

ALBERTA SECURITIES COMMISSION

NOTICE OF HEARING

Citation: Foundation Capital Corporation, 2009 ABASC 291

Date: 20090616

Docket: E/03920

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

To: Foundation Capital Corporation, Spruce Ridge Capital Inc., Spruce Ridge Estates Inc., Beyer Consulting Ltd., Ronald James Aitkens and Roy Juergen Beyer (Respondents)

Notice: The Alberta Securities Commission (**Commission**) will convene at 9:00 am on Thursday, the 9th day of July 2009, at Calgary, Alberta, to set a date for a hearing regarding the allegations in this Notice and to deal with any preliminary matters. At the hearing, the Commission will consider whether it is in the public interest to order:

- (i) Under subsection 198(1)(a) of the *Act*, that trading in or purchasing cease in respect of specified securities;
- (ii) Under subsection 198(1)(b) of the *Act*, that you cease trading in or purchasing securities;
- (iii) Under subsection 198(1)(b.2) of the *Act*, that you be reprimanded;
- (iv) Under subsection 198(1)(c) of the *Act*, that any or all of the exemptions contained in Alberta securities laws do not apply to you;
- (v) Under subsection 198(1)(d) and (e) of the *Act*, that you resign any positions that you hold as a director or officer of an issuer, registrant or investment fund manager and that you be prohibited from becoming or acting as a director or officer or as both a director and officer of any issuer, registrant, or investment fund manager;
- (vi) Under subsection 198(1)(e.2) of the *Act*, that you be prohibited from becoming or acting as a registrant, investment fund manager or promoter;
- (vii) Under subsection 198(1)(e.3) of the *Act*, that you be prohibited from acting in a management or consultative capacity in connection with any activities in the securities market;
- (viii) Under subsection 198(1)(g) of the *Act*, that you disseminate to the public, any information, documents, records, or other materials relating to your affairs that the Commission considers should be disseminated;

- (ix) Under subsection 198(1)(i) of the *Act*, that you pay to the Commission any amounts obtained or payments or losses avoided as a result of non-compliance with Alberta securities laws;
- (x) Under subsection 199 of the *Act*, that you pay an administrative penalty to the Commission;
- (xi) Under subsections 202(1) and (2) of the *Act*, that you pay the costs of the investigation and hearing to the Commission; and
- (xii) Such further and other order under Section 198 as the Commission deems appropriate.

Location: Alberta Securities Commission, 6th Floor, 300 – 5th Avenue SW, Calgary, Alberta.

- Procedure:**
1. You may obtain disclosure and particulars of the allegations in this Notice from Tom McCartney, c/o Alberta Securities Commission, 4th Floor, 300 - 5 Avenue SW, Calgary, Alberta, T2P 3C4, telephone 403.355-4480.
 2. You may be represented by legal counsel and you or your counsel may make representations and introduce relevant evidence.
 3. If you or your counsel fail to attend on July 9, 2009, at 9:00 am, or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See also section 29 of the Act and Rule 15-501, Rules of Practice and Procedure for Commission Proceedings.

Allegations

1 Staff of the Commission (**Staff**) alleges that in breach of Alberta securities laws and contrary to the public interest:

1.1 the Respondents Spruce Ridge Capital Inc. (**SRC**) and Spruce Ridge Estates Inc. (**SRE**) made, and Ronald James Aitkens (**Aitkens**) authorized, permitted, or acquiesced in the making of, misleading or untrue statements about a proposed real estate development project (**Project**), in two offering memorandums filed with the Commission and distributed to Alberta investors, which statements omitted to state a fact or facts required to be stated, or that were necessary to be stated in order for the statements not to be misleading;

1.2 the Respondent Aitkens signed certificates, on behalf of the boards of directors and promoters of SRC and SRE, in their respective offering memorandums, which were not true;

1.3 each of the Respondents traded in securities of SRC and SRE without being registered to do so;

1.4 each of the Respondents engaged in illegal distributions of SRC and SRE securities;

1.5 each of the Respondents made, authorized, permitted or acquiesced in the making of, misleading or untrue statements during investor seminars conducted in Alberta between about October 4, 2007 and June 18, 2008 (**Investor Seminars**); and

1.6 each of the Respondents made, authorized, permitted or acquiesced in the making of, statements at the Investor Seminars which omitted to state a fact or facts required to be stated, or that were necessary to be stated in order for the statements not to be misleading.

Parties

2 Foundation Capital Corporation (**FCC**) was incorporated in Alberta on June 15, 2005 and maintains its registered office in Lethbridge, Alberta. FCC has never been a reporting issuer. At all material times, Ron Aitkens (**Aitkens**) was its president, a director and owned 75% of its voting shares. FCC describes itself as being focused primarily on land development projects.

3 **SRC** was incorporated in Alberta on September 6, 2007 and maintains its registered office in Calgary, Alberta. SRC has never been a reporting issuer. At all material times, Ron Aitkens was its president, sole director and owned 40% of its voting shares. SRC was the capital raising arm for the Project, further described in paragraph 8 , and issued bonds to investors pursuant to an offering memorandum dated October 1, 2007 (**SRC OM**).

4 SRE was incorporated in Alberta on September 6, 2007 and maintains its registered office in Calgary, Alberta. SRE has never been a reporting issuer. At all material times, Ron Aitkens was its president, sole director and shareholder. SRE was intended to be the developer of the Project. In addition to the SRC bonds, investors also received Shares of SRE pursuant to a separate offering memorandum dated October 1, 2007 (**SRE OM**).

5 Aitkens is a resident of Lethbridge, Alberta and, at all material times, was a director, officer and shareholder of each of FCC, SRC, and SRE. He was the guiding mind of FCC, SRC and SRE and authorized, permitted or acquiesced in the creation and use of promotional materials relating to marketing the Project to investors. He was also a Certified Financial Planner. He has never been registered with Executive Director of the Commission in any capacity.

6 Beyer Consulting Ltd. (**Beyer Ltd.**) was incorporated in Alberta on July 13, 2001 and maintains its registered office in Edmonton, Alberta. Beyer Ltd has never been a reporting issuer. At all material times, Roy Juergen Beyer (**Beyer**) and his wife were its sole directors and shareholders. FCC contracted with Beyer Ltd. to provide FCC with marketing services relating to raising capital for the Project.

7 Beyer is a resident of Edmonton, Alberta and at all material times, was a director and shareholder of Beyer Ltd. He drafted the Project's promotional materials and was the main presenter at the Investor Seminars marketing the Project. He has never been registered with the Executive Director of the Commission in any capacity.

Circumstances

8 The Project concept was largely conceived and implemented by Aitkens through FCC, SRC, SRE, and Beyer Ltd.. The Project required capital to be raised to acquire and develop a 923 acre parcel of farmland in Priddis, Alberta (**Lands**). The plan was to obtain the approval of the Municipal District of Foothills (**MD**) to "redesignate" the Lands and facilitate the building of a community called Spruce Ridge Estates, which would include a PGA-class 27 hole golf course, five star hotel and approximately 1,800 residences.

9 Between about October 4, 2007 and June 18, 2008, SRC and SRE raised at least \$46 million in Alberta, of which about \$41.8 million came from 1,731 Alberta investors. The proceeds were raised by selling 6%, 5 year term, redeemable bonds in SRC, and class B common shares of SRE, pursuant to the SRC OM and the SRE OM respectively.

Misrepresentations in Offering Memorandums / Untrue Certificates

10 Staff alleges that the SRC OM and the SRE OM were misleading or untrue because they omitted to state all of the facts that were required to be stated, or were necessary to be stated in order for the statements contained therein not to be misleading. Specifically, the OMs did not disclose that water was in short supply in the area where the Project was located, failed to disclose that water supply and use issues were critical considerations to obtaining the approval of the MD to any proposed development, and failed to state that those concerns had already been communicated to the Respondents by officials of the MD.

11 Both the SRC OM and the SRE OM contained certificates, as required by section 2.9(10) of National Instrument 45-106 (**NI 45-106**), which were signed by Aitkens as president of SRC and SRE, and on behalf of their boards of directors and promoters, which stated “This Offering Memorandum does not contain a misrepresentation.”.

12 Contrary to s. 2.9(12) of NI 45-106, the certificates signed by Aitkens were not true by reason of the misrepresentation described above.

Illegal Trades and Distributions

13 Staff alleges that the SRC bonds and SRC shares were securities as defined in section 1(ggg) of the *Act*.

14 Staff alleges that the sales of the securities described above were trades as defined in the *Act*. As first trades in securities that had not been previously issued, the sales were also distributions under the *Act*.

15 As a result of the misleading statements contained in the SRC OM and the SRE OM, and consequent breaches of 2.9(12), the offering memorandums were not delivered in accordance with Alberta securities laws, and specifically in breach of s. 2.9(2)(c)(i) of NI 45-106. The Respondents therefore, could not rely on the offering memorandum exemption for the trades and distributions described above.

16 As a result, Staff alleges that the Respondents:

16.1 breached section 75 of the *Act* and acted contrary to the public interest by trading in securities of SRC and SRE without registration; and

16.2 breached section 110 of the *Act* and acted contrary to the public interest by engaging in distributions of securities of SRC and SRE without having filed and received a receipt for a preliminary and final prospectus and without an appropriate exemption.

Misrepresentations at Investor Seminars

17 In order to raise these funds, the Respondents engaged in a variety of capital raising activities including radio and print advertising, distributing promotional materials, and conducting Investor Seminars.

18 The promotional materials created by the Respondents included letters, brochures, flyers and Powerpoint presentations (**Promotional Materials**). The Promotional Materials presented at the Investor Seminars were drafted by Beyer in reliance upon information supplied by Aitkens. Aitkens approved of all of the Promotional Materials before they were circulated.

19 The Respondents were all engaged in either authoring or presenting, or both, the Promotional Materials and Investor Seminars.

Misrepresentation about Support from MD

20 During the Investor Seminars, Beyer on behalf of the Respondents, represented to investors that, after meeting with officials of the MD, the MD officials indicated they were “very, very favourable”, “very supportive” of the Project.

21 Staff alleges these statements were untrue as the MD had given no indication of support for the Project.

22 Staff alleges these statements were also misleading because the Respondents did not state all of the facts necessary for the statements not to be misleading, because they omitted to disclose that SRE had yet to submit an application to the MD to redesignate the Lands.

Misrepresentation about “Guarantee” on Bonds

23 During the Investor Seminars, Beyer on behalf of the Respondents, presented a slide in a Powerpoint presentation, and verbally represented to investors, that the bonds would pay “a guaranteed rate of 6% per year for 5 years”.

24 Staff alleges this statement was untrue because the SRC OM stated that:

1. the bonds were redeemable by the corporation on 90 days notice;
2. interest payments were at the sole discretion of the corporation; and
3. the bonds were unsecured and ranked *parri passu* with SRC’s other unsecured creditors.

25 Staff alleges that the use of the term “guarantee” respecting the interest payments on the SRC bonds was misleading in light of the disclosure in the SRC OM described in paragraph 24.

Misrepresentation about MD and Local Conservationists Being “Disarmed” by Water Plan

26 During the Investor Seminars, Beyer on behalf of the Respondents, represented to investors that SRE had explained their water plan to the MD and local conservation representatives and “disarmed everyone”, and further, that “there was no problem with water issues”.

27 Staff alleges these statements were misleading or untrue because SRE had yet to formally submit its water plan to the MD for its consideration. Staff further alleges these statements were misleading or untrue because MD officials had told SRE representatives that water supply and use issues presented significant obstacles to the approval of the development of the Project because of the limited water supply in that region.

28 Staff further alleges that the Respondents omitted to state all of the facts necessary for the statement not to be misleading, because they failed to accurately represent the MD’s concerns, and failed to fairly represent the water supply issue.

29 Staff further alleges these statements were misleading because they were intended to create the impression amongst prospective investors that water supply and use issues were not significant obstacles to obtaining the MD's approval for the development of the Project, and not a critical consideration in making an application to the MD to redesignate the Lands.

Misrepresentation about Water License

30 During the Investor Seminars, Beyer on behalf of the Respondents, represented to investors that SRE had obtained a water license or water rights.

31 Staff alleges this statement was misleading because SRE had not obtained such water license as was required for the Project.

32 Staff alleges that the Respondents knew or ought to have known that all of the misrepresentations described above would reasonably be expected to have a significant effect on the market price or value of the SRC and SRE securities being sold to investors.

Breaches

33 As a result of the above, Staff alleges that:

33.1 the Respondents SRC, SRE and Aitkens breached section 92(4.1) of the *Act* by making, authorizing, permitting, or acquiescing in the making of statements to investors about the Project as described herein, in the SRC OM and the SRE OM, that they knew or ought to have known were misleading and untrue, or that omitted to state a fact or facts that were required to be stated, or that were necessary to be stated in order for the statement or statements not to be misleading, and would reasonably be expected to have a significant effect on the market price or value of the SRC and SRE securities;

33.2 the Respondents SRC, SRE and Aitkens breached section 2.9(12) of NI 45-106 by signing certificates in the SRC OM and the SRE OM which were not true.

33.3 each of the Respondents breached section 75(1)(a) of the *Act* by trading in securities of SRC and SRE without having been registered with the Executive Director;

33.4 each of the Respondents breached section 110 of the *Act* by engaging in illegal distributions of securities of SRC and SRE without having filed and received a receipt for a preliminary prospectus or prospectus and without an appropriate exemption; and

33.5 each of the Respondents breached section 92(4.1) of the *Act* by making authorizing, permitting, or acquiescing in the making of statements to investors about the Project at the Investor Seminars, that they knew or ought to have known were misleading or untrue, or that omitted to state a fact or facts that were required to be stated, or that were necessary to be stated in order for the statement or statements not to be misleading, and would reasonably be expected to have a significant effect on the market price or value of the SRC and SRE securities.

34 Staff alleges that the misconduct of the Respondents as described above also constituted conduct contrary to the public interest.

Calgary, Alberta, 16th June 2009.

) ALBERTA SECURITIES COMMISSION

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) *“Original Signed by”*

) John P. Petch

) Director, Enforcement