



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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IN THE MATTER OF

HARRY STINSON, BUFFALO GRAND HOTEL INC., STINSON HOSPITALITY MANAGEMENT INC., STINSON HOSPITALITY CORP., RESTORATION FUNDING CORPORATION, BUFFALO CENTRAL LLC, and STEPHEN KELLEY

STATEMENT OF ALLEGATIONS

(Subsections 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

A. OVERVIEW

1. Staff of the Enforcement Branch of the Ontario Securities Commission bring this proceeding to hold Harry Stinson accountable for his further violation of the registration and prospectus requirements of Ontario securities law and for making misleading statements to investors. Staff also bring this proceeding against Stinson's employee, Stephen Kelley, for his role in violating Ontario securities law and making misleading statements to investors.
2. Stinson acknowledged in a December 2006 settlement agreement with Staff that he had breached the registration and prospectus requirements of the Securities Act, RSO 1990 c. S5. (the **Act**) by trading in securities as part of an unregistered hotel-condominium project.
3. Despite his previous violations, Stinson orchestrated another hotel-condominium project in November 2016 called the Buffalo Grand Hotel, in respect of which he and corporate entities he controlled sold approximately \$19 million in securities to investors, mainly based in Ontario, without being registered with the Commission and without providing investors with a prospectus.
4. Stinson and Kelley actively promoted the investments in the hotel through various Stinson entities. Using subscription agreements, they sold securities to investors, including promissory notes related to the Hotel. In some cases, they offered investors shares in Stinson Hospitality Corporation (**SHC**) or Restoration Funding Corporation (**Restoration**) in exchange for their investments.

5. Stinson and other respondents also made false or misleading statements to investors that all investments were RRSP and TFSA-eligible, and that some were secured by a mortgage and interest reserve. They were not. Instead of securing investor funds, Stinson caused them to be comingled with funds in bank accounts from other projects without appropriate segregation and recordkeeping.
6. Furthermore, Stinson, Kelley and SHC repeatedly breached a Temporary Cease Trade Order in this matter by issuing shares to investors after being ordered to stop.
7. Registration requirements serve an important gatekeeping function by ensuring that only properly qualified and suitable persons engage in the business of trading securities with the public, and registrants under the Act are subject to a robust regulatory regime and ongoing oversight. Prospectus requirements ensure that investors receive full, true, and plain disclosure of all material facts relating to the securities being issued, helping them make informed investment decisions.
8. By disregarding these cornerstone principles of Ontario securities law, and by flouting the Commission's Orders, the Respondents exposed investors to risk and undermined confidence in the capital markets.

B. FACTS

Staff of the Commission make the following allegations of fact:

The Hotel Investments

9. In 2016, Stinson formed a plan to purchase and renovate the Hotel and convert it into a condominium structure in which investors would own individual units and share in a portion of the Hotel's global profits from operations.
10. Stinson is a resident of Hamilton, Ontario and is a real estate broker and developer.
11. Stinson involved a series of corporations in the project, namely Buffalo Grand Hotel Inc. (**BGHI**), Stinson Hospitality Management Inc. (**SHMI**), SHC, Restoration Funding Corporation (**Restoration**), and Buffalo Central LLC (**BCLLC**) (collectively the **Stinson Entities**). Stinson founded these entities and was their sole officer and director. During the period between November 2016 and March 2020 (the **Material Time**), Stinson controlled and operated the Stinson Entities in the capital raising activity described below. At times, Stinson used the Stinson Entities interchangeably in their capital-raising roles.

12. Details of the roles of these entities in the Hotel's capital-raising activity are as follows:
 - (a) BGHI is a New York corporation and the owner of the Hotel. It carries on Hotel business. BGHI entered into subscription agreements with Ontario residents.
 - (b) SHMI, formerly Stinson Hospitality Buffalo Inc., is a federally incorporated Canadian corporation. SHMI entered into subscription agreements with investors.
 - (c) SHC is an Ontario corporation involved in hospitality operations at the Hotel. SHC received funds from investors and in some cases also issued common shares to investors in exchange for their investment.
 - (d) Restoration is an Ontario corporation that acts as a trustee for funds invested in the Hotel. Restoration received investor funds from Ontario residents and in some cases also issued common shares to investors in exchange for their investment.
 - (e) BCLLC is a New York corporation, which entered into subscription agreements with investors.
13. Neither Stinson nor any of the Stinson Entities were registered under the Act during the Material Time.
14. In November 2016, Stinson and the Stinson Entities began actively soliciting investments in the Hotel, primarily from Ontario investors.
15. On or around July 10, 2018, BGHI purchased the Hotel for approximately USD 17 million.
16. Since March 2018, Kelley has been the Hotel's Manager of Client Services. Kelley was held out as an "Investment Coordinator" and solicited investments in the Hotel. Kelley has never been registered under the Act in any capacity and has no education, training, or experience in the securities industry.
17. During the Material Time, the Respondents actively and regularly promoted investments in the Hotel through multiple channels. This included posting promotional content on social media, sending mass emails, hosting investment seminars, disseminating promotional flyers and brochures, meeting with potential investors, giving tours of the Hotel, publishing a promotional YouTube video about the Hotel, and posting promotional material on Stinson's website.

18. The promotional material included statements such as:
- (a) "rapid, fixed returns";
 - (b) "Fixed double-digit returns, no surprises";
 - (c) "a fast flip on your investment funds";
 - (d) "Earn 20+% (RRSP – and TFSA – eligible)";
 - (e) "Fixed return, (not a 'projection')";
 - (f) "A rare opportunity for investors to participate in a full-service luxury convention hotel";
 - (g) "Investors share in ALL of the revenues, from all suites (not just their own) as well as from banquets, weddings, events, meetings, dining room, lobby, bar, room service, parking...from all of the revenue streams and departments of the hotel and conference centre"; and
 - (h) "Cash and Registered Funds Accepted".
19. Throughout the Material Time, Stinson, BGHI, SHMI, and BCLLC raised capital from investors through one of three broad categories of subscription agreements (collectively, the **Subscription Agreements**). Each of the investments offered through the Subscription Agreements (described below) is a 'security' as defined in subsection 1(1) of the Act:
- (a) A 'Unit Purchase Agreement', in which an investor paid a fixed price for the purchase of a specific suite, with the transfer of title to take place upon the Hotel's conversion to a condominium structure. Under the Unit Purchase Agreement, once title to a suite had been transferred, the investor would lease the suite back to one of the Respondents in exchange for a 'leaseback' payment of 5% per annum of the purchase price and a proportionate share of net profits (total income, less total expenses) from all Hotel suites and revenue streams. In the interim period between the investor's initial investment and the transfer of title, the investment agreement involved a promissory note in favour of the investor, under which the investor was typically entitled to receive 5% quarterly interest payments.
 - (b) An 'Option to Purchase Agreement', in which an investor paid a fixed price for a promissory note with a fixed rate of interest payable to the investor quarterly.

Upon conversion of the Hotel to a condominium structure, the investor has the option to convert the investment into the purchase of a suite in the Hotel. If the investor exercises that option, the investor leases the suite back to one of the Respondents in exchange for a leaseback payment of 5% per annum of the purchase price and a proportionate share of net profits (total income, less total expenses) from all Hotel suites and revenue streams.

- (c) A 'Wholesale Room Block Agreement', in which an investor purchased a block of Hotel rooms, at reduced "wholesale prices" in a future month. In exchange, the investor would be paid a fixed return based on the higher, "retail price" of those rooms that Hotel patrons pay for their stay in that future month. The investment was described as involving a promissory note. The wholesale room rate and the retail projected room rate are both specified in the Wholesale Room Block Agreement, as is the amount of the investor's total investment and the "retail payout" the investor will receive. Some of these agreements include an option for investors to roll-over their investment plus accrued interest into the purchase of a suite in the Hotel that would include a leaseback term substantially the same as those described in subparagraphs (a) and (b) above.

Use of Investor Funds and Status of the Hotel Project

20. Despite advising investors that they intended to undertake substantial renovations to the Hotel that would increase the value of the Hotel and ultimately benefit investors who stood to share in resulting increased profits from Hotel operations, Stinson and the Stinson Entities spent only a modest share of investor funds on renovations to the Hotel.
21. Instead, Stinson and the Stinson Entities failed to put in place proper segregation and allowed investor funds to be co-mingled into omnibus accounts from which funds were used for other Stinson projects and transfers were made to other bank accounts and credit cards, including certain accounts and credit cards held by Stinson.
22. The Respondents failed to maintain accurate records of funds raised from investors and failed to properly record the use of those funds.
23. During the Material Time, the Respondents encountered cash flow issues and were unable to meet their loan obligations under loan agreements related to the purchase of the Hotel. Beginning in March 2019, the Respondents were required to enter into loan forbearance agreements as a result of their inability to meet their loan obligations.

24. The Respondents did not disclose their cash flow issues to potential investors while continuing to raise funds for the Hotel and encouraged investors who had invested in other Stinson projects to roll their investments over into the Hotel.
25. Stinson and the Stinson Entities did not complete, or in some cases begin, certain renovations they told investors they would make to the Hotel.
26. As of November 2021, Stinson and the Stinson entities have not obtained the necessary legal authorizations or approvals to convert the Hotel to a condominium structure.

Illegal Distribution

27. Stinson, BGHI, SHMI, and BCLLC, which were parties to the Subscription Agreements, issued investments.
28. Each of the investments offered through the Subscription Agreements is a 'security' as defined in subsection 1(1) of the Act.
29. Stinson, BGHI, SHMI, and BCLLC engaged in trading in securities, which constituted distributions of the securities, without filing a preliminary prospectus and a prospectus with the Commission, and where no exemptions were available, contrary to subsection 53(1) of the Act.
30. Stinson, BGHI, SHMI, and BCLLC did not take steps to determine whether investors qualified as accredited investors. Many did not.
31. The investments offered through the Subscription Agreements did not qualify for any other exemption from the prospectus requirement set out in section 53 of the Act and the Respondents did not file reports of exempt distributions, including Form 45-106F1, with the Commission.
32. Stinson authorized, permitted, or acquiesced in BGHI, SHMI, and BCLLC's illegal distributions and, pursuant to section 129.2 of the Act, is deemed to have contravened subsection 53(1) of the Act.

Unregistered Trading

33. Throughout the Material Time, the Respondents engaged in, or held themselves out as engaging in, the business of trading in securities without being registered under subsection 25(1) of the Act as dealing representatives. In particular:

- (a) Stinson and Kelley actively promoted investment opportunities in the Hotel on behalf of Restoration, SHC, SHMI, BCLLC and BGHI;
 - (b) Stinson and Kelley regularly advertised investment opportunities in the Hotel on behalf of Stinson Entities;
 - (c) Stinson prepared and/or was responsible for the content of the website promoting the Hotel, the promotional material circulated by email and in hardcopy, and the slide decks shown to or provided to investors;
 - (d) Stinson, Restoration, SHMI, SHC, BGHI, and BCLLC entered into investment agreements offering promissory notes, payments, and profit sharing in exchange for investor funds;
 - (e) Stinson, and at Stinson's direction, Kelley, met and communicated with investors in the Hotel to facilitate investments. This included meeting and communicating with investors personally, including through appearances at investor seminars and conferences, having investors sign Subscription Agreements, and having investors make deposits for their investments;
 - (f) Stinson and the Stinson Entities stood to profit or receive compensation from the success of the Hotel investment project;
 - (g) Kelley stood to receive compensation from new investor funds raised for the Hotel; and
 - (h) Restoration, SHMI, and SHC accepted deposits for Hotel investments and Restoration and SHC offered shares to investors in exchange for investments.
34. Stinson took steps to contact exempt market dealers but ultimately chose not to retain a dealer and to issue and trade securities directly through the Stinson Entities.
35. The Respondents acted with repetition, regularity, and continuity over the Material Time, raising approximately \$19 million from approximately 207 investors.
36. Stinson authorized, permitted, or acquiesced in the Stinson Entities engaging in the business of unregistered trading and, pursuant to section 129.2 of the Act, is deemed to have contravened subsection 25(1) of the Act.

False and Misleading Representations to Investors

37. Stinson, Kelley, and BGHI made three sets of false or misleading statements to investors in their promotional materials or Subscription Agreements, which are detailed below.

Representation 1: Hotel Investments Were RRSP and TFSA Eligible

38. Stinson drafted and/or approved promotional material that stated or conveyed that all investments in the Hotel were qualified investments for Registered Retirement Savings Plans (**RRSPs**) and Tax-Free Savings Accounts (**TFSA**s).
39. Stinson and Kelley provided investors with this promotional material and personally confirmed to investors that all investments were qualified investments for RRSPs and TFSA
40. Examples of these representations included:
- (a) a promotional flyer that advertised investment in the Hotel being different by virtue of “individual real estate ownership” and the ability of investors to “use [their] RRSP or TFSA” for their investments in the Hotel; and
 - (b) a YouTube video in which Stinson appeared in front of a poster listing “20 good reasons” to invest in the Hotel. The reasons included “[f]ull ownership of individually titled suites” and “RRSP & TFSA eligible.”
41. Purchases of individually titled Hotel suites were not qualified investments for RRSPs or TFSA

Representation 2: Investor Funds Secured by a Mortgage

42. Certain Subscription Agreements stated that investor funds would be collectively secured by a USD 40 million mortgage against the Hotel property. Despite making this representation to investors, no such mortgage was put in place. Neither Stinson nor the Stinson Entities took any material steps to place a mortgage on the Hotel property for the benefit of investors.

Representation 3: Investor Funds Would Be Secured by an Interest Reserve

43. Certain Subscription Agreements stated that one or more of the Stinson Entities would maintain an interest reserve equal to 10% of the value of investor funds in the Hotel. The purpose of the interest reserve was to ensure that adequate funds were available

to pay regular interest payments owing to investors under the Subscription Agreements. Neither Stinson nor the Stinson Entities established an interest reserve.

44. The representations regarding RRSP and TFSA eligibility, mortgage security, and an interest reserve described in paragraphs 38 through 43 above were false and misleading. Each of the representations was one that a reasonable investor would consider relevant in deciding whether to enter or maintain a trading relationship with the Respondents and that investors in the Hotel did in fact consider relevant in making their decision to invest in the Hotel. By making these false or misleading statements about matters that a reasonable investor would consider relevant and by omitting information necessary to prevent the statements from being false or misleading in the circumstances in which they were made, the Respondents breached subsection 44(2) of the Act.
45. Stinson authorized, permitted, or acquiesced in the three sets of misleading statements made by BGHI and, pursuant to section 129.2 of the Act, is deemed to have contravened subsection 44(2) of the Act.

Breaches of the Temporary Cease Trade Order

46. Stinson, Kelley, and SHC failed to comply with the terms of the March 20, 2020 TCTO and the Commission's orders extending the TCTO (collectively, the **TCTOs**).
47. The TCTO ordered that the following trading cease:
 - (a) trading in any securities by BGHI, SHMI, SHC, Restoration, and Stinson or by any person on their behalf; and
 - (b) trading in securities related to the Hotel, including trading related to Hotel suites or 'units' and trading related to wholesale room blocks.
48. The Commission extended the TCTO on April 3, 2020, January 29, 2021, April 28, 2021, and October 29, 2021. The orders extending the TCTO prohibited all trading in any securities by or of BGHI, SHMI, SHC, Restoration, and Stinson.
49. In January and February 2021, while the TCTOs remained in effect, Stinson and Kelley caused SHC to issue approximately 45,140 shares in SHC to approximately eight investors. SHC issued the shares in lieu of interest payments owing to those investors, in breach of the Commission's orders.

50. Stinson authorized the issuance of the shares and share certificates, and signed the share certificates in his capacity as President of SHC; and
51. Kelley facilitated the issuance of shares and share certificates, including through communications with investors and with third parties with custody of the certificates.
52. By engaging in the conduct described above, SHC, Stinson, and Kelley breached the terms of the TCTOs and thereby contravened Ontario securities law.
53. Stinson authorized, permitted, or acquiesced in SHC's breaches of the TCTOs and, pursuant to section 129.2 of the Act, is deemed to have contravened Ontario securities law.

C. BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

Staff allege the following breaches of Ontario securities law and conduct contrary to the public interest:

54. During the Material Time, Stinson, BGHI, SHMI, and BCLLC participated in distributions of securities without filing a preliminary prospectus or a prospectus and without an applicable exemption to the prospectus requirement, contrary to section 53 of the Act;
55. During the Material Time, the Respondents engaged in, or held themselves out as engaging in, the business of trading in securities, without the required dealer registration, and where there were no exemptions to the requirement to be registered as dealer available to them, contrary to s. 25(1) of the Act;
56. Stinson, Kelley, and BGHI made untrue, false, or misleading representations that a reasonable investor would have considered relevant in deciding whether to enter into or maintain a trading relationship, contrary to subsection 44(2) of the Act;
57. SHC, Stinson, and Kelley engaged in trades of SHC securities and, as a result, breached the terms of the TCTOs, thereby contravening Ontario securities law;
58. Stinson, as a director or officer of the Stinson Entities, authorized, permitted, or acquiesced in the Stinson Entities' non-compliance Ontario securities law, and accordingly are deemed to have failed to comply with Ontario securities law, pursuant to section 129.2 of the Act;
59. The Respondents acted in a manner contrary to the public interest; and

60. Staff reserve the right to amend these allegations and make such further allegations as Staff may advise and the Commission may permit.

D. ORDER SOUGHT

Staff request that the Commission make the following orders:

- (a) that trading in any securities by the Respondents cease permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of s. 127(1) of the Act;
- (b) that the Respondents be prohibited from the acquisition of any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of s. 127(1) of the Act;
- (c) that any exemption contained in Ontario securities law does not apply to the Respondents, permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of s. 127(1) of the Act;
- (d) that the Respondents be reprimanded, pursuant to paragraph 6 of s. 127(1) of the Act;
- (e) that Stinson and Kelley resign all positions they hold as a director or officer of an issuer, pursuant to paragraph 7 of s. 127(1) of the Act;
- (f) that Stinson and Kelley are prohibited from becoming or acting as a director or officer of any issuer, pursuant to paragraph 8 of s. 127(1) of the Act;
- (g) that Stinson and Kelley resign from all positions they hold as a director or officer of any registrant, pursuant to paragraph 8.1 of s. 127(1) of the Act;
- (h) that Stinson and Kelley are prohibited from becoming or acting as a director or officer of any registrant, pursuant to paragraph 8.2 of s. 127(1) of the Act;
- (i) that Stinson and Kelley be prohibited from becoming or acting as a registrant, or promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of s. 127(1) of the Act;
- (j) that the Respondents pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of s. 127(1) of the Act;

- (k) that the Respondents disgorge to the Commission any amounts obtained as a result of their non-compliance with Ontario securities law, pursuant to paragraph 10 of s. 127(1) of the Act;
- (l) that the Respondents pay Staff's costs of the investigation and the hearing, pursuant to s. 127.1 of the Act; and
- (m) such other order as the Commission considers appropriate in the public interest.

DATED at Toronto this 10th day of February, 2022.

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