

ALBERTA SECURITIES COMMISSION

Citation: Re Fauth, 2016 ABASC 130

Date: 20160511
Docket: ENF-009690

NOTICE OF HEARING

To: Vernon Ray Fauth

Notice: The Alberta Securities Commission (the **Commission**) will convene at 4:00 p.m. on Wednesday, June 8, 2016, at Calgary, Alberta, to set a date for hearing (**Set Date**) 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 Adrienne Wong, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.297.2634, email: adrienne.wong@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 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.

Allegations

Parties

1. Fauth Financial Services Ltd. (**Fauth Financial**) is a corporation formed pursuant to the laws of Alberta. It was incorporated on November 1, 2005. Fauth Financial offered financial planning, investment advice, and sold mutual funds and insurance.
2. Espoir Capital Corporation (**Espoir**) is a corporation formed pursuant to the laws of Alberta. It was incorporated on October 1, 2002. Espoir was described in materials given to investors as a company established to invest in secured investments. Espoir had no underlying business other than as a vehicle to raise capital from the public.
3. FairWest Energy Corporation (**FairWest**) was incorporated federally on August 18, 2005 and struck on February 2, 2015. FairWest was a reporting issuer listed on the TSX Venture Exchange and was ostensibly involved in oil and gas production before it made an application under the *Companies' Creditors Arrangement Act* on December 10, 2012.
4. Fauth Financial, Espoir, and FairWest are insolvent.
5. Vernon Ray Fauth (**V Fauth**) is a resident of Alberta. He was, at all material times:
 - 5.1 the sole director and majority shareholder of Fauth Financial;
 - 5.2 the sole director and shareholder of Espoir; and
 - 5.3 a director and the CEO of FairWest.

Circumstances

Registration Breaches

6. Beginning around November 2002, V Fauth solicited investments in Espoir from clients of Fauth Financial.
7. Between 2002 and 2012, V Fauth raised capital in Espoir through debentures and promissory notes (collectively, the **Investments**). Between 2002 and 2010, the debentures offered 10.5% interest to investors. Starting in or around 2010, when Espoir was unable to repay debentures as they became due, some investors signed debenture amending agreements, which amended the interest rate from 10.5% to 8%.
8. V Fauth introduced, promoted and discussed the Investments with investors and prospective investors.
9. V Fauth gave investors a document which described how investor proceeds would be used. This document stated that investor proceeds would be invested into "securitized debt instruments" and listed the following: money market, treasury bills, bankers acceptance paper, commercial paper, guaranteed investment certificates and term deposits, government and

corporate bonds, secured debentures, secured promissory notes, first and second mortgages and lease papers.

10. From approximately September 28, 2010 to November 19, 2012, V Fauth raised approximately \$3.7 million from investors (most of whom are Albertans) through the sale of Espoir promissory notes and debentures.
11. The Espoir promissory notes and debentures constituted securities under the *Act*.
12. By soliciting the Investments, V Fauth "traded" in securities as defined under the *Act*.
13. V Fauth acted as an intermediary between Espoir and the investors, seeking and accepting their funds, and provided them with materials describing the investment.
14. V Fauth's involvement in the trading amounted to dealing because V Fauth:
 - 14.1 engaged in activities similar to a registrant;
 - 14.2 intermediated trading;
 - 14.3 carried on trading with repetition, regularity or continuity; and/or
 - 14.4 directly solicited investments.

V Fauth therefore engaged in the business of trading in securities.

15. At no point in time was V Fauth registered as a dealer with the Executive Director of the Commission, contrary to section 75 of the *Act* (the **Registration Requirement**).
16. No filings with respect to the Investments have ever been made with the Commission.
17. V Fauth is not able to rely on any exemptions from the Registration Requirement.

Use of Investment Funds

18. Funds raised through Espoir were in turn diverted to V Fauth owned, controlled and/ or managed businesses, such as FairWest, for their operations. The majority of investment funds were used to pay interest and debenture redemptions to other investors.

Misleading or Untrue Statements

19. From approximately October 6, 2006 to June 3, 2012, in the course of the activities described above, V Fauth made statements that he knew or reasonably ought to have known were, in a material respect, misleading or untrue or failed to state a fact that was required to be stated or was necessary to make the statements not misleading, including:

- 19.1 investment funds would be used in investing in a strip mall;
- 19.2 Espoir debenture was secured;

- 19.3 the Investments were guaranteed, safe or secure;
- 19.4 investment funds would only be invested in money market, treasury bills, bankers acceptance paper, commercial paper, guaranteed investment certificates and term deposits, government and corporate bonds, secured debentures, secured promissory notes, first and second mortgages and lease papers;
- 19.5 failing to disclose that investment funds would be diverted to FairWest;
- 19.6 failing to disclose that some investment funds would be used by V Fauth to repay other investors; and
- 19.7 failing to disclose that some investment funds would be diverted to businesses which V Fauth owned, controlled and/or managed.

20. These representations and omissions would reasonably be expected to have a significant effect on the market price or value of the securities in Espoir, and the willingness of the investors and prospective investors to invest in them.

Fraud

21. Staff allege that V Fauth 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 in include:

- 21.1 Deceiving investors as to the security or safety of the Investments;
- 21.2 Deceiving at least one investor to believe that investment funds would not be invested in FairWest; and
- 21.3 converting investment funds for use by businesses owned, controlled, and/or managed by V Fauth or using investment funds to pay interest and/ or principal to other investors.

22. V Fauth's conduct described above constitutes a continuing course of conduct. As part of this continuing course of conduct, V Fauth solicited investors, took investment funds, provided false and misleading information to investors and disbursed proceeds in ways that were inconsistent with representations to investors.

23. Furthermore, this course of conduct placed the pecuniary interests of investors at risk.

Breaches

24. As a result of the above, Staff allege that:

- 24.1 From approximately September 28, 2010 to November 19, 2012, V Fauth breached subsection 75(1)(a) of the *Act* by acting as a dealer contrary to the Registration Requirement and without an exemption from that requirement;
- 24.2 From approximately October 6, 2006 to June 3, 2012, V Fauth breached subsection 92(4.1) of the *Act* by making representations, by act or omission, which he knew or reasonably ought to have known were materially misleading or untrue, or both, or did not state facts that were required to be stated or necessary to make the statements not misleading; and
- 24.3 From approximately January 1, 2009 to September 30, 2014, V Fauth breached subsection 93(b) of the *Act* by directly or indirectly engaging or participating in any act, practice or course of conduct relating to security that he knew or reasonably ought to have known perpetrated a fraud on investors.

Calgary, Alberta, 11 May 2016.

) ALBERTA SECURITIES COMMISSION
)
)
) *"Original Signed By"*
) _____
) Kari Horn
) Acting Executive Director