2021 (the **Settlement Agreement**) and to issue the requested order.
- [2] This matter concerns an inter-jurisdictional enforcement proceeding brought by Staff against the Respondent arising from an unregistered trading conviction against the Respondent by the Honourable Justice Louise Botham (**Justice Botham**) of the Ontario Court of Justice (**Ontario Court**) on July 29, 2021.
- [3] After considering the Settlement Agreement and the submissions of the parties, I have concluded that it would be in the public interest to approve the Settlement Agreement. These are my reasons.

II. SUMMARY OF THE FACTS

- [4] The underlying facts and the specific breaches of Ontario securities law are set out in the Settlement Agreement, which has been filed with the Commission and is publicly available. Accordingly, I need not repeat them in detail here.
- [5] In summary, the Respondent formed a company, Yonge Street Capital LLC (**YSC**), with two individuals, Nathanael Anthony Aikman (**Aikman**) and Jazib Ali Khan (**Khan**). YSC was promoted as a hedge fund which purported to provide high monthly returns by aggregating investors' funds and subsequently investing those funds in various securities and cryptocurrencies. The Respondent and Khan would secure funds, mostly through friends and family, and Aikman would be responsible for managing the funds and investments. Only Aikman had access to YSC's brokerage account.
- [6] In early August 2019, investors received an email from YSC announcing a structural change at YSC that reportedly resulted in the liquidation of 72 client accounts totalling over \$10 million. Subsequent to this email, the Respondent and Khan learned that Aikman had falsified information about YSC's monthly returns and that Aikman had lost all the investors' money.
- [7] On August 22, 2019, the Respondent and Khan made a complaint to York Regional Police about Aikman. The Respondent and Khan also sent an email to YSC investors advising them that Aikman had lost and/or stolen most of the funds of YSC. The investors have not received any funds back from YSC.
- [8] The Respondent admits that between August 2016 and August 2019, he held himself out as engaging in the business of trading in the securities of YSC to several investors without first obtaining registration, in breach of s. 25(1) of the *Securities Act* (the **Act**), and thereby committing an offence contrary to s. 122(1)(c) of the Act.¹ At all times when the Respondent was engaged in the business of trading in the securities of YSC, he operated under the understanding that YSC was a legitimate business.

¹ RSO 1990, c S.5

- [9] On July 29, 2021, the Respondent pled guilty before the Ontario Court to contravening s. 25(1) of the Act. The Respondent has not yet been sentenced in the Ontario Court as Justice Botham requested that the issue of disgorgement be dealt with in this proceeding before a sentence is imposed by her Honour.
- [10] Staff commenced an interjurisdictional enforcement proceeding against the Respondent pursuant to s. 127(10) by issuing a Statement of Allegations on November 25, 2021.
- [11] As part of the Settlement Agreement, the parties agreed to the following:
- a. the Respondent will disgorge to the Commission \$60,000 payable at a rate of no less than \$6000 per year, commencing 30 days from the date of the order, with the final payment of \$6000 payable by December 31, 2030, or until the amount equivalent to the disgorgement amount has been repaid in full;
 - b. the Respondent will cease trading or acquiring any securities or derivatives for a period of 10 years, except that the Respondent can trade or acquire securities or derivatives in a registered retirement saving plan, registered education saving plan, any registered retirement income funds, and/or tax-free savings account in which he has sole legal and beneficial ownership and interest;
 - c. any exemptions contained in Ontario securities law will not apply to the Respondent for a period of 10 years;
 - d. the Respondent will resign any position he holds as a director or officer of any issuer, registrant or investment fund manager, and is prohibited from becoming or acting as a director or officer of any issuer, registrant or investment fund manager for a period of 10 years; and
 - e. the Respondent will comply with the terms of an undertaking, set out in Schedule "B" to the Settlement Agreement, to make payment of the disgorgement amount and cooperate with Staff by testifying as a witness in any proceedings commenced by Staff with respect to these matters, including the quasi-criminal trials of Khan and Aikman before the Ontario Court.
- [12] The Commission agreed in the Settlement Agreement not to take steps to collect the full disgorgement amount outstanding or add the Respondent to the list of "Respondents Delinquent in Payment of Commission Orders" published on the Commission's website, as long as the Respondent makes yearly payments on time and complies with the undertaking. In the event a payment from the Respondent is not made in full, the non-monetary provisions will continue in force until payment is made in full without any limitation as to time period.

III. LAW AND ANALYSIS

- [13] The Commission's role at a settlement hearing is to determine whether the terms of the settlement fall within a range of reasonable outcomes and whether the approval of the settlement is in the public interest.²

² *Research in Motion Limited (Re)*, 2009 ONSEC 19, (2009) 32 OSCB 4434 (***Research in Motion***) at paras 44-46

- [14] The Settlement Agreement is the result of lengthy negotiations between Staff and the Respondent, who was ably represented by counsel. The Commission respects the negotiation process and accords significant deference to the resolution reached by the parties.³
- [15] Settlements serve the public interest in resolving regulatory proceedings promptly, efficiently and with certainty. Settlements avoid the significant resources that would be incurred in a contested proceeding and promote timely statements regarding regulatory requirements and standards to all capital market participants.
- [16] I have reviewed the Settlement Agreement in detail and considered the submissions of counsel for the parties. I also conducted a confidential settlement conference with counsel for the parties during which I reviewed the proposed settlement agreement, asked questions of counsel and heard their submissions.
- [17] The breach of securities law in this matter is serious. Registration is a cornerstone of securities law designed to ensure that those who sell or promote securities are proficient, solvent and act with integrity.⁴ Unregistered trading undermines investor protection and the integrity of the capital markets.⁵
- [18] I believe the requested order agreed to by the parties is proportionate to the conduct at issue. The Commission may make a protective order in the public interest under s. 127(1) of the Act, pursuant to paragraph 1 of s. 127(10) where a person has been convicted in any jurisdiction of an offence arising from a course of conduct related to securities. Of note, the sanctions reflect existing principles in jurisprudence for an inter-jurisdictional enforcement order.⁶
- [19] The circumstances of this s. 127(10) proceeding are slightly unusual in that the proceeding is being brought prior to the Respondent being sentenced by the Ontario Court. Staff submits that this is because the Respondent requires 10 years to repay the disgorgement order, which is substantially longer than the maximum period of Probation a Court can impose under the *Provincial Offences Act* (the **POA**).⁷ Additionally, the restitution provisions of the POA make disgorgement by the Court impractical, as Staff do not have a full accounting of all YSC investors, and are not able to direct that restitution be made individually to investors. I am satisfied that the lack of sentencing at this time does not prevent the Commission from making an order under s. 127(10), which only requires a "conviction". I am satisfied that the unusual factual situation adequately explains why Staff has proceeded in this manner.
- [20] In assessing whether it is in the public interest to approve the settlement, I considered various mitigating factors as set out in the Settlement Agreement and determined that the sanctions were within a range of reasonable outcomes. The following mitigating factors, which Staff has granted the Respondent substantial credit for, are particularly relevant:

³ *Katanga Mining Limited (Re)*, 2018 ONSEC 59, (2018) 41 OSCB 9987 at para 18; *Research in Motion* at para 45

⁴ *MRS Sciences Incorporated (Re)*, 2014 ONSEC 14, (2014) 37 OSCB 5611 at para 88

⁵ *Fauth (Re)*, 2021 ONSEC 4, (2021) 44 OSCB 739 at para 24

⁶ *Dunk (Re)*, 2019 ONSEC 6, (2019) 42 OSCB 997 at para 17

⁷ RSO 1990, c P.33

- a. the Respondent pleaded guilty early in the quasi-criminal proceedings before the Ontario Court;
- b. the Respondent will fully cooperate with Staff as this matter progresses, including testifying as a witness for Staff in any proceeding relating to this matter;
- c. the Respondent is remorseful for his conduct, and, in particular for failing to safeguard and protect the integrity of the capital markets;
- d. the Respondent accepts full responsibility for his conduct;
- e. the Respondent's financial circumstances; and
- f. the Respondent was 20 years old when the company was formed and he looked to Aikman as a mentor and advisor.

IV. CONCLUSION

- [21] In my view, the terms of the Settlement Agreement fall within a range of reasonable dispositions in the circumstances and will have a significant deterrent effect on the Respondent and others. The Settlement Agreement, including the undertaking, holds the Respondent accountable for his actions and furthers the protection and preventive purposes of the Act.
- [22] The settlement also demonstrates that compliance with registration requirements will be enforced even in circumstances where the individual did not engage in any intentional misconduct or any dishonest or abusive conduct.
- [23] In my view, the settlement terms in the circumstances appropriately reflect the principles applicable to sanctions, including the importance of fostering investor protection and confidence in the market, recognition of the nature and circumstances of the misconduct, and recognition of and the need for specific and general deterrence of such misconduct.
- [24] For these reasons, I conclude that the Settlement Agreement is in the public interest. I approve the Settlement Agreement on the terms proposed by the parties and will issue an order substantially in the form requested.

Dated at Toronto this 31st day of December 2021.

"Lawrence Haber"

Lawrence Haber