

ALBERTA SECURITIES COMMISSION

Citation: Re Breitreutz, 2016 ABASC 235

Docket: ENF-010926

Date: 20160822

NOTICE OF HEARING

To: **Arnold Breitreutz, Base Finance Ltd., Base Mortgage & Investments Ltd. and Susan Elizabeth Way (Respondents)**

Notice: The Alberta Securities Commission (**Commission**) will convene at 1:00 p.m. on Wednesday, October 19, 2016 (**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 Tom McCartney, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.355.4480, email: tom.mccartney@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 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. Base Finance Ltd. (**Base Finance**) was incorporated in Alberta on February 16, 1984, and carried on business in Calgary, Alberta. Its sole director, officer, and shareholder was Arnold Breikreutz (**Breikreutz**). It was ostensibly in the lending business.
2. Base Mortgage & Investments Ltd. (**Base Mortgage**) was incorporated in Alberta on August 28, 1978, and carried on business in Calgary, Alberta. Its sole director, officer, and shareholder was Breikreutz. Base Mortgage was the administrator for Base Finance, and among other things, maintained its accounting and other books and records.
3. Breikreutz resided in Calgary, Alberta. He was the founder and guiding mind of each of Base Finance and Base Mortgage, (together, **Base**) and authorised, permitted or acquiesced in the acts, practices and conduct of Base described below.
4. Susan Elizabeth Way resided in Calgary, Alberta. She was the office manager and administrator of Base, kept its books and records, and directly or indirectly engaged or participated in the acts, practices or conduct of Base described below.

Circumstances

Fundraising

5. Between August 1, 2006 and September 24, 2015, Base Finance raised about \$137,211,801 from at least 261 investors. Of this amount, \$96,003,544 came from 191 Alberta investors.
6. Base Finance raised these funds by selling securities to investors in the form of an "Irrevocable Assignment of Mortgage Interest" agreement (**Assignment Agreement**).
7. The Assignment Agreement provided, among other things, that:
 - 7.1 Base Finance would assign irrevocable mortgage interests to lenders (investors), against 1st mortgages held by Base Finance; and
 - 7.2 Base Finance would direct, from the borrowers (mortgagors), to the lenders, interest payments ranging from 9% to 14%.

Fraud

8. Breikreutz, Way and Base Finance told investors that investors' funds would be lent by Base Finance to borrowers, and secured by first mortgages on real estate in Alberta (**First Mortgages**).

9. Contrary to what investors were told, instead of lending the funds to borrowers, and securing the loans with First Mortgages, Base used new investors' funds to pay interest and principal owing to existing investors in a manner consistent with a Ponzi scheme.
10. Between January 1, 2011 and September 1, 2015, approximately \$83,501,887.34 was raised from Base Finance investors. Of that sum, during that time, \$79,838,793.65 was paid out to investors in the form of principal and interest payments.
11. At all material times, the Respondents engaged in these activities with the intent to deceive investors about the purpose for which the funds had been, or were to be, used.
12. As of about September 2015, Base Finance was indebted to about 240 investors in the approximate amount of \$122 million, and had no funds left to pay investors their principal or returns.

Misleading Staff

13. While testifying under oath and represented by legal counsel during an investigative interview conducted with the Commission on January 7, 2016, Breitkreutz told Staff investigators that Base Finance no longer possessed the \$122 million because it had loaned the investors' money to a Brian Douglas Fox (**Fox**) and his companies.
14. Fox, a resident of Strathmore, Alberta, was a long time business associate of Breitkreutz, and operated a number of oil and gas exploration and development companies in the United States, including Powder River Basin Gas Corp. (**Powder River**), Goliad Phoenix Energy LLC (**Goliad**) and Saddle Lake Energy LLC (**Saddle Lake**) (together, **Fox and his Companies**).
15. Breitkreutz testified that, unbeknownst to investors, he caused Base Finance to lend about \$120 million of investors' funds to Fox and his Companies.
16. Breitkreutz also provided the investigators with two fictitious deed of trust agreements, one for \$50 million with Goliad dated November 5, 2013, and another for \$30 million with Saddle Lake dated October 3, 2014, which he said documented \$80 million worth of loans from Base Finance.
17. In fact, only about \$462,297 was paid by Base Finance to Fox and his Companies, and the investors' funds were actually used to operate the Ponzi scheme.
18. Staff allege that Breitkreutz knew the statements he made to Staff investigators were, in a material respect at the time and in light of the circumstances under which they were made, misleading or untrue or did not state a fact that was required to be stated or that was necessary to be stated to make the statements not misleading.

Breaches

19. As a result of the above, Staff allege the Respondents breached section 93(b) of the *Act* when they directly or indirectly, or both, engaged or participated in acts, practices or conduct relating to Base Finance' securities, that they knew or reasonably ought to have known, perpetrated a fraud on investors.
20. Staff allege that Breitzkreutz breached section 221.1(2) when he made statements under oath to Staff that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state a fact which was required to be stated or that was necessary to be stated to make the statements not misleading.
21. Staff allege that the Respondents' misconduct described above was contrary to the public interest.

Calgary, Alberta, 22 August, 2016.

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