

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: Re Gordon Mak, 2014 ABASC 477

Date: 20141202
Docket: ENF-007656

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

Gordon Mak

Agreed Facts

Introduction

1. The staff of the Alberta Securities Commission (respectively, **Staff** and **Commission**) conducted an investigation into allegations that Gordon Mak (**Mak**) breached Alberta securities laws and acted contrary to the public interest by advising investors without registration and engaging in an illegal distribution of securities of Goldenrod Resources Inc. (**Goldenrod**) and Clean Power Technologies Inc. (**Clean Power**). Staff subsequently investigated whether Mak concealed his activities from investigators.
2. The investigation confirmed and Mak acknowledges that he breached those sections of the Alberta securities laws referenced herein, and that he acted contrary to the public interest.
3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 23, Mak agrees to the facts and consequences set out in this Settlement Agreement and Undertaking (**Agreement**).
4. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws.

Circumstances

5. Mak is a resident of Calgary, Alberta.
6. Goldenrod was incorporated in Alberta on February 15, 2001, and at all material times carried on business in Calgary, Alberta.
7. Clean Power was incorporated in Nevada and registered extra-provincially in Alberta on January 8, 2007. At all material times it carried on business in Calgary, Alberta.
8. None of Mak, Goldenrod, or Clean Power have ever been registered with the Commission as a salesperson or an advisor, and neither a preliminary prospectus nor final prospectus were ever filed with and received by the Commission for the distribution of any Goldenrod or Clean Power securities.

Goldenrod

9. From 2006 to 2010, Goldenrod raised funds from investors in Alberta through documents called net profit agreements (**NPA's**). The NPA's were purportedly in respect of specific gas assets or a gas processing facility, and were to pay returns, typically at 1%, from the profits of the particular well or facility.
10. At least 50 investors purchased NPA's, with total funds raised by Goldenrod amounting to approximately \$5.5 million. Mak assisted with fundraising activities on behalf of Goldenrod, including meeting with prospective investors, providing advice, soliciting investments, and handling investment dollars.
11. The NPA's were securities, and the sale of the securities by Mak to investors were trades, as those terms are defined in the *Act*. As first trades in securities that were not previously issued, the sales were also a distribution under the *Act*.

Clean Power

12. From 2007 to 2008, Clean Power raised funds from investors in Alberta. At least 87 investors purchased securities in Clean Power, with total funds raised amounting to at least \$2,200,000. Mak assisted with fundraising activities on behalf of Clean Power, including meeting with prospective investors, providing advice, participating in sales meetings, soliciting investments, and handling investment dollars.
13. The sale of securities of Clean Power constituted trades, as that term is defined in the *Act*. As first trades in securities that were not previously issued, the sales were also a distribution under the *Act*.

Concealing Activities

14. Mak was interviewed by Staff investigators with respect to his role and activities in the trading of Goldenrod and Clean Power securities. He concealed certain of his activities during that interview, specifically that he:
 - a. received funds from Goldenrod, and its investors, for his activities related to the sale of NPA's;
 - b. received funds from Clean Power, and its investors, for his activities related to the sale of its shares; and
 - c. provided advice to investors to purchase the Goldenrod and Clean Power securities.
15. Mak requested and received in excess of \$30,000 as fees or payments from investors in connection with the sale of securities of Goldenrod or Clean Power.

Breaches

16. Mak breached:
 - a. section 75(1)(a) of the *Act* by trading in securities of Goldenrod and Clean Power without registration;
 - b. section 75(1)(b) of the *Act* by acting as an advisor with respect to the Goldenrod and Clean Power investments without registration;
 - c. section 110 of the *Act* by engaging in a distribution of securities of Goldenrod and Clean Power without filing with the Commission and receiving a receipt for a preliminary prospectus and prospectus; and
 - d. section 93.4(1) of the *Act* by concealing or withholding information reasonably required for an investigation under the *Act*.
17. Mak's unregistered sales to Albertans of, and advice in relation to, securities in Goldenrod and Clean Power, and his concealment and withholding of information reasonably required for an investigation under the *Act*, constituted conduct contrary to the public interest.

Other Relevant Circumstances

18. Mak has no prior regulatory sanctions before the Commission.
19. Mak was not a director or officer of Goldenrod or Clean Power, and his sales activities and advice were in support of the principals of those companies.
20. Mak's sales efforts and advice contributed to only a portion of the \$7.7 plus million raised by the two companies.
21. The bulk of the funds raised for Goldenrod and Clean Power was done so outside of the six-year limitation period for proceedings under the *Act*.
22. This Agreement has saved the Commission the time and expense associated with a fully contested hearing.

Settlement Payments and Undertakings

23. Based on these facts and admissions, Mak undertakes to the Executive Director:
 - a. to pay to the Commission the amount of \$80,000 in settlement of the allegations;
 - b. for a period of 6 years from the date of this Agreement:
 - (i) to cease trading in or purchasing securities and derivatives, with the exception that Mak is permitted to trade in one personal: brokerage account, LIRA account, and TFSA account, provided that such trading is through a registrant who has been given a copy of this Agreement;

- (ii) to refrain from using any of the exemptions contained in Alberta securities laws;
- (iii) to refrain from advising in securities or derivatives; and
- c. to pay to the Commission the amount of \$15,000 towards investigation costs.

Administration

- 24. Mak acknowledges that he has sought and received independent legal advice and that he has voluntarily made the admissions herein.
- 25. Mak waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
- 26. Mak acknowledges that this Agreement may be referred to solely for securities regulatory purposes in Alberta and elsewhere.
- 27. The Agreement resolves all issues involving Mak as described in the above paragraphs, and Staff will take no further steps against him arising from these facts.
- 28. The Agreement may be executed in counterpart.

Signed by Gordon Mak at)
 Calgary, Alberta this)
 2 day of December, 2014, in the)
 presence of:)

) “Original Signed By”
) Gordon Mak

Andrew Wilson)
 PRINT WITNESS NAME)

“Original Signed By”)
 SIGNATURE)

) ALBERTA SECURITIES COMMISSION
)
 Calgary, Alberta, December 2, 2014)

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