

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: Essen Capital Inc., Re, 2009 ABASC 530

Date: 20091027

Docket: E/03812

Securities Act, R.S.A. 2000, c. S-4 (Act)

ESSEN CAPITAL INC. and KEVIN LOMAN

Agreed Facts

Introduction

1. The staff of the Alberta Securities Commission (respectively, **Staff** and **Commission**) conducted an investigation into allegations that Essen Capital Inc. (**Essen**) and Kevin Loman (**Loman**) breached Alberta securities laws and acted contrary to the public interest by engaging in illegal distributions of securities in Alberta to Alberta residents and by acting as investment advisors or permitting other Essen representatives to act as investment advisors in Alberta despite the fact that none of them was registered to act in that capacity with the Executive Director of the Commission (**Executive Director**).
2. The investigation confirmed and each of Essen and Loman (collectively, **Respondents**) admits that they breached those sections of the *Act* referred to in this Settlement Agreement and Undertaking (**Agreement**), and that each acted contrary to the public interest.
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraphs 30 and 31 of this Agreement, each of the Respondents agrees to the facts set out in this Agreement.
4. Terms used in this Agreement have the same meaning as provided in Alberta securities laws, a defined term in the *Act*.

Parties

5. At all material times, Essen was a federal corporation conducting business in Alberta. It had office premises in Lethbridge, Alberta, and was represented as being in the business of “wealth management”. Essen has never been a reporting issuer in Alberta, and has never been registered with the Executive Director in any capacity under the *Act*.

6. At all material times, Loman was a resident of Alberta and was the president, C.E.O., and sole director of Essen. He was registered with the Executive Director as a mutual funds salesman between 2003 and 2005, but has not been registered with the Executive Director in any other capacity and at any other time.

Circumstances

7. In mid-2006, an Alberta resident (**Client**) was introduced to Loman by the accountant (**Accountant**) they both used. The Accountant was aware that Loman had invested in Camdeton Trading Ltd. (**Camdeton**). Loman spoke to the Client about Loman's investment in Camdeton.
8. Loman also discussed a number of tax and debt-related strategies with the Client, many of which are reflected in an unsigned document entitled, "Strategic Financial Analysis". The Strategic Financial Analysis included information as to specific investment strategies, including Camdeton and a "Business Loss Program", which was through The Synergy Group (2000) Inc. (**Synergy**).
9. The Camdeton investment was to involve placing funds through Camdeton in order to participate in foreign currency settlement with international banks.
10. The Synergy investment was to involve the purchase of investment "units" from Synergy in an association of Canadian businesses managed by Integrated Business Concepts Inc. Synergy investors were either to share in profits realized by the association of businesses, or share in losses suffered by the association of businesses, which would then be assigned to investors and claimed against their personal income taxes.
11. In approximately September 2006, the Client invested \$100,000 in Camdeton and purchased \$15,000 worth of Synergy "units".
12. Between approximately October 2005 and August 2006, Loman and other Essen representatives conducted various meetings with Alberta residents and discussed investment in Synergy and Camdeton. At least seven Alberta residents (**Additional Camdeton Investors**) subsequently invested an additional \$850,000 in Camdeton.
13. In 2006 and 2007, Essen representatives also referred at least 14 additional investors to Synergy, at least eight of whom were Alberta residents (**Additional Synergy Investors**). The Additional Synergy Investors purchased \$230,000 worth of Synergy "units". Loman was personally involved in referring some of the Additional Synergy Investors to Synergy.
14. Synergy was subject to an interim cease trade order issued by the Commission on June 15, 2007, directing that Synergy cease trading in all securities (**Synergy**

Interim CTO). On June 29, 2007, the Synergy Interim CTO was extended by the Commission until a hearing was concluded and a decision rendered, or until otherwise ordered by the Commission.

15. In furtherance of the Client's and the Additional Camdeton Investors' investments in Camdeton, the Respondents:
 - 15.1 provided information regarding the Camdeton investment opportunity; and
 - 15.2 processed and transmitted some of the investment documentation and investment funds between the Client and the Additional Camdeton Investors and Camdeton.

16. In furtherance of the Client's and the Additional Synergy Investors' investments in Synergy, the Respondents:
 - 16.1 provided information regarding the Synergy investment opportunity; and
 - 16.2 processed and transmitted some of the investment documentation and investment funds between the Client and the Additional Synergy Investors and Synergy.

17. Essen representatives, including Loman, received or were entitled to receive a referral fee of 9 to 10% of the amount of the investments they respectively referred to Synergy.

18. The Respondents admit that:
 - 18.1 the investments in Camdeton were investment contracts and therefore were securities as defined by the *Act*;
 - 18.2 the Synergy "units" were securities as defined by the *Act*;
 - 18.3 sales of the Camdeton and Synergy securities to the Client, the Additional Camdeton Investors and the Additional Synergy Investors, and the actions of the Respondents in furtherance of those sales, constituted trades in securities as defined by the *Act*;
 - 18.4 as trades in securities of issuers which had not previously been issued, these trades also constituted distributions under the *Act*;
 - 18.5 no preliminary prospectus or prospectus was filed with or receipted by the Executive Director with respect to these distributions; and
 - 18.6 no exemption was available with respect to the sale of the Camdeton and Synergy securities as described herein.

Breaches

19. As a result of the conduct outlined above, each of the Respondents admits that they breached:
 - 19.1 section 75(1)(a) of the *Act* by trading in securities of Camdeton and Synergy without registration; and
 - 19.2 section 110 of the *Act* by distributing securities of Camdeton and Synergy when no preliminary prospectus or prospectus had been filed by Camdeton or Synergy and receipted by the Executive Director, and when no appropriate exemption was available.
20. As a further result of the above, the Respondents admit that each breached section 75(1)(b) of the *Act* by acting as investment advisors and engaging in the business of providing investment advice when they were not registered with the Executive Director to act in that capacity.
21. Each of the Respondents acknowledges that their failure to comply with the registration and prospectus requirements in the *Act*, and the provision of investment advice without appropriate registration, amounted to conduct that was contrary to the public interest.
22. Loman admits that as the president, C.E.O. and sole director of Essen, he is responsible for the participation of Essen in the breaches of the *Act* described herein.

Other Circumstances Relevant to Settlement

23. Essen was struck from the Alberta Corporate Registry on March 2, 2009 and no longer operates in Alberta, and Loman no longer resides or conducts business in Alberta.
24. Loman invested \$50,000 of his personal funds in Camdeton.
25. The Respondents state that they did not receive any commission in relation to the investments in Camdeton described herein.
26. Loman states that in 2005 and 2006, based on advice from Camdeton and Synergy, he believed that the investments in Camdeton and Synergy were not securities and that no licensing or registration was required. Loman admits that he did not exercise sufficient due diligence to confirm his understanding that these were not securities that required registration.

27. Loman states that he has been involved in efforts to try to recover the investments made in Camdeton. To date, those efforts have been unsuccessful.
28. The Respondents have not been previously sanctioned by the Commission and have cooperated with Staff during the investigation.
29. In making the admissions contained herein, the Respondents have saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement Payments and Undertakings

30. Based on these facts and admissions, Essen undertakes to the Executive Director to permanently cease and refrain from all trading in or purchasing of securities or exchange contracts in Alberta, and from relying on any exemptions contained in Alberta securities laws.
31. Based on these facts and admissions, Loman:
 - 31.1 agrees to pay the amount of \$50,000.00 to the Commission in settlement of the allegations against him;
 - 31.2 agrees to pay the amount of \$10,000.00 to the Commission towards the costs of the investigation of this matter;
 - 31.3 undertakes to the Executive Director to cease and refrain from trading in or purchasing in Alberta securities or exchange contracts or relying on any exemptions contained in Alberta securities laws for a period of three years from the date of this Agreement, except that Loman is not precluded from trading in or purchasing securities through a registrant (who has first been given a copy of this Agreement) in registered retirement savings plans (as defined in the *Income Tax Act* (Canada)) for his benefit or the benefit of his spouse; and
 - 31.4 undertakes to the Executive Director to resign immediately from all positions that he currently holds as a director or officer of any issuers carrying on business in Alberta, and to refrain from becoming or acting as a director or officer, or as both a director and an officer, of any issuer carrying on business in Alberta for a period of three years from the date of this Agreement.

Administration

- 32. Each of the Respondents acknowledges that they have sought and received independent legal advice and that each has voluntarily made the admissions herein.
- 33. Each of the Respondents waives any rights existing under the *Act*, or otherwise, to a judicial review or appeal of this matter.
- 34. Each of the Respondents acknowledges that this Agreement may be referred to in any other proceedings under the *Act* and in securities regulatory proceedings in other jurisdictions.
- 35. This Agreement resolves all issues involving the Respondents as described in the preceding paragraphs, and Staff will take no further steps against the Respondents arising from these facts.
- 36. This Agreement may be executed in counterpart.

Signed by Essen Capital Inc. at)
 Calgary, Alberta, this 22nd day of)
 October, 2009, in the presence of:)

Marcey Lepka)
WITNESS NAME)
 “*Original Signed By*”)
SIGNATURE)

 “*Original Signed By*”
Essen Capital Inc.

Signed by Kevin Loman at)
 Calgary, Alberta, this 22nd day of)
 October, 2009, in the presence of:)

Marcey Lepka)
WITNESS NAME)
 “*Original Signed By*”)
SIGNATURE)

 “*Original Signed By*”
Kevin Loman

Calgary, Alberta, this 27th day of
October, 2009

) **ALBERTA SECURITIES COMMISSION**

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) *“Original Signed By”*

) _____
John P. Petch

) Director, Enforcement