ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Campbell, 2015 ABASC 750 **Date: 20150616**

Douglas Gordon Campbell, Atlantic Tides Incorporated and Atlantic Tides Mortgage Investment Corp.

Panel:	Stephen Murison Webster Macdonald, QC Richard Shaw, QC
Representation:	Natasha Didur for Commission Staff
Submissions Completed:	22 May 2015
Decision:	16 June 2015

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I. INTRODUCTION

[1] Douglas Gordon Campbell (**Campbell**), Atlantic Tides Incorporated (**ATI**) and Atlantic Tides Mortgage Investment Corp. (**ATMIC**) made misrepresentations to investors, and Campbell also made a prohibited representation, all of this contrary to both the *Securities Act* (Alberta) (the **Act**) and the public interest. Further, ATI breached a filing requirement, and Campbell authorized, permitted or acquiesced in the breaches by ATI and ATMIC. The misconduct all pertained to the sale of investments relating to Nova Scotia land developments, marketed under the name "Atlantic Tides".

[2] We made these findings in our decision (the **Merits Decision**, cited as *Re Campbell*, 2015 ABASC 604) on the merits of allegations levelled by Alberta Securities Commission (**ASC**) staff (**Staff**) against Campbell, ATI and ATMIC (together, the **Respondents**). Upon issuance of the Merits Decision this proceeding moved into a second phase, for the determination of what, if any, orders for sanctions and costs ought to be made against each of the Respondents. We received written submissions on the issue of appropriate orders from Staff; we received no submissions on that issue from the Respondents.

[3] For the reasons given below, we are ordering an array of 15-year market-access bans and a $100,000 administrative penalty against Campbell, and permanent trading and use-of-exemptions bans on ATI and ATMIC. We are also ordering that the Respondents jointly and severally pay $33,000 of the investigation and hearing costs.

II. BACKGROUND

[4] For convenience, we summarize here some factual background and key findings from the Merits Decision.

A. The Respondents

[5] "Atlantic Tides" – a term used frequently in connection with various investments in ATI or ATMIC – referred to an enterprise headed by Campbell that was to develop and sell recreational land in Nova Scotia. Campbell, who appeared to have resided at times in Alberta, was identified as the sole director of both ATI and its sole voting shareholder, and as the trustee of the latter's majority (or only) voting shareholder. He was one of two directors of ATMIC, although evidence suggested that the other director at some point resigned; ATI's sole voting shareholder was identified as holding 25% of ATMIC's voting shares.

[6] As stated in the Merits Decision (at para. 18): "The evidence as a whole confirmed the centrality of Campbell's role in the Atlantic Tides enterprise generally, in ATI and ATMIC specifically, and in the selling of investments offered by and for those two companies."

B. The Misconduct

[7] A group of Edmonton-area investors were told by Campbell and ATI (in marketing material and otherwise) that an investment in a series of debenture securities of ATI (**ATI A Debentures**) would be secured by ATI's assets, with the focus being land at Charles Island, Nova Scotia. Campbell, and through him ATI, also made a statement to those investors about ATI's "very-low" debt-to-equity ratio. These statements were misleading. In fact, there was no mortgage or other charge registered against any part of Charles Island in favour of those

investors, and that land appears clearly to have been lost; other land associated with ATI or Campbell (or both) was, or would become, encumbered by claims not favouring those investors. ATI found itself unable to make or continue interest payments on its debenture securities and could not repay principal at maturity. In these respects, we found Campbell and ATI to have made misrepresentations to investors, contrary to both section 92(4.1) of the Act and the public interest.

[8] At least some ATI investors were given marketing material touting ATI, or Atlantic Tides, as having land development experience in Nova Scotia supposedly unmatched by any competitor. This statement, by Campbell and ATI, was misleading and untrue. There was evidence that Atlantic Tides had been involved in the sale of some lots at English Cove, Nova Scotia, seemingly with minimal or no development. Apart from this, the evidence did not demonstrate that ATI, or Atlantic Tides, had developed any property in Nova Scotia, and Campbell seemed to have no such experience there. In this regard, we found Campbell and ATI to have made a misrepresentation to investors, contrary to both section 92(4.1) of the Act and the public interest.

[9] In an email Campbell offered "to personally guarantee any capital" the mentioned Edmonton-area investors invested, and to "buy back anyone's interest in a year's time". We found these statements to have been a representation prohibited by section 92(1)(b) of the Act and contrary to the public interest.

[10] The evidence indicated that ATI distributed its debenture securities in reliance (albeit imperfect) on a certain prospectus exemption. This triggered an obligation under National Instrument 45-106 *Prospectus and Registration Exemptions* to file reports of exempt distribution, but none were filed. We accordingly found ATI to have breached this filing requirement.

[11] As for certain shares of ATMIC, statements in marketing material or made to investors by Campbell or by salespersons (communicating what they had been told by Campbell) were to the effect that such an investment would be backed by English Cove (and perhaps other) land, and that such land was unencumbered by debt. These statements, attributed to ATMIC, were misleading. The evidence disclosed no mortgage or other charge registered against any English Cove (or Charles Island) land in favour of ATMIC or its investors, and at the time of the share distributions some of the English Cove lots were encumbered by mortgages in favour of others. In this regard, we found ATMIC to have made misrepresentations to investors, contrary to both section 92(4.1) of the Act and the public interest.

[12] Campbell also authorized, permitted or acquiesced in ATI's and ATMIC's respective breaches of Alberta securities laws.

III. SANCTIONS AND COST-RECOVERY ORDERS

A. The Law

[13] Capital-market misconduct is sanctionable by orders under sections 198 and 199 of the Act. Such orders are to be made prospectively in the public interest, with a view to protection and prevention rather than punishment (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, 2001 SCC 37 at paras. 39-45). Specific

deterrence (discouraging repetition of misconduct by a respondent) and general deterrence (discouraging like misconduct by others) are both recognized sanctioning objectives (*Re Cartaway Resources Corp.*, 2004 SCC 26 at paras. 52-62; and *Re Podorieszach*, 2004 ABASC 567 at para. 17). Factors to be considered may include the following, as set out in *Re Hagerty*, 2014 ABASC 348 (at para. 11):

- 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.

[14] Orders for the recovery of investigation and hearing costs are contemplated by section 202 of the Act. Such orders were discussed 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.

B. The Parties' Positions

1. Staff

[15] Staff seek against ATI and ATMIC permanent trading and use-of-exemptions bans, and against Campbell 15-year trading, use-of-exemptions, director-and-officer, registrant, investment fund manager, and (in respect of capital-raising) management-and-consultancy bans, together with a $100,000 administrative penalty. Staff submitted that such sanctions would be "appropriate in the public interest" and "commensurate with the extent of misconduct found and the goals of specific and general deterrence".

[16] Staff also seek $33,000 in cost recovery, payable by the Respondents jointly and severally. This amount represents approximately half of the investigation and hearing costs recorded in a statement tendered by Staff. Staff suggested that this amount would be appropriate given their success "in proving a substantial portion of the allegations" against the Respondents.

2. The Respondents

[17] The Respondents did not respond to the opportunity given them to make submissions on the issue of appropriate orders.

C. Sanctions

1. Factors Considered

(a) Seriousness and Recognition of Seriousness

[18] As stated in the Merits Decision (at para. 125), Campbell's prohibited representation "partly led to the very mischief the provision [section 92(1)(b) of the Act] was meant to prevent". That misconduct, and the misrepresentations by Campbell, ATI and ATMIC, exposed investors to unanticipated financial risk and actual financial harm. What we said in respect of one particular of the misrepresentations (Merits Decision, at para. 139) can fairly be applied to all of this misconduct: it "was wholly inconsistent with investor protection and capital-market fairness". The misconduct of each of the Respondents was, we conclude, serious. This argues for significant sanction against each of them.

[19] The Respondents did not participate in the first or second phases of the proceeding. Staff submitted that this non-participation demonstrated, at best, the Respondents' "casual indifference to the proceedings and at worst, disdain", which "ought to be interpreted as a lack of recognition of the seriousness of their misconduct". Whether or not the Respondents' non-participation amounted to "disdain" (we need not reach a conclusion on that), we discern from their non-participation no recognition on their part of the seriousness of their misconduct. The pertinence of this to our assessment of risk is discussed below.

(b) The Respondents' Characteristics and History

[20] There was no evidence of any of the Respondents having previously been sanctioned by a securities regulatory authority. None appeared to have been particularly sophisticated capital-market participants at the time of their misconduct. These might be supportive of moderation in sanction in other circumstances. Here, they are not. The nature of the Respondents' misconduct – inducing ill-informed investment decisions through misrepresentations or a prohibited representation (or both) – was self-evidently wrong, and therefore in no way attributable to, or excused by, a lack of sophistication or the absence of a disciplinary history.

[21] Staff raised another point. They characterized Campbell as "charismatic and charming" – evident, Staff suggested, from his demonstrated ability to convince well-educated professionals to invest large sums in the Atlantic Tides enterprise. Staff also claimed that Campbell "failed to take any accountability", "used stall tactics and then finally, was simply evasive". Staff ultimately submitted that Campbell "is currently incapable" of "dealing fairly, honestly and in good faith with clients".

[22] The evidence of Campbell's dealings with investors, including investor testimony and email evidence recounted in the Merits Decision, tended to support these assertions by Staff. Whether or not Campbell is truly "incapable" of better behaviour, he certainly did not deal fairly, honestly or in good faith with ATI or ATMIC investors, either when soliciting their investments or afterward, when promises went unfulfilled. This, coupled with his apparent talent for persuasive selling, heighten our concern about risk of future harm, discussed below.

(c) Benefit and Harm from Misconduct

[23] The Respondents unquestionably sought to benefit when they misinformed or improperly informed investors. That misconduct occurred in the course of raising money – indeed, it

facilitated the capital-raising – for the Atlantic Tides enterprise, specifically by and through ATI and ATMIC. Those corporations benefited directly when investors, responding to the selling efforts involving that misconduct, subscribed money for the respective securities of those companies. Campbell, as the guiding mind of those companies and of the entire Atlantic Tides enterprise, stood to benefit financially and otherwise from the capital-raising facilitated by that misconduct. He presumably did so benefit, at least until the enterprise began to fail.

[24] Clearly there was harm done. Identifiable investors made investment decisions with a misinformed understanding of the associated risks. The unanticipated financial risks to which they were exposed became fact: land that they thought secured their investments was not encumbered in their favour, with certain of it apparently lost and other apparently encumbered in favour of arm's-length third parties; anticipated returns were not received in full or at all; and invested money (substantial amounts in many cases) appears clearly to have been lost. Our capital market, too, was exposed to harm: a prohibited representation and misrepresentations by their very nature undermine confidence in the integrity of the capital market.

[25] All of this calls for significant sanction against each of the Respondents.

(d) Risk Posed

[26] Certain considerations already mentioned are pertinent to our assessment of the risk of future harm to investors and our capital market posed by the Respondents.

[27] In our view, such risk is real and substantial. The Respondents were able to raise large sums from investors, due partly to Campbell's apparent talent for persuasive selling. The persuasiveness of Campbell's, and ATI's and ATMIC's, selling efforts was increased by the Respondents' ready use of misinformation and improper information. As well, when things began to go awry and investors sought answers and corrective action, Campbell's responses included blaming others, delay and evasion. We reiterate that Campbell certainly did not deal fairly, honestly or in good faith with ATI or ATMIC investors, when soliciting their investments or afterward. Further, there was, as noted, no discernable recognition on the Respondents' part of the seriousness of their misconduct – more particularly, no such recognition on Campbell's part of the seriousness of his misconduct or that of ATI or ATMIC of which he was the guiding mind. In sum, we have little reason to believe that, were the Respondents to go unsanctioned, they would comply with Alberta securities laws.

[28] Indeed, we perceive a serious risk that the Respondents could again readily be tempted – by the prospect of, and their past success at, benefiting from investors' money – to repeat their misconduct, possibly with equal initial success (and equal detriment to new investors).

[29] Moreover, we perceive a similarly serious risk that others, aware of the Respondents' capital-raising success, might be tempted to emulate their misconduct.

[30] This factor argues for significant sanction delivering strong specific and general deterrence.

(e) Mitigating Considerations

[31] We discern no mitigating considerations – nothing moderating either the seriousness of the misconduct found or the harm done by it. In particular, the fact that some laws were not broken (allegations of illegal trades and distributions were dismissed) in no way diminishes the seriousness of the misconduct found or the harm done by it.

(f) Conclusion on Factors

[32] We therefore conclude this is a case in which the public interest demands significant sanction that, in type and extent, will deliver strong specific deterrence to each of the Respondents, as well as strong general deterrence.

2. Sanctions (Type and Extent) Warranted

[33] We consider that delivering the protective specific and general deterrence required here will necessitate denying ATI and ATMIC any further access to our capital market, and removing Campbell's access to the capital market in a range of capacities (pertinent to his misconduct) for a lengthy period. Even that, in our view, would not suffice without supplementation by a direct and substantial monetary order against Campbell.

[34] We are satisfied that the types of sanction sought by Staff are pertinent to the misconduct found and would appropriately serve the identified sanctioning objectives.

[35] Concerning the market-access bans sought by Staff, we discern no reason to provide any carve-outs limiting their application. We would make two adjustments to such bans, first substituting their application (where relevant) to "derivatives" rather than "exchange contracts" to accord with Act amendments effective 31 October 2014. Second, we note that Staff seek an order not only banning Campbell from "acting" as a registrant or investment fund manager but also requiring that he "immediately resign" any such position he holds. There is no express authority for the latter requirement, but the objective in substance would be achieved by the former, authority for which is explicitly provided by section 198(1)(e.2) of the Act.

[36] Sanctioning, while a circumstance-specific task, must be proportionate to the misconduct and the individual circumstances of the transgressor.

[37] Taking into account the totality of the package of sanctions sought against each of the Respondents (including an administrative penalty in Campbell's case), we are also satisfied that the respective market-access bans in duration are adequate to address the identified sanctioning objectives and are proportionate to the misconduct found. We consider that bans of shorter duration would fail to adequately deter a recurrence of misconduct by the Respondents, and would fail to send a sufficiently clear message of general deterrence.

[38] As for the administrative penalty against Campbell, we conclude in the circumstances that no less than the amount sought by Staff ($100,000) would be proportionate to Campbell's misconduct or would provide the necessary deterrence in the public interest. Moreover, because we have neither evidence of Campbell's current financial situation or prospects nor submissions from him that the administrative penalty amount sought is beyond his capacity, it cannot be

considered that the amount is disproportionate to his individual circumstances (*Walton v. Alberta (Securities Commission)*, 2014 ABCA 273).

[39] Finally, we note that Staff pointed to outcomes in two other proceedings as providing some sanctioning guidance. In our view, these and other outcomes are generally supportive of the sanctions, in type and extent, sought by Staff.

3. Conclusion on Sanctions

[40] In the result, we find that the sanctions sought by Staff against each Respondent would, in type and extent (with the two adjustments noted), appropriately serve the public interest.

D. Cost-recovery Orders

[41] Staff tendered a statement of investigation and hearing costs, with some supporting documentation. We have no reason to doubt that the recorded costs (totalling $66,190.79) were incurred. Nor do we perceive the total to be unreasonable. Accordingly, all of the recorded costs are potentially recoverable under section 202 of the Act.

[42] We consider this a case in which the Respondents ought to make a substantial contribution to the investigation and hearing costs. The Respondents made no contribution to the efficient conduct of the hearing, so no reduction of the recorded costs on that ground is warranted. On the other hand, Staff (as was acknowledged) did not prove certain of their allegations. That does merit a reduction, one which we think is fairly and sufficiently reflected in Staff's proposed cost-recovery order of approximately half the recorded costs.

[43] The Respondents' respective roles in any sense relevant to cost-recovery are essentially inseparable. It is therefore appropriate that their responsibility for costs be joint and several.

[44] It follows, and we find, that a cost-recovery order for a total of $33,000 of the investigation and hearing costs, payable by the Respondents jointly and severally, is appropriate.

IV. ORDERS

[45] For the reasons given, we order in the public interest that:

(a) in respect of Campbell:

- under sections 198(1)(b) and (c) of the Act, he must cease trading in or purchasing securities or derivatives, and all of the exemptions contained in Alberta securities laws do not apply to him, until (and including) 16 June 2030;

- under sections 198(1)(d) and (e), he must resign all positions he holds as a director or officer of any issuer, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer, until (and including) 16 June 2030;

- under section 198(1)(e.2), he is prohibited from becoming or acting as a registrant or investment fund manager, until (and including) 16 June 2030;

- under section 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with capital-raising activities in the securities market, until (and including) 16 June 2030; and

- under section 199, he must pay an administrative penalty of $100,000; and

(b) under sections 198(1)(b) and (c), ATI and ATMIC must each cease trading in or purchasing securities or derivatives, and all of the exemptions contained in Alberta securities laws do not apply to them, permanently.

[46] We further order under section 202 of the Act that the Respondents must pay, jointly and severally, $33,000 of the costs of the investigation and hearing.

[47] This proceeding is concluded.

16 June 2015

For the Commission:

"original signed by"
Stephen Murison

"original signed by"
Webster Macdonald, QC

"original signed by"
Richard Shaw, QC