

ALBERTA SECURITIES COMMISSION
SETTLEMENT AGREEMENT AND UNDERTAKING

Citation: McDonald, Re, 2010 ABASC 448

Date: 20100924
Docket: ENF- 005587

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

Neil Andrew McDonald

Introduction

1 The staff of the Alberta Securities Commission (respectively, **Staff and Commission**) conducted an investigation into allegations that Neil Andrew McDonald (**McDonald**) breached Alberta securities laws when he made false or misleading statements to Alberta investors, and acted contrary to the public interest.

2 The investigation confirmed and McDonald admits that he breached those sections of the *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, and as the basis for the settlement and undertaking referred to in paragraph 24, McDonald agrees to the facts and consequences set out in this Agreement.

4 Terms used in this Agreement have the same meaning as provided in Alberta securities laws, a defined term in the *Act*.

Parties

5 McDonald was a mutual fund representative and resides in Calgary, Alberta.

Circumstances

6 Between February 2009 and April 2009, McDonald raised \$439,000 in Alberta from seven Alberta investors by the sale of non-existent Guaranteed Investment Certificates (**Certificates**).

7 McDonald represented to investors that he would purchase a Certificate on their behalf, which certificate was to be issued by Armstrong and Quaile Associates Inc. (**Armstrong and Quaile**), and guaranteed or insured by Royal Bank of Canada Insurance (**Royal Bank**), when in fact his intention at the time was to convert the investors' funds to his own use by using the investors' funds to purchase securities in another company (**Alternate Securities**).

8 McDonald admits that, instead of purchasing Certificates on the investors' behalf, he deposited the \$439,000 into the bank account of 1440488 Alberta Ltd. (**Numberco**), a company owned and controlled by McDonald.

9 McDonald further admits that he put two of the investors' pecuniary interests at risk when he paid \$260,000 of the \$439,000 to purchase the Alternate Securities in his own name and that of his boss and business partner.

10 McDonald admits the Certificates did not exist.

False and Misleading Statements

11 Solely for securities regulatory purposes in Alberta and elsewhere, McDonald admits he made statements to investors that were misleading or untrue, or failed to state all of the facts necessary to make the statements not misleading, particulars of which include informing investors that:

11.1 the Certificates existed, when they did not;

11.2 the Certificates were to be issued by a mutual fund dealer named Armstrong and Quaile, when in fact they were not;

11.3 the principal and interest earned by the Certificates were guaranteed or insured by the Royal Bank, when in fact they were not; and

11.4 the Certificates were to pay a variable rate of interest of up to 18% per annum.

12 McDonald admits the above statements would reasonably be expected to have a significant effect on the market price or value of the Certificates.

Aggravating Circumstances

13 McDonald admits he authored the investor application forms for the Certificates and affixed, without permission, the logos of Armstrong & Quaile and the Royal Bank to the application forms.

14 McDonald admits he authored promotional literature to market the Certificates and affixed, without permission, the logos of Armstrong and Quaile and the Royal Bank to the promotional literature.

15 McDonald admits that when investor GS insisted on obtaining written confirmation that a Certificate was purchased on his behalf, he created an account statement on Armstrong and Quaile letterhead which purported to confirm to GS that his money had been invested in an “A & Q RBC High Interest account”, when in fact the funds were on deposit in Numberco’s bank account.

16 When investor SS insisted on receiving confirmation from McDonald that a Certificate had been purchased on his behalf, someone called SS, impersonated an employee of the Royal Bank, and informed SS that the bank was in receipt of the his funds, when in fact the funds were on deposit in Numberco’s bank account.

Mitigating Circumstances

17 McDonald, on his own initiative, repaid the seven investors the \$439,000 received from them, plus additional restitution of \$6203.18.

18 McDonald did not profit from engaging in the prohibited conduct.

19 McDonald has lost his livelihood and voluntarily refrained from acting as an investment advisor or otherwise participated in the capital markets since August 2009.

20 McDonald has not been previously sanctioned by the Commission.

21 McDonald has cooperated in the investigation of these allegations.

22 This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Breaches

23 Solely for securities regulatory purposes in Alberta and elsewhere, McDonald admits that he:

23.1 breached s. 93(b) of the *Act*, by engaging in a course of conduct relating to a security that he knew or ought reasonably to have known perpetrated a fraud;

23.2 breached s. 92(4.1) of the *Act*, by making statements that he knew, or ought reasonably to have known, were misleading or untrue; and

23.3 acted contrary to the public interest.

Settlement Payments and Undertakings

24 Based on these facts and admissions, McDonald undertakes to the Executive Director of the Commission (**Executive Director**), upon execution of this Agreement:

- 24.1 to pay to the Commission the amount of \$15,000 to settle the allegations;
- 24.2 to pay to the Commission the amount of \$5,000 towards investigation costs;
- 24.3 to cease and refrain from trading in or purchasing securities or exchange contracts for a period of 15 years, except that this order does not preclude McDonald from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:
 - (a) one account for McDonald's benefit;
 - (b) registered retirement savings plans ("RRSPs"), registered retirement income funds ("RRIFs") or registered education savings plans ("RESPs") (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for the benefit of one or more of McDonald, his spouse and his children; or
 - (c) both;
- 24.4 to refrain from using any exemptions in Alberta securities laws for a period of 15 years;
- 24.5 to resign all positions he holds as a director or officer of any issuer, registrant, or investment fund manager, and to refrain from becoming or acting as a director or officer, or both, of any issuer, registrant, or investment fund manager for a period of 15 years, except that this undertaking shall not preclude him from acting as a director or officer, or both, of any issuer, that is not a reporting issuer under the *Act*, and does not distribute securities to the public;
- 24.6 to refrain from becoming or acting as a registrant, investment fund manager or promoter for a period of 15 years;
- 24.7 to refrain from advising in securities or exchange contracts for a period of 15 years; and
- 24.8 to refrain from acting in a management or consultative capacity in connection with activities in the securities market for a period of 15 years.

Administration

25 McDonald acknowledges that he has sought independent legal advice and voluntarily made the admissions herein.

26 McDonald waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.

27 McDonald acknowledges that this Agreement may be referred to in any other proceedings under the *Act*, and in securities regulatory proceedings in other jurisdictions.

28 This Agreement resolves all issues involving McDonald as described above. Staff will take no further steps against McDonald arising from these facts.

29 This Agreement may be executed in counterpart.

Signed by Neil Andrew McDonald at)
Calgary, Alberta, this 23 day of)
September 2010, in the presence of:)

_____)
WITNESS NAME)
_____)
WITNESS NAME)

_____) "*Original Signed By*")
SIGNATURE) Neil Andrew McDonald

) ALBERTA SECURITIES COMMISSION
)

Calgary, Alberta, September 24 2010)
) "*Original Signed By*")
) _____)
) David Linder)
) Executive Director)