

ALBERTA SECURITIES COMMISSION

Citation: Re North America Frac Sand, Inc., 2018 ABASC 101

Docket: ENF-011012

Date: 20180627

NOTICE OF HEARING

To: North America Frac Sand, Inc., Lambert (Bert) Joseph Lavallee, Brian Maurice Gibbs, David Malcolm Alexander, and Seton Securities International Ltd.

Notice: The Alberta Securities Commission (the **Commission**) will convene at **9:30 a.m. on Monday, August 13, 2018 (Set Date)** at Calgary, Alberta, to set a date for hearing regarding the allegations in this Notice. 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 (*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 Don Young, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.297.2642, email: don.young@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 on Monday, August 13, 2018, at 9:30 a.m., 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 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, 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. North America Frac Sand, Inc. (**NAFS**), is a Florida, U.S.A. (**US**) corporation with a head office in Vancouver, B.C. (formerly in Calgary). It is a reporting issuer in Alberta, and its securities are quoted on the US Over-the-Counter markets.
2. Lambert (Bert) Joseph Lavallee (**Lavallee**) is a resident of Sturgeon County, Alberta.
3. Brian Maurice Gibbs (**Gibbs**) is a resident of Calgary, Alberta.
4. David Malcolm Alexander (**Alexander**), a chartered accountant, is a resident of Vancouver, British Columbia.
5. Seton Securities International Ltd. (**Seton**), is a securities dealer in the Bahamas. It was not registered in Alberta with the Commission at any time material hereto.

Circumstances

6. In approximately May 2015, Canadian Sandtech Inc. (**CSI**), a Saskatchewan based company operated by brothers R Newton and D Newton, was introduced to Lavallee by Gibbs. CSI was looking to raise funds to produce mineral interests it had in oil and gas properties (**Leases**). At the time, Lavallee had access to, or direction or control over, NAFS (at the time known as Xterra Building Systems Inc.), a publically quoted shell company.
7. On July 10, 2015, NAFS entered into a share purchase agreement with CSI (**Transaction**) to acquire CSI's wholly owned subsidiary, North America Frac Sand (CA) Inc. (**NAFSCA**). NAFSCA held the CSI Leases due to a recent transfer from CSI. The Transaction, which did not formally close until February 29, 2016, was represented as a reverse takeover by private company NAFSCA of public company NAFS.
8. Alexander signed the share purchase agreement for the Transaction on behalf of NAFS as its Principal Executive Officer and Chairman of the Board. R Newton and D Newton were to be directors and officers of NAFS following the Transaction.

Direction and Control of NAFS

9. Staff allege that following the Transaction Lavallee and Gibbs were officers of NAFS, by definition in the *Act*, and its directing and controlling minds, or both.
10. Lavallee provided much of the financing for NAFS (NAFS did not have a bank account), paying for expenses incurred by auditors, regulatory filings, lawyers, and transfer agents. He was involved in discussions regarding NAFS's business agreements, the content of NAFS's website, and communications NAFS had with the Commission. Lavallee engaged, paid for, and directed work done by geologists with respect to NAFS's Leases.

11. Gibbs was integral to NAFS's negotiations and discussions with auditors, lessors, and the Commission. Gibbs helped draft and revise letters from NAFS to the Commission. He met with the lessors of the Leases and helped Lavallee direct the work of the geologists hired by NAFS. Gibbs had custody of NAFS's corporate records, including the Leases. Gibbs, along with Lavallee, helped develop a new website for NAFS in 2017.
12. As officers of NAFS, Lavallee, and Gibbs were insiders by definition in the *Act*. As insiders, Lavallee and Gibbs were obliged to file reports with the Commission and make disclosure in accordance with the regulations.

Breach of ASC Cease Trade Order and Illegal Insider Trading

13. On May 16, 2016, Commission staff issued a cease trade order (**CTO**) with respect to NAFS's securities. That CTO continues to be in effect. Lavallee was aware of the CTO on or about that date, or at the latest by July 2016.
14. Between the date of issuance of the CTO, May 16, 2016, and September 29, 2017, Staff allege Lavallee traded thousands of shares of NAFS, for proceeds of approximately \$137,000 USD.
15. On May 30, 2017, NAFS announced it had obtained a technical geological report (**Report**) regarding the Leases. The Report results revealed "inferred" mineral resources had been found with reasonable potential for economic extraction.
16. In the weeks leading up to the announcement of the Report, NAFS shares typically closed trading in the 1–2.5 cent per share range, on volumes generally less than 100,000 shares traded per day. On the day of the announcement, and the following day, NAFS's shares closed trading in the 4.5–5 cent range, on volumes of 8,000,000–15,000,000 shares traded per day.
17. Staff allege the Report was a material fact or material change with respect to NAFS that was not generally disclosed until May 30, 2017. Lavallee was aware of the Report and its findings on or before May 20, 2017. As an insider of NAFS, Lavallee was in a special relationship with it.
18. On May 20, 2017, Lavallee entered into an agreement with New Opportunity Business Solutions (**NOBS** — operated by his friend, Brian Kistler) to purchase 1,500,000 shares of NAFS for \$5,000.
19. From May 25 to 30, 2017, Lavallee traded thousands of shares of NAFS through an account with Seton in the Bahamas for proceeds exceeding \$32,000 USD.
20. Lavallee and NOBS entered into a second agreement dated June 13, 2017, pursuant to which Lavallee purchased 2,000,000 shares of NAFS for \$6,000.

Obstruction of Justice

21. In its investigation, Staff interviewed Lavallee under oath. In the interview, and undertakings arising therefrom, Lavallee concealed or withheld from Staff:
 - 21.1 an email address, bertlavallee101@gmail.com, used by him to trade NAFS securities through the Seton account;
 - 21.2 his use of a nominee in Ontario named Harris, to hold and trade shares of NAFS owned or controlled by himself and Gibbs;
 - 21.3 the Harris trading account, over which Lavallee had trading authority or provided trading direction with respect to NAFS and other securities; and
 - 21.4 his involvement in Advance Environmental Petroleum Products Inc.

Continuous Disclosure Failures

22. As a reporting issuer in Alberta, NAFS was required to file with the Commission periodic and prescribed disclosure.
23. From approximately July 10, 2015, to the end of 2017, NAFS made numerous filings with the Commission (**Filings**), including quarterly and annual financial statements. Staff allege the Filings:
 - 23.1 failed to state Lavallee and Gibbs were the *de facto* officers and directing and controlling minds of NAFS; and
 - 23.2 failed to state NAFS's operations were funded mainly by Lavallee, a related party to NAFS.
24. Further, Staff allege that Alexander, NAFS's certifying officer for purposes of National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**), executed a certificate or certificates that accompanied some or all of those Filings and wrongly certified that:
 - 24.1 the Filings did not contain any untrue statements or omit to state a material fact necessary to be stated; and
 - 24.2 NAFS's financial statements and other financial information fairly presented in all material respects its financial condition, results of operations, and cash flows.

Breaches

25. As a result of the above, Staff allege that:
- 25.1 Lavallee and Gibbs breached section 182 of the *Act*, by failing as insiders to file a report or reports and make disclosure in accordance with the regulations;
 - 25.2 Lavallee breached section 93.1 of the *Act*, by trading in securities of NAFS in breach of the Commission CTO;
 - 25.3 Lavallee breached section 147(3) of the *Act*, by purchasing or selling securities of NAFS while in a special relationship with it, with knowledge of a material fact or material change that had not been generally disclosed;
 - 25.4 Seton breached section 75(1)(a) of the *Act*, by acting as a dealer in Alberta without registration in accordance with Alberta securities laws;
 - 25.5 NAFS, Alexander, Lavallee, and Gibbs breached section 221.1(2) of the *Act*, by making a statement, or authorizing, permitting, or acquiescing in the making of a statement, in the Filings or certificates, or both, provided to the Commission, that was misleading or untrue, or failed to state a fact necessary to make a statement not misleading;
 - 25.6 Lavallee breached section 93.4(1) of the *Act*, by concealing or withholding from Staff information reasonably required for an investigation; and
 - 25.7 Alexander breached NI 52-109, by executing false certificates with respect to interim and annual filings of NAFS.

Calgary, Alberta, June 27, 2018.

) ALBERTA SECURITIES COMMISSION
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) *“Original Signed By”*
) _____
) David C. Linder, Q.C.
) Executive Director