

ALBERTA SECURITIES COMMISSION

Citation: Re Reykdal, 2020 ABASC 145

Docket: ENF-009610

Date: 20200904

SETTLEMENT AGREEMENT AND UNDERTAKING

Gordon John Reykdal

Regulatory Message

Accurate, timely and complete disclosure of material information by reporting issuers is a cornerstone of securities regulation. Adherence by reporting issuers to continuous disclosure requirements is essential to informed decision-making by investors and other capital market participants.

Financial statements form the foundation of a reporting issuer's continuous disclosure. Alberta securities laws require financial statements to be accurate and not misleading or untrue. Financial statements must accurately and fairly depict the financial position and result of the issuer being reported on, measured by what would reasonably be considered, at the time, material to an investor or prospective investor.

Management of a reporting issuer is responsible for ensuring compliance with disclosure obligations. Under National Instrument 52-109, *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), the Chief Executive Officer (CEO) and Chief Financial Officer (CFO) are responsible to certify, among other things, that the issuer's disclosure presents its financial position fairly and that there are no untrue statements of material fact or omissions of material facts necessary to make a statement not misleading. Certification by a CEO or CFO of misleading or untrue disclosure is a serious breach of Alberta securities laws which strikes at the heart of our regulatory regime.

Introduction

1. Staff of the Alberta Securities Commission (**Staff** and **Commission**, respectively) conducted an investigation into the affairs of The Cash Store Financial Services Inc. (CSF) to determine if Alberta securities laws had been breached.
2. The investigation confirmed, and Gordon John Reykdal (**Reykdal**) admits, that CSF and Reykdal breached those sections of the *Securities Act*, RSA 2000, c S-4, as amended (**Act**) referred to in this Settlement Agreement and Undertaking (**Agreement**).

3. Solely for securities regulatory purposes in Alberta and elsewhere, and as the basis for the settlement and undertakings referred to in paragraph 36 and for no other use or purpose, Reykdal 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*.

Agreed Facts

Circumstances

5. 1511419 Ontario Inc., formerly known as The Cash Store Financial Services Inc., is a corporation amalgamated pursuant to the laws of Ontario. It was incorporated on January 17, 2002, and extra-provincially registered in Alberta on January 30, 2002.
6. CSF shares traded on the Toronto Stock Exchange and on the New York Stock Exchange. Its head office was located in Edmonton, Alberta.
7. Reykdal is a resident of Alberta and was at all relevant times a director and the CEO of CSF.
8. CSF was in the business of providing short-term loans or advances, and other financial services in Canada.
9. CSF obtained funds from creditors that were loaned to customers, who paid interest and fees on short-term loans. Wholly-owned CSF subsidiaries managed the operation of retail lending outlets in various regions of Canada.
10. As described in CSF's continuous disclosure, in order to obtain funds, CSF signed a number of written agreements (**Broker Agreements**) in which it acted as a loan broker on behalf of creditors, which CSF described as independent third party lenders (**TPL(s)**).
11. CSF earned revenue on short-term loans it brokered by charging customers a broker fee.
12. CSF's continuous disclosure stated that the TPLs were not guaranteed a return but that CSF had decided to voluntarily make retention payments to TPLs that continued to be willing to fund advances to CSF's customers to lessen the impact of loan losses experienced by TPLs (the **Retention Payments**). Prior to March 31, 2012, without TPL funding, CSF would have been unable to operate.

CSF Disclosure Regarding Its Business

13. As a reporting issuer, CSF was required under Alberta securities laws to provide prescribed, continuous disclosure. CSF's disclosure with respect to October 1, 2010 to March 31, 2012 (the **Relevant Time**), which was filed with the Commission, included the following:
 - 13.1 Annual 2011 Consolidated Financial Statements for the 12 and 15 months ended September 30, 2011 and September 30, 2010 (**YE 2011 Financial Statements**);
 - 13.2 Interim Consolidated Financial Statements for the three months ended December 31, 2011 (**Q1 2012 Financial Statements**); and
 - 13.3 Interim Consolidated Financial Statements for the three and six months ended March 31, 2012 (**Q2 2012 Financial Statements**);(collectively, **CSF's Financial Disclosure**).
14. Pursuant to NI 52-109, Reykdal certified, among other things, that disclosure documents filed with the Commission fairly presented in all material respects the financial condition of CSF and did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make a statement not misleading.
15. CSF's Financial Disclosure described the Broker Agreements and the Retention Payments as the basis on which CSF dealt with TPLs. CSF's Financial Disclosure stated that:
 - 15.1 CSF's balance sheet did not include the short-term loans funded by TPLs because the loans were repayable to the TPLs and represented assets of the TPLs;
 - 15.2 Responsibility for losses suffered on account of uncollectible loans rested with the TPLs, unless CSF had not properly performed its duties under the Broker Agreements; and
 - 15.3 Risk associated with CSF non-compliance with Broker Agreements was managed through compliance with the loan limits, procedures and selection criteria established by the TPLs.
16. Pursuant to the Broker Agreements, and among other terms:
 - 16.1 CSF was obligated to arrange loans between customers and the TPLs, including by collecting the principal and interest received from customers;
 - 16.2 CSF was obligated to pay the principal and interest received from customers to TPLs;
 - 16.3 The annual interest rate payable by customers was 59 per cent;
 - 16.4 TPLs bore the risk of losses due to default in payment; and

- 16.5 CSF bore the risk of losses due to default in payment, in the full amount of principal plus accrued interest (defined as the “loan loss”), if it failed to perform its duties under the Broker Agreement.
17. The Retention Payments were characterized throughout CSF’s Financial Disclosure as voluntary and discretionary payments made to lessen, deflect or otherwise reduce the impact of loan losses and as consideration to TPLs willing to continue lending.

CSF’s Actual Arrangements Regarding Its Business

18. In reality, CSF operated its business in a manner different from the description of its operations contained in CSF’s Financial Disclosure during the Relevant Time.
19. CSF’s Financial Disclosure did not disclose that CSF was not complying with the Broker Agreements, including that:
- 19.1 CSF did not forward the principal and interest received from customers to the TPLs but instead used collected funds for further lending. Internally, CSF maintained lender reconciliation reports regarding the status of the funds from the various TPLs; and
- 19.2 CSF paid TPLs at least 17.5 per cent annual interest calculated on the amount of TPL capital advanced, regardless of loan performance.
20. Further, Reykdal was responsible for CSF’s relationships with TPLs. Specifically:
- 20.1 Reykdal negotiated the rate of interest paid to TPLs; and
- 20.2 Reykdal told some of the TPLs that CSF would ensure that the TPLs suffered no loss of capital.
21. CSF’s Financial Disclosure did not adequately disclose that CSF had effectively assumed responsibility for loan losses. When CSF purchased the majority of the TPL loan portfolio on January 31, 2012, it paid the TPLs face value for the loan portfolio. The TPLs suffered no loss of capital.
22. CSF’s Financial Disclosure did not provide complete and accurate disclosure in respect of the degree of material financial risk in CSF’s operations. Loan losses occurred and, contrary to CSF’s Financial Disclosure, were borne by CSF. Further, CSF was not compliant with the Broker Agreements which created further risk to CSF operations.

CSF’s Financial Disclosure – Omissions and Certifications

23. CSF’s Financial Disclosure omitted the full details of the actual arrangements between CSF and the TPLs and did not state all of the facts necessary to make CSF’s Financial Disclosure not misleading. In particular, the facts set out in paragraphs 19 to 22 were material to CSF’s risk profile and financial condition, but were omitted from CSF’s Financial Disclosure.

24. The effect of CSF's Financial Disclosure was that the actual arrangements between CSF and the TPLs and their financial implications were not adequately disclosed to the investing public.
25. When Reykdal certified CSF's Financial Disclosure, Reykdal was aware, or ought to have been aware, of the actual arrangements with the TPLs. Reykdal knew, or reasonably ought to have known, that the Financial Statements were, as a result of inadequate disclosure, misleading or untrue and did not fairly present the financial condition and operations of CSF.

Admitted Breaches of Alberta Securities Laws (Admitted Breaches)

26. Based on the Agreed Facts, Reykdal admits that:
 - 26.1 CSF contravened subsection 92(4.1) of the *Act* by making statements in CSF's Financial Disclosure that CSF knew, or reasonably ought to have known, were misleading or untrue in a material respect, or which failed to state a fact necessary to make a statement not misleading and which would reasonably be expected to have a significant effect on the market price or value of CSF's securities.
 - 26.2 Reykdal authorized, permitted or acquiesced in the contraventions set out in subparagraph 26.1;
 - 26.3 Reykdal contravened section 221.1 of the *Act* when he provided the Commission with misleading or untrue NI 52-109 certificates in respect of the YE 2011, Q1 2012 and Q2 2012 Financial Statements.

Circumstances Relevant to Settlement

27. Reykdal has not been previously sanctioned by the Commission.
28. Reykdal cooperated with Staff during the investigation.
29. Reykdal was the largest single shareholder of CSF during the Relevant Time. He resigned as a director and officer of CSF on July 7, 2014.
30. Reykdal does not have specialized expertise, education or accreditation in accounting or securities law.
31. In his role as CEO of CSF, Reykdal placed some reliance on professional advice, but accepts responsibility for the contraventions admitted to herein.
32. Reykdal acknowledges that he failed to take proper or sufficient steps to fulfill his obligations as a director and officer of CSF to ensure the completeness and accuracy of CSF's Financial Disclosure.

33. The original Notice of Hearing in this matter was issued in November 2017. Since the events described herein, and partly due to the ongoing proceedings, Reykdal has not acted as a director or officer of a reporting issuer other than CSF.
34. Reykdal has expressed his willingness to ensure that he receives appropriate education and training regarding the obligations of directors and officers of a reporting issuer.
35. This Agreement has saved the Commission the time and expense associated with a contested hearing under the *Act*.

Settlement and Undertakings

36. Based on the Agreed Facts and Admitted Breaches, Reykdal agrees and undertakes to the Executive Director of the Commission to:
 - 36.1 Pay to the Commission a monetary settlement of \$300,000 and an additional \$200,000 for costs;
 - 36.2 Resign all positions he may have as a director or officer of any reporting issuer;
 - 36.3 Be prohibited from acting as a director or officer, or both, of any reporting issuer for a period of two years from the date of this Agreement, unless the undertaking set out in subparagraph 36.4 has not yet been fulfilled in which case the prohibition continues until that undertaking has been fulfilled; and
 - 36.4 Pursue and complete training in best practices for public company governance and disclosure, as approved by the Executive Director of the Commission in writing upon satisfactory completion.

Administration

37. Reykdal acknowledges that he received independent legal advice and has voluntarily made the admissions and undertakings in this Agreement.
38. Reykdal waives any right existing under the *Act*, or otherwise, to a hearing, review, judicial review or appeal of this matter.
39. Reykdal 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.
40. Reykdal 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. Reykdal 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.

41. Execution and fulfillment of the terms of this Agreement by Reykdal resolves all issues relating to the conduct described above, and Staff will take no further steps against him arising from these facts.

42. This Agreement may be executed in counterpart.

Signed by GORDON JOHN REYKDAL)
at Edmonton, Alberta this 3 day of)
September, 2020, in the presence of:)

_____)
WITNESS NAME)
WITNESS NAME)

_____)
"Original signed by")
SIGNATURE)

_____)
"Original signed by")
GORDON JOHN REYKDAL)

) ALBERTA SECURITIES COMMISSION
)

Calgary, Alberta, 4 September, 2020)

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