ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Allan, 2015 ABASC 919 **Date: 20151102**

Ryan Scott Allan and John Carlos Labun

Panel:	Stephen Murison Tom Cotter
Appearing:	Robert Stack for Commission Staff
	Ryan Scott Allan for himself
	John Carlos Labun for himself
Hearing:	2 October 2015
Decision:	2 November 2015

I. INTRODUCTION

[1] Ryan Scott Allan (**Allan**) and John Carlos Labun (**Labun**) were alleged by staff (**Staff**) of the Alberta Securities Commission (the **ASC**) to have acted contrary to the public interest by authorizing, permitting or acquiescing in violations of the *Securities Act* (Alberta) (the **Act**) on the part of four corporations (the **Corporations**) – La Terra Ventures Inc. (**LTV**), La Terra Mortgage Inc. (**LTM**), Discovery Plains Park Limited (**Discovery**) and Eagle Ridge Park Limited (**Eagle**).

[2] Allan and Labun, having received independent legal advice, each signed an Agreed Statement of Facts and Joint Submission on Sanction (respectively, the **Allan Statement** and the **Labun Statement**, and together the **Statements**), to which Staff were also party. The Statements (to each of which was appended a copy of a Settlement Agreement and Undertaking (the **Settlement**) among Staff, the Corporations and two other individuals) constituted the sole evidence before us. We also heard oral submissions from Staff.

[3] This is our decision on both the merits of the allegations and appropriate orders.

II. FACTUAL BACKGROUND

A. Business Model and Sales to Investors

[4] Allan and Labun are Calgary residents. The Corporations, all Alberta companies, operated from Calgary at all material times. Allan and Labun were directors of each of the Corporations, and shareholders of LTV and LTM. Allan was "Vice President of Sales" of LTV and LTM, and responsible for organizing their sales forces and sales presentations. Labun admitted to having been "particularly responsible" for operations of LTV and LTM and administration of the LTV office.

[5] LTV has since 2008 operated a business model under which it contracted to buy, with a view to development, undeveloped land on the peripheries of southern Alberta urban centres. LTV applied a "promotional brand" name to each of its seven land purchase projects (the **Projects**, as described in para. 16 of each of the Allan Statement and the Labun Statement).

[6] To fund each land purchase, LTV sold undivided interests in the land, representing to the purchasers – we will adopt the Statements' description of these purchasers as "investors" – that once the land purchase closed LTV "would manage all affairs relating to the land". LTV's duties would include "pre-development activities" and "proactive planning". LTV also indicated that "it would seek to attract and negotiate with potential buyers that may be interested in acquiring developable land". Once sufficient money was raised and a land purchase closed, LTV "would become the registered owner" of the land and "would then have the undivided interests of the investors registered on title". At this point some investors had not yet fully paid for their investments, and in respect of the shortfall LTV registered an interest as mortgagee against the investors' undivided land interests (the **Mortgage Interests**).

[7] Investors would sign two agreements. Together, these appointed LTV as "administrator" of the undivided land interests and of a joint venture in relation to the respective Project property, and permitted LTV to use investor money for pre-development activities.

[8] Each of Discovery and Eagle also executed such agreements in relation to undivided land interests they held in one or other of two specific Projects: "Discovery Plains", a Project involving a September 2009 land purchase in Olds; and "Eagle Ridge", a Project involving an October 2009 land purchase near Okotoks. Concerning these undivided land interests, LTV and its salespersons sold shares in Discovery and Eagle to investors as indirect but RRSP-eligible investments in those two Projects.

[9] LTV also arranged for some individuals (the **Mortgage Investors**) to buy Mortgage Interests. One Mortgage Investor (or more) would pay LTV the amount owed by a particular land-interest investor, and thus become entitled to principal and interest payments from that land-interest investor. At some point this part of the operation was taken over by LTM.

[10] In selling to investors, LTV and (in respect of Mortgage Investors) LTM employed and managed commissioned salespersons and provided them with promotional material.

[11] The evidence and Staff's submissions indicated that the Corporations' sales of undivided land interests, shares and Mortgage Interests over approximately four years beginning in or about September 2008 raised approximately $28.4 million, at least.

B. Facts and Findings Pertinent to Securities Laws

[12] LTV's land-interest investors were investing in a "common enterprise" with a view to profiting from, and in reliance on, the management and activities of LTV. These investments thus constituted investment contracts, a category of "security" under section 1(ggg)(xiv) of the Act. Discovery and Eagle shares and LTV's and LTM's mortgage offerings were also securities, under section 1(ggg)(v).

[13] The sales, and acts in furtherance of sales, of these securities constituted "trades" (section 1(jjj) of the Act and, from 28 September 2009, engaging in the business of trading) and – the securities being newly issued – "distributions" (section 1(p)). Registration and prospectus requirements were therefore triggered under sections 75(1) and 110(1).

[14] Allan and Labun both acknowledged that: neither LTV nor LTM was ever registered under the Act; none of LTV, LTM and their directors and officers, including Allan and Labun, were registered or licensed as mortgage brokers or mortgage dealers; at least some (if not all) of LTV's and LTM's salespersons involving in selling the various securities were not registered under the Act or registered or licensed as mortgage brokers or mortgage dealers; and there was no prospectus for any of these distributions.

[15] Alberta securities laws offer certain exemptions from the registration and prospectus requirements, but those relying on an exemption bear the onus of demonstrating adherence to applicable conditions. Allan and Labun both acknowledged that: LTV and LTM made no efforts to limit their respective trades, and the Corporations made no efforts to limit their respective distributions, to investors in respect of whom exemptions would apply; and many land-interest investors would not have qualified for a prospectus exemption.

[16] We find (consistent with the Statements and with the Corporations' admissions in the Settlement) that: the Corporations each contravened section 110(1) of the Act; LTV and LTM each contravened section 75(1); and, given the fundamental importance to our securities regulatory regime of the registration and prospectus requirements, these contraventions were also contrary to the public interest.

[17] Allan and Labun each admitted that he "was aware of and authorized, permitted, or acquiesced in" the Corporations' distributions and associated trading of LTV and LTM salespersons. We find (consistent with the Statements, including these admissions) that Allan and Labun each authorized, permitted or acquiesced in the Corporations' respective contraventions of the Act, and that in so doing Allan and Labun each also acted contrary to the public interest.

III. APPROPRIATE ORDERS

A. Joint Recommendations

[18] Staff and Allan in the Allan Statement, and Staff and Labun in the Labun Statement, jointly recommended sanctions and costs orders, as follows: each of Allan and Labun pay an administrative penalty of $50,000, and be denied the use of exemptions under Alberta securities laws for one year (with a limited exception); and each of them pay investigation costs of $5,000.

B. Appropriate Sanctions

[19] Those who engage in capital-market misconduct can be sanctioned, in the public interest, under sections 198 and 199 of the Act. The purpose of such sanctions is not retrospective or punitive, but prospective, protective and preventative (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). Appropriate sanctioning objectives include specific deterrence (to discourage future misconduct by a respondent) and general deterrence (to discourage similar misconduct by others): *Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62; and *Re Podorieszach*, 2004 ABASC 567 at para. 17. That said, sanctions "must be proportionate and reasonable for each [respondent]. The pursuit of general deterrence does not warrant imposing a crushing or unfit sanction on any individual [respondent]" (*Walton v. Alberta (Securities Commission)*, 2014 ABCA 273 at para. 154).

[20] The ASC in *Re Hagerty*, 2014 ABASC 348 (at para. 11) set out a non-exhaustive list of relevant sanctioning factors:

- the seriousness of the respondent's misconduct and the respondent's recognition of that;
- the respondent's characteristics and history, such as capital-market experience and any prior sanctions;
- any benefit sought or obtained by the respondent, and any harm to which the capital market generally or investors were exposed by the misconduct;
- the risk to investors and the capital market if the respondent were to go unsanctioned or if others were to emulate the respondent's misconduct; and
- any mitigating considerations.

[21] A hearing panel is not obliged to order jointly-recommended sanctions but will do so if satisfied they fall within a range of sanctions that are reasonable in all the circumstances and in keeping with the ASC's public-interest mandate.

[22] Assessing the appropriateness of the jointly-recommended sanctions before us in light of the sanctioning principles and relevant sanctioning factors, we make the following observations:

- The Corporations' admitted contraventions of the registration and prospectus requirements, in the course of raising at least approximately $28.4 million, were serious misconduct. Their contraventions deprived many investors of key protections – a registrant's involvement and prospectus disclosure. It follows that Allan's and Labun's having authorized, permitted or acquiesced in such contraventions was also serious misconduct. This indicates that sanctions, delivering a clear deterrent message, are warranted against Allan and Labun.

- From their respective "work relating to the Corporations", Allan earned approximately $1,588,000 and Labun earned approximately $1,484,231. This, too, indicates that such sanctions are warranted against them.

- We are satisfied that Allan and Labun – in providing detailed and unqualified admissions, and in recommending sanctions jointly with Staff – recognize the seriousness of, and accept responsibility for, their respective misconduct. This, in all the circumstances, indicates that there is a limited risk of their repeating their misconduct, and goes far in diminishing the extent of specific deterrence required.

- Neither Allan nor Labun has been previously sanctioned by the ASC, which argues for some moderation in sanctions against them. We also accept, as asserted in the Statements, that Allan and Labun cooperated with Staff during the investigation. This, too, argues for some moderation in sanctions.

- The proposed sanctions would parallel consequences to which two other individuals – like Allan and Labun, directors of each of the Corporations – agreed in the Settlement. They are also commensurate with sanctions ordered in *Re Westside Land Corporation*, 2012 ABASC 486, a decision cited by Staff.

- The circumstances overall warrant the imposition of proportionate sanctions, not only to deter Allan and Labun from future misconduct but also to deter similarly-situated others from similar misconduct.

[23] Ultimately, we find the sanctions jointly recommended by the parties to be within a range of sanctions that we consider reasonable and proportionate in all the circumstances, albeit near the lower end of that range. We therefore find ordering the proposed sanctions to be in the public interest. In so finding, we note that, even were a limitation period applicable in respect of certain of the earlier activities at issue here, the proposed sanctions are appropriate for the activities occurring in the six years preceding the issuance of the notice of hearing.

C. Appropriate Costs Orders

[24] Section 202 of the Act contemplates orders for the recovery of costs of an investigation or hearing (or both). As stated in *Re Marcotte*, 2011 ABASC 287 (at para. 20):

> A costs order is not a sanction, but rather a means of recovering, from a respondent found to have engaged in capital-market misconduct, certain investigation and hearing costs that would otherwise be borne indirectly by law-abiding market participants whose fees fund the [ASC's] operations. It is generally appropriate that a respondent pay at least some portion of the relevant costs. Determination of the appropriate portion may involve assessing parties' contributions to the efficient conduct and ultimate resolution of the proceeding.

[25] Here, we think it appropriate that Allan and Labun bear some responsibility for investigation costs, which we were told exceeded $20,000 by some considerable margin. We find (consistent with the Statements) that the jointly-recommended costs orders are reasonable given that Allan and Labun cooperated with Staff, that the Statements have "saved the [ASC] the time and expense associated with a contested hearing on liability", and that the proposed costs orders parallel costs payments to which two other directors of the Corporations agreed in the Settlement.

IV. ORDERS

[26] For the reasons given, we order in respect of each of Allan and Labun that:

- under section 199 of the Act, he must pay an administrative penalty of $50,000;
- under section 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to him for one year to and including 2 November 2016, except in respect of his sale of any undivided land interests he owns in any Project property to a buyer of all such interests of all owners in such property; and
- under section 202, he must pay $5,000 of the costs of the investigation.

[27] This proceeding is concluded.

2 November 2015

For the Commission:

"original signed by"
Stephen Murison

"original signed by"
Tom Cotter