

# ALBERTA SECURITIES COMMISSION

Citation: Re McClure, 2017 ABASC 144

Docket: ENF-009221

Date: 20170816

## SETTLEMENT AGREEMENT AND UNDERTAKING

**David Gregor McClure**

### Agreed Facts

#### *Introduction*

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into David Gregor McClure (**McClure**) to determine if Alberta securities laws had been breached.
2. The investigation confirmed, and McClure admits, that he breached those sections of the *Securities Act*, RSA 2000, c S-4, as amended, (**Act**), referred to in this Settlement Agreement and Undertaking (**Agreement**), and that he acted contrary to the public interest.
3. Solely for securities regulatory purposes in Alberta, and elsewhere in Canada, and as the basis for the settlement and undertakings referred to in this Agreement and for no other use or purpose, McClure agrees to the facts and consequences set out in this Agreement.
4. Terms used in this Agreement have the same meaning as provided in the Alberta securities laws, a defined term in the *Act*.

#### *Parties*

At all material times:

5. McClure was a resident of Calgary, Alberta, and not registered as a dealer under section 75 of the *Act*.
6. McClure was a director of Bedford Biofuels Inc. (**Bedford**) and exercised day-to-day control over the corporation's operations. Bedford was an Alberta corporation, incorporated on November 14, 2008.

7. McClure was a director of Bedford Biofuels Tana Delta Phase 1 Investment Corporation (**Bedford Tana Delta**) and exercised day-to-day control over the corporation's operations. Bedford Tana Delta was an Alberta corporation, incorporated on June 29, 2009.
8. McClure was the *de facto* director of Arts Without Borders Inc. (**AWB**) and exercised day-to-day control over the corporation's operations. AWB was an Alberta corporation, incorporated on July 20, 2010.
9. McClure was a director of Bella Bay Investments (Barbados) Inc. (**Bella Bay**) and exercised day-to-day control over the corporation's sales. Bella Bay was incorporated under the laws of Barbados on April 18, 2012.

### *Circumstances*

#### Illegal Distributions – Bedford

10. Bedford was incorporated for a legitimate business purpose. Its business plan involved the development of biofuel plantations in Kenya. No preliminary prospectus or prospectus was ever filed on behalf of Bedford.
11. Between November 14, 2008 and December 31, 2012, Bedford raised approximately \$11,000,000 from investors for the development of its biofuel business in Kenya. A portion of this amount, \$975,000, was raised by McClure by selling shares of Bedford to five investors resident in Alberta who did not qualify for any exemptions under the *Act*. McClure raised \$975,000 for Bedford from the five investors, contrary to the *Act*.

#### Illegal Distributions – Bedford Tana Delta

12. Bedford Tana Delta was incorporated to raise proceeds to finance the purchase of agricultural leases in Kenya for the cultivation of biofuels. Bedford Tana Delta was part of Bedford's business plan regarding the development of the Kenyan biofuel plantations.
13. Between February 1, 2010 and December 15, 2011, Bedford Tana Delta issued six Offering Memoranda. Bedford Tana Delta raised approximately \$5,300,000 between February 1, 2010 and May 25, 2012. Although investment monies were legitimately raised pursuant to the Offering Memoranda, McClure solicited, either himself or through employees he supervised, three investors resident in Alberta for Bedford Tana Delta. These investors were purportedly qualified as eligible investors under Alberta securities laws. However, these three investors did not, in fact, meet the criteria for the eligible investor exemption or for any exemptions under the *Act*. McClure raised \$72,000 for Bedford Tana Delta from the three investors, contrary to the *Act*.

#### Unregistered Dealing and Illegal Distributions – AWB

14. 1548715 Alberta Ltd. was incorporated in Alberta on July 20, 2010 and on March 10, 2011 changed its name to Arts Without Borders Inc. (**AWB**). AWB's purpose

was to take any profits from leasing art to customers in Canada and use them to support micro-lending to Kenyan employees working on Bedford's biofuel plantations in Kenya. No preliminary prospectus or prospectus was ever filed on behalf of AWB.

15. McClure solicited five investors resident in Alberta for AWB. He ostensibly relied on the employee and accredited investor exemptions under Alberta securities laws to qualify the five investors. These investors did not, in fact, qualify for any of these exemptions and no prospectus requirement exemption was available. McClure raised \$125,000 for AWB from the five investors, contrary to the *Act*.

#### Unregistered Dealing and Illegal Distributions – Bella Bay

16. Bella Bay was created for the purpose of developing real estate properties in Honduras. No preliminary prospectus or prospectus was ever filed on behalf of Bella Bay in Alberta.
17. In 2012, McClure solicited three couples, resident in Alberta, to invest in Bella Bay. The Bella Bay investment included shares in the company, real estate in Honduras, and shares in Bedford. The investors did not qualify for any exemptions under the *Act* and no prospectus requirement exemption was available. McClure raised \$200,000 for Bella Bay and Bedford from the sale of shares in Bella Bay and Bedford to the investors, contrary to the *Act*.

#### Misleading or Untrue Statements Regarding Bedford

18. Bedford ran into difficulties with the implementation of its business plan in Kenya in 2011. McClure began to make efforts to sell the company. Starting in the fall of 2011, McClure, on behalf of Bedford, retained agents in Hong Kong to identify and solicit potential purchasers for Bedford.
19. McClure made representations to three investors resident in Alberta in late 2011 and early 2012 that Bedford was about to be sold to an Asian buyer for \$70 to \$80 million and that the closing would take place in April 2012. McClure represented that Bedford needed further funds to close the sale. At the time of these representations no actual buyer for Bedford existed. No actual buyer for Bedford ever came forward and on January 31, 2013 Bedford filed an Assignment in Bankruptcy.
20. As a result of McClure's representations regarding the imminent sale of Bedford, a further \$450,000 was raised for Bedford from the three investors.

#### **Admitted Breaches of Alberta Securities Laws**

21. Based on the Agreed Statement of Facts, McClure admits he:
  - 21.1 breached section 75(1) of the *Act* by trading in the securities of AWB and Bella Bay without being registered to do so under Alberta securities laws and without an exemption from the registration requirement, as set out in paragraphs 15 and 17, above;

- 21.2 breached section 110(1) of the *Act* by distributing the securities of Bedford, Bedford Tana Delta, AWB, and Bella Bay without being registered to do so under Alberta securities laws and without filing a preliminary prospectus or a prospectus with the Executive Director and obtaining a receipt therefor, as set out in paragraphs 10 to 17, above; and
- 21.3 breached section 92(4.1) of the *Act* by making representations to investors regarding the purported sale of Bedford to Asian buyers that were materially misleading or untrue, as set out in paragraphs 19 and 20, above.

### **Circumstances Relevant to Settlement**

- 22. McClure has not been previously sanctioned by the Commission.
- 23. McClure cooperated with Staff during the investigation.
- 24. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

### **Settlement and Undertakings**

- 25. Based on the Agreed Facts and Admitted Breaches, McClure agrees and undertakes to the Executive Director of the Commission to:
  - 25.1 pay to the Commission the amount of \$50,000 as settlement;
  - 25.2 pay to the Commission the amount of \$30,000 for investigation and legal costs incurred by Staff;
  - 25.3 resign all positions he may have as a director or officer of any issuer that relies on any exemptions contained in Alberta securities laws or that distributes securities to the public; and
  - 25.4 refrain for a period of three (3) years from the date of this Agreement from:
    - 25.4.1 becoming or acting as a director or officer, or both, of any issuer that relies on any exemptions contained in Alberta securities laws or that distributes securities to the public;
    - 25.4.2 trading in or purchasing any securities or derivatives except trades in an RRSP, RESP, or other such plans permitted under Canadian tax law where such plans are operated for his benefit, or for the benefit of any immediate member of his family, provided such trades are made through a registrant who has first been given a copy of this Agreement;
    - 25.4.3 relying on any or all of the exemptions contained in Alberta securities laws;

- 25.4.4 engaging in any investor relations activities;
- 25.4.5 advising in securities or derivatives; and
- 25.4.6 acting in a management or consultative capacity in connection with activities in the securities market.

**Administration**

- 26. McClure acknowledges that he received independent legal advice and has voluntarily made the admissions and undertakings in this Agreement.
- 27. McClure waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review, or appeal of this matter.
- 28. McClure 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. McClure understands and acknowledges that this Agreement may form the basis for securities-related orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow for provisions of a settlement agreement made in this matter to be given parallel effect in those other jurisdictions automatically, without further notice to him. McClure understands and acknowledges that he should contact the securities regulator of any other jurisdiction in which he may intend to engage in any securities related activities.
- 30. Execution and fulfillment of the terms of this Agreement by McClure resolves all issues involving him relating to the conduct described above, and Staff will take no further steps against him arising from these facts.
- 31. This Agreement may be executed in counterpart.

Signed by DAVID GREGOR McCLURE )  
 at Calgary, Alberta this 2<sup>nd</sup> day of )  
 August 2017, in the presence of: )  
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 Ortenzia Naccarato )  
 WITNESS NAME )  
 )  
 "*Original Signed By*" )  
 SIGNATURE ) DAVID GREGOR McCLURE

Calgary, Alberta, 16 August 2017

) ALBERTA SECURITIES COMMISSION

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) *“Original Signed By”*

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David C. Linder, Q.C.

) Executive Director