

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: Re Vermeeren, 2016 ABASC 182

Date: 20160614
Docket: ENF-008812

Securities Act, R.S.A. 2000, c. S-4, as amended (“Act”)

DOUGLAS JOHN VERMEEREN
(hereafter, The Respondent)

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into the Respondent and corporate entities he controlled. The investigation has led to evidence supporting the facts and admissions set out in this Settlement Agreement and Undertaking (the **Agreement**).
2. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.
3. Solely for securities regulatory purposes in Alberta and for the purposes of regulatory proceedings by other regulators, and as the basis for the settlement and undertakings described in paragraphs 17 and 18, the Respondent makes the admissions and accepts the undertakings set out below in the Agreement.

Parties

4. The Respondent is a resident of Calgary, Alberta. At all material times, the Respondent was the sole director and officer of Calgary-based Monthly Millionaire Mentor Ltd. (**MMM**).

*Circumstances*Illegal Trading

5. From approximately December 2011 to April 2014, the Respondent entered into loan agreements, some evidenced by promissory notes (the **Loan Agreements**), with at least 43 investors from Alberta and elsewhere in Canada. The Respondent raised in excess of \$735,000 pursuant to the Loan Agreements.
6. The terms of the Loan Agreements varied from 3 to 24 months at varying interest rates of 7 to 10%. The Loan Agreements named either the Respondent, MMM or the Respondent's trade name Business Boost as the "Borrower".
7. Some investors received periodic updates entitled "Investment Report" from the Respondent. The Investment Reports indicated the total amount of returns on each investment as well as details of the investment, including the "investment description", "investment date", and "investment amount".
8. Investors understood that their funds would be used for loans to third parties, usually small businesses. The Investment Reports described these loans as "venture capital lending".
9. The Respondent gave presentations to potential investors, met with investors, handled investor money and communicated with investors regarding their investments.
10. Investors provided money to the Respondent, to be used by The Respondent, to gain profit from third party lending or "venture capital lending". The investors expected The Respondent to make the efforts required to satisfy the obligations to pay interest on the monies given to the Respondent. Investors were not required to do anything whatsoever to help generate the profits other than to provide their investment funds to the Respondent. The venture capital lending was to be a common enterprise, with investors relying significantly on the efforts of the Respondent to realize the expected profits.
11. The investments detailed above constituted trades in securities, as those terms are defined in the *Act*. Further, the Respondent, by his conduct, was engaging in, or holding himself out as engaging in, the business of trading in securities or exchange contracts. These securities had not been previously issued, and that these trades were distributions under the *Act*.
12. At all material times, neither the Respondent nor MMM was registered as a dealer in accordance with Alberta securities laws.
13. At the time of and in relation to the trades described above, no preliminary prospectus and no final prospectus had been filed with or received by the Executive Director of the Commission.

Misleading or Untrue Statements

14. The Respondent made statements to an investor or investors that he knew or reasonably ought to know were misleading or untrue. The Respondent stated that:
 - 14.1 The invested funds would be used for "capital lending" or "venture capital lending";
 - 14.2 There were no risks associated with the investment or that their investments were "guaranteed"; and the Respondent never lost money for investors.
15. The Respondent made knowingly, or ought reasonably to have known that, the statements referred to paragraph 12 were misleading or untrue, in that:
 - 15.1 a portion of the invested funds was used to pay personal expenses of the Respondent or to pay returns to prior investors;
 - 15.2 there was no basis for the representation that the investments involved no risk nor were guaranteed; and some investors lost some or all of the amounts invested with the Respondent.

Fraud

16. The Respondent directly or indirectly engaged or participated in acts, practices, or courses of conduct relating to the aforementioned securities that he knew or reasonably ought to have known would perpetrate a fraud on investors. The particulars of the fraudulent conduct engaged by the Respondent include commingling investor funds into the Respondent's personal account and corporate accounts controlled by the Respondent. Some funds from these accounts were used for personal expenditures and to pay investors. The Respondent did not keep adequate accounting records making it difficult to determine the precise scope of the fraudulent use of investor funds.
17. Some of the investor funds were used for third party lending.

Breach of Commission Order

18. On March 14, 2013, the Commission issued an interim cease trade order (**ICTO**) against MMM and The Respondent. The ICTO was extended "until an enforcement proceeding in this matter is concluded and a decision rendered...".
19. The Respondent raised funds from additional investors in breach of the ICTO.

Admitted Breaches of Alberta securities laws (Admitted Breaches)

20. Based on the Agreed Facts, the the Respondent admits he:
 - 20.1 breached section 75(1)(a) by trading in securities without being registered and without an exemption from that requirement;

- 20.2 breached section 110(1) by trading securities without filing a preliminary prospectus or a prospectus and without an exemption from that requirement;
- 20.3 breached section 93(b) of the *Act* by directly or indirectly engaging or participating in an act, practice, or course of conduct relating to the aforementioned securities that he knew or reasonably ought to have known perpetrated a fraud on investors;
- 20.4 breached subsection 92(4.1) of the *Act* by making statements that he knew or reasonably ought to have known were misleading or untrue, or which failed to state a fact necessary to make a statement not misleading, and which would reasonably be expected to have a significant effect on the market price or value of the aforementioned securities; and
- 20.5 breached section 93.1 by trading in and distributing securities in contravention of a Commission Order banning him from doing so.

Circumstances Relevant to Settlement

- 21. The Respondent has not been previously sanctioned by the Commission.
- 22. The Respondent cooperated with Staff during the investigation and consented to Staff's ICTO application.
- 23. The Respondent has repaid investors approximately \$382, 971.00 of the total amount raised.
- 24. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement Payments and Undertakings

- 25. Based on the Agreed Facts and Admitted Breaches, the Respondent agrees and undertakes to the Executive Director of the Commission to:
 - 25.1 Pay the total amount of \$120,000 in settlement of all allegations against him and pay to the Commission \$10,000 for the costs of the investigation;
 - 25.2 Cease trading in and purchasing securities or derivatives for a period of ten years from the execution of the Agreement except that this does not preclude the Respondent, in his personal capacity of for the benefit of his family only, from trading in or purchasing exchange-listed securities through a registrant (who has first been given a copy of this Agreement) in one or more personal or family accounts maintained with that registrant; and
 - 25.3 Resign from any positions that he holds as a director or officer of any issuer, registrant or investment fund manager in Alberta or elsewhere in Canada, and refrain from becoming or acting as a director or officer (or both) of any issuer,

registrant or investment fund manager in Alberta or elsewhere in Canada, for a period of ten years, except that he may become or continue to act as a director or officer (or both) of any issuer that and does not issue or propose to issue securities to the public.

- 25.4 Enter into or consent to, and have his spouse enter, into or consent to, such further and other agreements or documents required by the Executive Director or his delegate to implement and secure the orderly payment of the \$130,000.

Administration

26. The Respondent acknowledges that he received independent legal advice and has voluntarily made the admissions and undertakings in this Agreement.
27. The Respondent waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
28. The Respondent acknowledges and agrees that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.
29. Execution and fulfillment of the terms of this Agreement by the Respondent resolves all issues involving the Respondent relating to the conduct described above, and Staff will take no further steps against him arising from these facts.
30. This Agreement may be executed in counterpart.

Signed by DOUGLAS JOHN)
 VERMEEREN at Calgary,)
 Alberta this 9th day of June 2016, in the)
 presence of:)

Paul Chiswell)
 WITNESS NAME)

"Original Signed By")
 SIGNATURE)

"Original Signed By")
 Douglas John Vermeeren)

) ALBERTA SECURITIES COMMISSION

Calgary, Alberta, 14 June 2016)

) "Original Signed By")
) David C. Linder, Q.C.)
) Executive Director)