

ALBERTA SECURITIES COMMISSION

Citation: Re Zang, 2019 ABASC 171

Docket: ENF-009991

Date: 20191112

SETTLEMENT AGREEMENT AND UNDERTAKING

John Charles Zang

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into John Charles Zang (**Zang**) to determine if Alberta securities laws had been breached.
2. The investigation confirmed and Zang admits that he breached those sections of the *Securities Act*, R.S.A. 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, and as the basis for the settlement and undertakings referred to in paragraph 41 and for no other use or purpose, Zang 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*.

Overview

5. In a Notice of Hearing dated October 11, 2017, Staff allege a market manipulation scheme involving multiple parties and jurisdictions, commonly referred to as a “pump and dump.” The allegations identify a number of indicia common to this type of scheme, including:
 - 5.1 use of nominees to hide beneficial ownership of a dominant controlling position of an issuer’s securities;
 - 5.2 release of untrue or unduly promotional material and a promotional campaign designed to create interest in and artificial value for the securities;
 - 5.3 use of forward share splits to exponentially increase the number of securities available for trading; and

- 5.4 sale of securities by insiders when the market price is inflated.
6. The Notice of Hearing further states that market manipulation schemes, including pump and dump schemes, are incompatible with a fair and efficient capital market operating on accurate information and genuine supply and demand.
7. Zang's role in this matter entailed the following:
- 7.1 causing corporate entities controlled by him to hold large amounts of shares in Kilimanjaro Capital Ltd. (**Kilimanjaro**), a substantial portion of which were in fact controlled by Ashmit S. Patel (**Patel**), a *de facto* control person of Kilimanjaro. Zang was not the beneficial owner of these shares;
- 7.2 twice loaning funds to Kilimanjaro that Zang ought to have known would be used to finance a promotional campaign for Kilimanjaro's securities (**Promotional Campaign**); and
- 7.3 facilitating Patel's sale of Kilimanjaro shares in the United States following the issuance of a cease trade order by the Commission on April 3, 2014.

Other Parties Relevant to this Agreement

8. Kilimanjaro was incorporated under the laws of Belize on May 25, 2011. At all material times, it maintained an office address and management presence in Calgary, Alberta. Kilimanjaro's stated business was investment in and development of future contingent oil and gas interests in regions of Africa seeking or purporting to seek self-determination.
9. Patel is an individual whose last known address was in Oakville, Ontario. At all material times, Patel held himself out as a lawyer licensed to practice law in the USA, and as an attorney for Kilimanjaro.
10. Jonathan Harris Levy (**Levy**) is a resident of Hilton Head, South Carolina. At all material times, Levy held himself out as a lawyer licensed to practice law in the USA, and as an attorney for Kilimanjaro.

Agreed Facts

11. Zang is a resident of Calgary, Alberta. At all material times, Zang was a lawyer licensed to practice in Alberta. Staff's investigation did not uncover any evidence that Zang provided legal services in relation to this matter.
12. All of Zang's business dealings with respect to Kilimanjaro were with Patel and Levy.

Kilimanjaro Shareholdings

13. Zang negotiated a purchase of 300,000 Kilimanjaro shares in June 2013 through correspondence with Patel and Levy without meeting either of them in person.
14. These Kilimanjaro shares were deposited into Zang's trading account at Richardson GMP Limited (**RGMP**).
15. On or about March 3, 2014, Kilimanjaro underwent a 100-for-1 forward split of its issued and outstanding shares, which had the effect of increasing the number of Kilimanjaro's issued and outstanding shares to a total of 500 million.
16. The number of shares in Zang's trading account at RGMP was accordingly increased by 100 times to a total of 30 million.
17. On March 26, 2014, Zang granted Patel a trading authorization over the RGMP trading account of Zang's wholly-owned company, 1649568 Alberta Ltd. (**164 Alberta**).
18. On approximately March 27, 2014, at the direction of Patel, over 200 million shares in Kilimanjaro were deposited into 164 Alberta's account at RGMP. Neither Zang nor 164 Alberta beneficially owned these shares.

Loans to Kilimanjaro

19. On Patel's advice that Kilimanjaro required money to pay promoters in relation to the Promotional Campaign, Zang loaned \$22,136 USD to Kilimanjaro (the **March Loan**).
20. Between March 27 and April 4, 2014, over 1.5 million Kilimanjaro shares in 164 Alberta's account were traded on Patel's direction. Zang was repaid the March Loan from the trade proceeds.
21. Zang again loaned funds to Kilimanjaro on June 10, 2014, by wiring \$25,000 USD to Patel (the **June Loan**).

Cease Trade Order

22. On April 3, 2014, the Commission issued a cease trade order for Kilimanjaro's shares (**CTO**) pursuant to section 33.1 of the *Act* (the failure to comply with filing requirements in Alberta), directing that trading or purchasing cease in respect of any security of Kilimanjaro until the order is revoked or varied. The CTO was amended in February 2015 to reflect Kilimanjaro's name change to N1 Technologies and remains in effect.
23. Zang admits that he was informed of the CTO by Patel on April 5, 2014.
24. Of the 1.5 million Kilimanjaro shares traded in 164 Alberta's account on Patel's direction, over 100,000 were traded after the CTO was issued.

25. On April 17, 2014, Zang incorporated a Delaware corporation named 1649568 Alberta Ltd. (**164 Delaware**). At all material times thereafter, Zang was the sole director and officer of 164 Delaware.
26. On or about April 23, 2014, Zang made arrangements with RGMP to transfer the Kilimanjaro shares then remaining in Zang's and 164 Alberta's trading accounts at RGMP to brokerages located in the USA.
27. On or about April 29, 2014, with Zang's knowledge and approval, Patel arranged for trading accounts to be opened in the name of Zang and 164 Delaware at COR Clearing (**COR**), a brokerage located in the USA.
28. On April 30, 2014, at Patel's request, Zang paid for a legal opinion pursuant to a USA regulatory requirement, which enabled 29.5 million shares in the name of Zang and 49.5 million shares in the name of 164 Delaware to be deposited with COR to be sold.
29. On June 3, 2014, Patel arranged for the deposit of the 29.5 million Kilimanjaro shares into Zang's account at COR, and for the 49.5 million shares to be deposited into 164 Delaware's account at COR.
30. On June 7, 2014, Zang granted Patel trading authority over the account in his name at COR, and the following day Zang granted Patel trading authority over the account in 164 Delaware's name at COR.
31. At the direction of Patel, between July 17 and September 5, 2014, all or substantially all of the Kilimanjaro shares were sold out of 164 Delaware's account at COR. Zang received repayment of the June Loan from the proceeds of these sales.
32. Also at the direction of Patel, between September 3 and September 9, 2014, all Kilimanjaro shares were sold out of Zang's account at COR.
33. Other than as described above, Zang had no involvement in the sales or trades referenced at paragraphs 20, 24, 31, and 32.
34. Staff's investigation determined that any profit realized by Zang from trades of Kilimanjaro shares following the issuance of the CTO was nominal.

Admitted Breaches of Alberta Securities Laws

35. Based on the Agreed Facts, Zang admits that he:
 - 35.1 breached section 93.1 of the *Act* by directly or indirectly engaging in an act or course of conduct in furtherance of the sale of Kilimanjaro shares, following the issuance of the CTO, by:
 - 35.1.1 obtaining a legal opinion from a United States attorney which enabled Kilimanjaro shares to be deposited with COR and sold in the United States;

- 35.2 breached section 93(a)(i) by indirectly engaging in a course of conduct that he ought to have known may contribute to an artificial price for the shares of Kilimanjaro by:
 - 35.2.1 loaning funds to Kilimanjaro that he ought to have known would be used by Patel and/or Kilimanjaro to finance the Promotional Campaign; and
- 35.3 engaged in conduct contrary to the public interest by:
 - 35.3.1 failing to identify and adequately respond to suspicious circumstances surrounding the management, business operations, and promotional activities of Kilimanjaro.

Circumstances Relevant to Settlement

- 36. Zang did not personally provide instructions to sell shares of Kilimanjaro following the issuance of the CTO.
- 37. Zang was not part of the management of Kilimanjaro, nor was he a director or officer of Kilimanjaro.
- 38. Other than the March Loan and June Loan, Zang played no role in the Promotional Campaign and Staff's investigation did not uncover any evidence that Zang was aware of the contents of promotional material that formed part of the Promotional Campaign.
- 39. Zang has not been previously sanctioned by the Commission. During Staff's investigation, he attended multiple compelled interviews and provided considerable documentary evidence to Staff.
- 40. Staff's investigation commenced in the spring of 2014 and resulted in the issuance of the Notice of Hearing.

Settlement and Undertakings

- 41. Based on the Agreed Facts and Admitted Breaches, Zang agrees and undertakes to the Executive Director of the Commission to:
 - 41.1 pay to the Commission a monetary settlement of \$70,000, inclusive of costs;
 - 41.2 be prohibited for a period of six years from:
 - 41.2.1 acting as a director or officer, or both, of any reporting issuer—with the exception he can act in those capacities with respect to Nextraction Energy Corp. to and until the earlier of April 1, 2020 and the completion of an agreement pursuant to which Nextraction intends to acquire new material assets, subject to Nextraction's compliance with Alberta securities laws;
 - 41.2.2 trading in or purchasing any securities or derivatives, with the exception of:

- 41.2.2.1 trades or purchases of securities made for the sole benefit of Zang through his self-directed registered retirement savings plan account;
- 41.2.2.2 trades or purchases of securities made for the sole benefit of Zang, provided that any brokerage company used to facilitate such trades or purchases shall first be provided with a copy of this Agreement;
- 41.2.3 acting as a trustee or beneficiary for any reporting issuer;
- 41.3 withdraw the complaint he has made to the Privacy Commissioner regarding conduct of the Commission;
- 41.4 discontinue any and all motions, appeals, or proceedings in any court on a without costs basis; and
- 41.5 withdraw any currently outstanding applications he has made to the panel of the Commission.

Administration

- 42. Zang acknowledges that he received independent legal advice and has voluntarily made the admissions and undertakings in this Agreement.
- 43. Zang waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
- 44. Zang 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.
- 45. Zang 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. Zang 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.
- 46. Execution and fulfillment of the terms of this Agreement by Zang resolves all issues involving Zang relating to the conduct described above, and Staff will take no further steps against him arising from these facts.

47. This Agreement may be executed in counterpart.

Signed by John Charles Zang at Calgary,)
Alberta this 12 day of November, 2019,)
in the presence of:)

Colin Schulhauser)
WITNESS NAME)

"Original signed by")
SIGNATURE)

"Original signed by")
John Charles Zang)

) ALBERTA SECURITIES COMMISSION
)

Calgary, Alberta, 12 November 2019)

) "Original signed by")
) David C. Linder, Q.C.)
) Executive Director)