

ALBERTA SECURITIES COMMISSION

Citation: Re Kitts, 2017 ABASC 130

Docket: ENF-010820

Date: 20170802

NOTICE OF HEARING

To: **Brian Arthur Kitts and Vesta Capcorp Inc. (the Respondents)**

Notice: The Alberta Securities Commission (the **Commission**) will convene at 2:30 p.m. on Wednesday, September 13, 2017, at Calgary, Alberta, to set a date for hearing regarding the allegations in this Notice (**Set Date**). At the hearing, the Commission will consider whether it is in the public interest to make orders against you under sections 198, 199, and 202 of the *Securities Act*, RSA 2000, c S-4, as amended (the *Act*).

Location: Alberta Securities Commission, 5th Floor, 250 – 5 Street SW, Calgary, Alberta.

Procedure:

1. You may obtain disclosure and particulars of the allegations in this Notice from Peter Verschoote, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.297.4967, email: peter.verschoote@asc.ca.
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 at the Set Date, or as directed, the hearing may proceed in your absence and an order may be made against you without further notice.

See attached sections 29, 198, 199, and 202 of the Act, and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.

Reciprocation: Take notice that orders or settlements made by the Alberta Securities Commission may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to you. If an order is made or a settlement agreement is reached in relation to this Notice of Hearing, you should contact the securities regulator of any other jurisdiction in which you may intend to engage in any securities related activities.

Allegations:

Parties

1. Brian Arthur Kitts (**Kitts**) is an individual who resided in Bragg Creek, Alberta during some or all of the period February 2014 to June 2015 (the **Relevant Period**). He was the sole director, president, secretary, and guiding mind of Vesta Capcorp Inc. (**Vesta**) throughout the Relevant Period.
2. Vesta is a Canadian company that was incorporated federally on February 2, 2014. It was extra-provincially incorporated in Alberta on September 17, 2014. Vesta purported to be in the business of providing financing for real estate developers and other companies and persons in the real estate industry. Its head office was located in Bragg Creek, Alberta throughout the Relevant Period.

Circumstances

3. During the Relevant Period, Vesta raised approximately \$5.3 million from 20 investors, approximately half of whom resided in Canada, mostly in Calgary and the surrounding area.
4. Vesta issued promissory notes to investors in exchange for their invested capital. The notes provided that Vesta would make a payment of "principle" (*sic*) and "profit sharing" to the investors at the end of the term of the notes, which was 30, 60, or 90 days.
5. Each of the promissory notes was a "security" as defined in the *Act*.
6. During the Relevant Period, the Respondents represented to investors, both orally and in writing, that their invested capital would be used to finance real estate developers or other companies or persons in the real estate industry.
7. The vast majority of the \$5.3 million that was raised from investors was not used for those purposes. Instead, the Respondents used the funds to pay principal and interest owing to existing investors in a manner consistent with a Ponzi scheme. Investor funds were also used for other non-authorized purposes, including payments to Kitts' and his wife's personal bank accounts and expenses that appear to have been personal in nature.
8. Approximately \$3.3 million of the funds were distributed to some of the investors, purportedly as investment interest or return of capital. The remaining amount of approximately \$2 million raised from investors was utilized by Kitts, mainly for his personal use.
9. At all material times, the Respondents engaged in the activities summarized above with the intent to deceive investors about the purpose for which their invested capital was to be, or had been, used.

