

ALBERTA SECURITIES COMMISSION

Citation: Re Yawrenko, 2018 ABASC 134

**Date: 20180817
Docket: ENF-011095**

SETTLEMENT AGREEMENT AND UNDERTAKING

Shane David Yawrenko and Umbrella Merchant Services Inc.

Agreed Facts

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into Shane David Yawrenko (**Yawrenko**) and Umbrella Merchant Services Inc. (**Umbrella**) to determine if Alberta securities laws had been breached.
2. The investigation confirmed, and Yawrenko and Umbrella admit, that they breached section 110 of the *Securities Act*, RSA 2000, c S-4, as amended, (*Act*), referred to in this Settlement Agreement and Undertaking (**Agreement**), and 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 17 and for no other use or purpose, Yawrenko and Umbrella agree 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

5. Yawrenko is an individual who resides in Edmonton, Alberta.
6. Yawrenko is and was the sole director and guiding mind of Umbrella. As such, Yawrenko authorized, permitted or acquiesced in the conduct of Umbrella as described herein.
7. Umbrella was incorporated in Alberta on April 30, 2013 with its registered office in Edmonton, Alberta.

Circumstances

8. Umbrella purported to be in the business of raising money for a business venture in Mexico related to point-of-sale technology and advertising for taxi cabs.
9. Between May 2013 and July 2016, Umbrella raised approximately \$2,139,500 from at least 33 investors, most of whom were Alberta residents, in exchange for common shares of Umbrella.
10. Yawrenko met with prospective investors, promoted and negotiated the sale of Umbrella shares, and handled or provided directions for invested capital. In exchange for their invested capital, the investors signed a subscription agreement for common shares of Umbrella.
11. The Umbrella shares were securities. The sale of Umbrella shares were trades as defined in the *Act*. As first trades in securities that had not been previously issued, the trades were distributions as defined in the *Act*.
12. At no time did the Respondents file a preliminary prospectus or prospectus with the Executive Director of the Commission or receive a receipt for same.
13. Exemptions were not available to at least half of the investors who invested in Umbrella.

Admitted Breaches of Alberta Securities Laws (Admitted Breaches)

14. Based on the Agreed Facts, Yawrenko and Umbrella admit that they breached section 110(1) of the *Act* by distributing securities without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for some of those distributions.

Circumstances Relevant to Settlement

15. Neither Yawrenko nor Umbrella has been previously sanctioned by the Commission.
16. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement and Undertakings

17. Based on the Agreed Facts and Admitted Breaches,
 - 17.1 Yawrenko and Umbrella agree and undertake to the Executive Director of the Commission to jointly and severally pay to the Commission the amount of \$55,000 in settlement of all allegations against them;
 - 17.2 Yawrenko agrees and undertakes to the Executive Director of the Commission to refrain for a period of 5 years from the date of this Agreement from:

- 17.2.1 trading in and purchasing securities or derivatives, except trades made through a registrant who has first been given a copy of this Agreement;
 - 17.2.2 using any of the exemptions contained in Alberta securities laws;
 - 17.2.3 becoming or acting as a director or officer (or both) of any issuer, registrant or investment fund manager in Alberta or elsewhere in Canada and to resign any positions he has as a director or officer, or both, of any issuer, registrant, or investment fund manager;
 - 17.2.4 becoming or acting as a registrant, investment fund manager or promoter; and
 - 17.2.5 acting in a management or consultative capacity in connection with activities in the securities market;
- 17.3 Umbrella undertakes and agrees to the Executive Director of the Commission to refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws for a period 5 years from the date of this Agreement.

Administration

- 18. Yawrenko and Umbrella acknowledge that they received independent legal advice and have voluntarily made the admissions and undertakings in this Agreement.
- 19. Yawrenko and Umbrella waive any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
- 20. Yawrenko and Umbrella acknowledge and agree that the Commission may enforce this Agreement in the Court of Queen's Bench or in any other court of competent jurisdiction.
- 21. Yawrenko and Umbrella understand and acknowledge 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. Yawrenko and Umbrella understand and acknowledge that he should contact the securities regulator of any other jurisdiction in which Yawrenko or Umbrella may intend to engage in any securities-related activities.

22. Execution and fulfillment of the terms of this Agreement by Yawrenko and Umbrella resolves all issues involving Yawrenko and Umbrella relating to the conduct described above, and Staff will take no further steps against Yawrenko and Umbrella arising from these facts.
23. This Agreement may be executed in counterpart.

Signed by SHANE DAVID)
YAWRENKO at Edmonton, Alberta this)
12 day of July 2018, in the presence of:)
)
WITNESS NAME)
WITNESS NAME)
)
"Original Signed By") "Original Signed By"
SIGNATURE) SHANE DAVID YAWRENKO
)

Signed by UMBRELLA MERCHANT)
SERVICES INC. at Edmonton, Alberta) UMBRELLA MERCHANT SERVICES INC.
this 12 day of July 2018, in the presence)
of:)
)
WITNESS NAME)
WITNESS NAME)
)
"Original Signed By")
"Original Signed By") Per: SHANE DAVID YAWRENKO
SIGNATURE)

) ALBERTA SECURITIES COMMISSION
)
Calgary, Alberta, 17 August 2018.)
) "Original Signed By"
) David C. Linder, Q.C.
) Executive Director