

ALBERTA SECURITIES COMMISSION

Citation: Re Rustulka, 2018 ABASC 188

Docket: ENF-011493

Date: 20181220

NOTICE OF HEARING

To: **Kenton Roy Rustulka**

Notice: The Alberta Securities Commission (the **Commission**) will convene at 3:00 p.m. on Wednesday, January 9, 2019, 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 Janet McCreedy, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.297.8049, email: janet.mccreedy@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 3:00 p.m. on Wednesday, January 9, 2019, 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. Kenton Roy Rustulka (**Rustulka**) is an individual resident in Edmonton, Alberta. Between approximately January 1, 2013 to June 3, 2016 (the **Relevant Period**), Rustulka was registered as an exempt market dealing representative in Alberta, British Columbia and Saskatchewan.
2. WealthTerra Capital Management Inc. (**WealthTerra**) is a federal corporation, extra-provincially registered in Alberta. During the Relevant Period, WealthTerra was registered as an exempt market dealer firm, and had employed Rustulka as a dealing representative.

Circumstances

3. During the Relevant Period, Rustulka sold approximately \$6,500,000 in exempt market securities offered through WealthTerra, which earned Rustulka approximately \$460,000 in commissions.
4. Rustulka made statements to his clients that Rustulka knew, or reasonably ought to have known, were in a material respect misleading or untrue, including that:
 - 4.1 exempt market securities were inherently low risk, safe and secure, when in fact they were inherently high risk, unsafe and not secure;
 - 4.2 securities in specific issuers were low risk, safe and secure, and in well-established companies, when in fact they were high risk, illiquid, and in start-up, speculative issuers with no proven records of revenue or operations;
 - 4.3 securities in specific issuers were backed, protected by, vetted, and/or otherwise safeguarded by the Government of Alberta and/or the Alberta Securities Commission, when in fact they were not; and
 - 4.4 the risk acknowledgement form (**RAF**) that was required to be signed by investors was procedural and that the “high risk nature” warning could be disregarded, when in fact the RAF was an integral part of client protection to guard against unsuitably high risk investments.
5. Rustulka’s clients were induced to invest in exempt market securities based on Rustulka’s material misrepresentations. Clients believed Rustulka to be trustworthy and honest, based on his previous employment as an Edmonton police officer and as a senior pastor.
6. Rustulka failed to comply with Know Your Client obligations required of a registrant, including that Rustulka, at a minimum, failed to properly identify his clients’ investment needs and objectives, financial circumstances, and risk tolerances.

7. Rustulka reported false and misleading information on Know Your Client forms, including false and misleading reports of clients' liquid and illiquid assets, income, investment knowledge, investment objectives, risk tolerances, and investment time horizons.
8. Rustulka failed to comply with suitability obligations required of a registrant. Rustulka did not take reasonable steps to ensure that recommended exempt market securities were suitable for his clients.
9. Rustulka recommended and aided certain of his clients in obtaining borrowed money to make leveraged purchases of exempt market securities.
10. The exempt market securities recommended by Rustulka and purchased by his clients, including leveraged investments, were unsuitable.

Breaches

11. As a result of the above, Staff allege that Rustulka:
 - 11.1 breached section 92(4.1) of the *Act* when he made material misrepresentations to his clients regarding general and specific risks associated with exempt market securities;
 - 11.2 breached section 13.2 of National Instrument 31-103, *Registration Requirements, Exemptions (NI 31-103)*, when he failed to comply with Know Your Client obligations; and
 - 11.3 breached section 13.3 of NI 31-103 when he failed to comply with suitability obligations.

Calgary, Alberta, December 20, 2018) ALBERTA SECURITIES COMMISSION
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) "original signed by"
) David C. Linder, Q.C.
) Executive Director