IN THE MATTER OF

THE SECURITIES ACT, 1988 S.S. 1988-89, C. S-42.2

AND

IN THE MATTER OF

EMO Resources Ltd.,
Abdulmenaf Avci,
John S. Thornton,
Paul Jenson,
Elliot St. Claire,
Commodities Market Edge LLC
And
Cliff Krause
(referred to as the "Respondents")

DECISION

Hearing Held:	September 26, 2016
Before:	Paul Robinson, Chairperson Howard Crofts Justice Eugene Scheibel (referred to as the "Panel")
Appearances:	Christina Meredith on behalf of the staff ("FCAA staff" or "staff") of the Financial and Consumer Affairs Authority of Saskatchewan (the "Authority" or "FCAA") No appearance by the Respondents or anyone on their behalf.
Date of Decision:	October 17, 2016

Preliminary Matters:

[1] Counsel for FCAA staff advised the Panel of the efforts that had been made to inform the Respondents of the allegations against them and the date of the hearing. The Panel determined that proper notice had been given. Pursuant to subsection 9(15) of *The Securities Act, 1988 S.S. 1988-89 C.S- 42.2 (*the "Act"), the Panel determined that the hearing should proceed in the absence of the Respondents or anyone on their behalf.

[2] The Panel noted that the Respondents are not located in the province. In *Global Securities Corp. v British Columbia (Securities Commission)* 2000 SCC 21 at para 41, [2000] 1 SCR 494, the Supreme Court of Canada elucidated that it is well established that a province's authority over securities regulation is not limited to purely provincial matters. The Panel further noted that the Authority has applied this principle in number of previous cases including *In the Matter of the Securities Act, 1988, SS c S-42.2 and In The Matter of Ocean International et. al. (Ocean).* In *Ocean,* the panel determined that a trade had occurred in Saskatchewan even though the Respondents were not located in the province. Based on the Supreme Court ruling and the decisions of previous panels, the Panel determined that it had jurisdiction to hear the current matter.

[3] The financial instruments in the current matter were common shares. Subclause 2(1)(ss)(v) of The Act specifically includes shares in the definition of security. The Panel determined that the common shares offered for sale by the Respondents were securities as defined by the Act.

Background:

[4] In a Statement of Allegations dated May 26, 2016, FCAA Staff allege that in or around October 2013 to in or around December 2013, the Respondents individually or collectively solicited and sold securities in EMO Resources Ltd. ("EMO") totalling approximately $215,700 USD to eight Saskatchewan residents.

[5] FCAA staff allege that the Respondents' actions, individually or collectively, contravened sub-section 58(1), clause 27(2)(a) and sub-section 44(3) of the Act.

[6] In the Statement of Allegations, FCAA staff asked the Panel to consider whether or not it is in the public interest to make the following orders:

> (a) Pursuant to sub-section 134(1)(a) of the Act, all of the exemptions in Saskatchewan securities laws do not apply to the Respondents;
>
> (b) Pursuant to sub- section 134(1)(d) of the Act, the Respondents shall cease trading in any securities or derivatives in Saskatchewan;
>
> (c) Pursuant to sub-section 134(1)(d.1) of the Act, the Respondents shall cease acquiring securities or derivatives for and on behalf of residents of Saskatchewan;
>
> (d) Pursuant to section 135.1 of the Act, the Respondents shall jointly and severally pay an administrative penalty to the Authority, in the amount of $50,000;
>
> (e) Pursuant to section 135.6 of the Act, the Respondents shall pay financial compensation to each person or company found to have sustained financial loss as

a result, in whole or in part, of the Respondents contraventions of the Act, in amounts to be determined; and

(e) Pursuant to section 161 of the Act, the Respondents shall pay the costs of or relating to the hearing in this matter.

Evidence:

[7] FCAA staff called four witnesses at the hearing, Harvey White (White) an investigator with the FCAA and three Saskatchewan investors. In conjunction with the testimony of the witnesses, FCAA staff provided the Panel with an exhibit book which contained copies of the exhibits entered into the records of this hearing as well as a Brief of Law. Subsequent to the hearing, staff provided the Panel with two documents: "Brief of Law and Argument" and "Summary of Evidence Presented at Hearing".

Testimony of Investor 1

[8] Investor 1, a resident of Saskatchewan, testified that in or around December 2013, he was contacted by telephone by Krause on behalf of EMO. He further testified that he does not know how Krause came to have his telephone number.

[9] Subsequent to the telephone call, Investor 1 received an email from EMO containing two attachments; a two page EMO fact sheet and a six page EMO stock purchase agreement. Investor 1 understood from Krause and the fact sheet that EMO was involved in an off shore drilling venture in Cyprus. He also testified that Krause advised him that an Initial Public Offering was in the process and that EMO shares would soon be traded on the TSX Venture (TSX-V), Over-the-Counter Bulletin Board in the United States (OTCBB) and Frankfurt exchanges.

[10] In or around January 2014, Investor 1 sent a completed stock purchase agreement to EMO and purchased 80,000 EMO shares for a total of $20,100 USD.

[11] The stock purchase agreement contained an affirmation clause. By signing the stock purchase agreement, Investor 1 affirmed that he was either an accredited or professional investor and that he was capable of assessing the risks of a speculative investment. Investor 1 was uncertain about whether or not he had been asked about his net worth or net income and whether or not any of his conversations with Krause had included the term "accredited investor".

[12] The shares were paid for by wire transfer to the lawyer's trust account (IOLTA) at the Norman T. Reynolds Law Firm (Reynolds) of Houston Texas which account was held at the Amegy Bank of Texas in Houston Texas.

[13] Investor 1 further testified that when he inquired why he had not received a share certificate, he was advised that a leveraged buyout was taking place and that this was "good news". Investor 1's last contact with EMO was in or around March 2014.

[14] Investor 1 testified that, to this date, he has received no return from his investment nor has any part of his initial investment been returned to him.

Testimony of Investor 2 and Spouse

[15] Investor 2, a resident of Saskatchewan, testified that sometime during 2012 he was contacted by telephone by Cliff Krause (Krause) who held himself out as a representative of Commodities Market Edge LLC (CME). Krause advised Investor 2 that CME offered broker assisted commodities trading as well as professionally managed accounts. Investor 2 further testified that prior to the telephone call he had no prior knowledge of Krause or CME.

[16] Investor 2 testified that he made an investment in commodities futures with CME through Krause. The investment was successful and Investor 2 testified that his initial investment was returned along with a small profit of approximately $1000. No documents or other evidence of this investment were presented to the Panel.

[17] Investor 2 further testified that in or around the spring of 2013, he was again contacted by telephone by Krause this time about an investment in EMO. Because of his previous success investing with Krause, Investor 2 agreed to purchase EMO shares.

[18] Krause provided Investor 2 with a stock purchase agreement. The agreement, which also contained the affirmation clause, was in the name of the investor's spouse, who subsequently testified that she had given her husband authority to invest with EMO and engage in all the dealings with EMO on her behalf. She further testified that she had signed the stock purchase agreement.

[19] As was the case with Investor 1, the shares were paid for via electronic transfer of $5,100 USD to the Reynolds trust account

[20] Investor 2 subsequently received share certificate #CV-8 for 20,000 EMO shares from Reynolds. The shares in EMO were in his spouse's name.

[21] Investor 2 testified that he seems to recollect that he was asked to fill out a form about his annual income and net worth but could not remember what he would have answered and also seems to recollect that he was directed by Krause to write down any number that suited him.

[22] Investor 2 testified that to this date has received no return from his investment nor has any portion of his investment been returned to him.

Testimony of Harvey White

[23] White testified that his investigation into this matter was initiated when the Enforcement Branch of the FCAA Securities Division was contacted by the Manitoba Securities Commission (MSC). MSC staff advised FCAA staff that MSC's investigation into the activities of EMO had identified eight Saskatchewan investors who had invested approximately $215,700 in total with EMO.

[24] White advised the Panel that significant portions of the evidence he had gathered was obtained from enforcement staff in a number of Canadian and international agencies including the RCMP.

[25] A Certificate of Incorporation for EMO Resources Ltd in the Republic of Seychelles, dated April 23, 2012 was entered into evidence. White testified that he was unable to determine if the certificate was authentic.

[26] The EMO Information Memorandum dated May 9, 2012 that described the investment in EMO shares and identified the corporate head office address as an office tower in Nicosia Cyprus, was entered into evidence. The EMO Information Memorandum contained a Letter from John S. Thornton (Thornton), Chairman of EMO Resources Ltd. White testified that the address was a virtual office.

[27] To facilitate the presentation of his evidence, White submitted a chart prepared by the RCMP that showed how funds flowed and how shares were issued to investors. Investors electronically transferred funds to the Reynolds Trust account held at the Amegy Bank. Elliot St. Claire (St. Claire) directed that Reynolds send the money to one of the following: K.R. Exchange Services Ltd. located in Israel, Denebola Holdings located in Australia, Saxon West Bank located in Latvia and Delicer International Ltd located in the Seychelles. St. Claire then gave instructions to Paul Jenson (Jenson) who directed Integral Transfer Agency to issue shares to investors. Evidence was submitted that this process was followed for all eight Saskatchewan investors with the exception of Investor 1 who did not receive a share certificate.

[28] An Escrow Agreement between EMO Resources and the Reynolds law firm signed by Thornton on behalf of EMO was entered into evidence. The agreement specified that the sole duty of the escrow agent was to receive proceeds from the sale of shares and hold them subject to release. A clause in the escrow agreement gave Delicer International Ltd., a company owned by St. Claire, power of attorney for the account.

[29] An agreement dated February 12, 2013, between Integral Transfer Agency and EMO to issue share certificates, was entered into evidence. The agreement was signed by Abdulmanef

Avci (Avci) who identified himself as a director of EMO. The agreement gave Jenson authority to direct operations of the EMO account.

[30] White testified that to his knowledge, none of the Respondents are registered with the Saskatchewan Corporations Branch, registered on the National Registration Database or with the Saskatchewan Corporations Branch.

[31] White further testified that none of the Respondents are registered in any capacity with the Authority. He also testified that neither a prospectus nor any report claiming any exemption has been filed with the Director of the Securities Branch.

[32] White also testified that an official with the TSX V Exchange confirmed that their internal records contained no information that EMO would be listed on the exchange. He further testified that to his knowledge, EMO shares have never been listed on the TSX-V, OTCBB or Frankfurt exchanges.

[33] White testified that Krause is believed to be a resident of Montreal, Quebec; St. Claire is believed to be located in the Adelaide region of Australia; Avci's 2011 passport shows him as being a Turkish citizen and the whereabouts of Thornton and Jenson are unknown.

Analysis of the Evidence by the Panel

[34] Staff contended that when Krause solicited Saskatchewan investors to invest in EMO shares he did so as a representative of CME. The only evidence before the Panel of any type of relationship between CME and EMO is that Investor 2 sent an email to Krause at CME when the payment for the EMO shares was submitted. There is no evidence in any of the corporate documents before the panel that there is any relationship between the two corporate entities. If any such relationship did exist, in the normal course it would have been disclosed in the Information Memorandum. In addition, there is no natural relationship between the business operations of the two companies, EMO held itself out as being in the energy exploration business while CME held itself out as operating a commodities trading enterprise.

Based on the above, the Panel has determined that there was not sufficient evidence before it to conclude that CME was involved in the distribution of the EMO shares.

[35] The Panel noted that, based on the evidence led, the sale of futures contracts to Investor 2 by Krause through CME may have resulted in contraventions of the Act. These possible violations were not included in the Statement of Allegations and the Panel has made no determination in this regard.

[36] The individual respondents, Avci, Thornton, Jenson St. Claire and Krause were all involved in the sale of EMO shares to the eight Saskatchewan investors. Avci held himself out as a Director of EMO and signed the transfer agreement with Integral Transfer Agency on behalf of EMO. Thornton held himself out as EMO's Chairman. St. Claire directed the flow of funds

from the Reynolds Trust Account and Jenson directed Integral Transfer Agency to issue shares to the Saskatchewan investors.

[37] Evidence was introduced showing that Investors 1 and 2 signed share purchase agreements by which they affirmed that they were accredited or professional investors and capable of assessing the risks of risky investments. Investor 1 testified that he had no recollection of being asked about his net income or net worth. Investor 2 testified that Krause had advised him to fill in whatever net income and net worth numbers he felt like on a form that was apparently supplied to him. The use of the accredited investor exemption requires that a diligent determination be made of the investor's financial circumstances. The Panel concluded that Krause had not met this test.

The use of this exemption also requires that documents be filed with the Authority of any trades that are made pursuant to the exemption. White testified that to his knowledge, no documents of any kind were filed by the corporate Respondent EMO or any of the individual Respondents.

The Panel heard evidence that neither Investor 1 nor Investor 2 had any knowledge of EMO or any of the individual Respondents prior to receiving a telephone call from Krause. The Panel concluded that the Family, friends and business associates exemption was not available to the Respondents.

The Panel concluded that no exemptions were available to the Respondents to save them from the registration and prospectus requirements of the Act.

[38] The Panel heard evidence that Krause solicited Investor 1 and Investor 2 to invest in EMO shares. In so doing, the Respondents took action in the furtherance of the sale of securities thereby engaging in the business of trading in securities. The Panel heard evidence from White that none of the Respondents were registered in any capacity at the relevant times. Thus the Panel has concluded that EMO, Avci, Thornton, Jenson, St. Claire and Krause were in contravention of clause 27(2)(a) of the Act; acting as a dealer without being registered to do so.

[39] Staff alleged that the trading in securities would have been related to securities that had not previously been issued and would have been distributions under the Act. White testified that no preliminary prospectus was filed or receipts issued for such distribution, both conditions of subsection 58(1) of the Act. Thus the Panel has concluded that EMO, Avci, Thornton, Jenson, St. Claire and Krause contravened subsection 58(1) of the Act.

[40] Evidence presented to the Panel showed that Krause with the intention of effecting a trade in a security, represented to investors that EMO shares would be listed on the TSX-V, OCBB and Frankfurt exchanges. The EMO fact sheet submitted into evidence also made this claim. White testified that he had been advised by an official with the TSX Venture Exchange that there is no information that EMO had applied to be listed on the exchange. White also testified that to his knowledge the Director had not given his written permission to make such

representations to investors. The Panel concluded, that in undertaking these actions the Respondents EMO, Avci, Thornton, Jenson, St. Claire and Krause had contravened subsection 44(3) of the Act; making a representation a security will be listed on an exchange without the Director's permission to do so.

Sanctions:

[41] Staff requested that, pursuant to section 134(1) of the Act, the Respondents be permanently banned from participating in the securities industry in Saskatchewan. In supporting this request, the staff noted that in circumstances where Respondents' livelihoods do not depend on doing business in Saskatchewan, the whereabouts of Respondents is either unknown or not in Canada, and Respondents do not appear at the hearing to defend themselves against the allegations against them, previous panels have determined that permanent bans are appropriate. Staff drew the Panel's attention to the decisions of the panels in the *Ocean International and IWF Inc.* matters as examples of cases in which these circumstances were present and permanent bans were ordered.

Based on the arguments advanced by staff, the Panel concluded that pursuant to section 134(1) of the Act., EMO, Avci, Thornton, Jenson, St. Claire and Kraus should not be allowed to trade in securities or derivatives in Saskatchewan, offer advice respecting securities, trades or derivatives in Saskatchewan, make use of Saskatchewan's exemptions, or acquire securities or derivatives for or on behalf of Saskatchewan residents.

[42] Staff requested that the Respondents be required to pay an administrative penalty of $50,000 based on the penalties ordered in the *Tri-Link* and *Gold Vault Metals* cases. In *Tri-Link*, the Respondents were found to have contravened clauses 27(2)(a) and 58(1) of the Act by trading while not registered to do so and making a distribution while not having met the prospectus requirements of the Act. The Respondents were found to have raised $4.4 million from 67 investors. In addition to being permanently banned from trading in securities in Saskatchewan, the Respondents were ordered to pay an administrative penalty of $100,000.

In *Gold Vault Metals* the Respondents raised $45,000 from Saskatchewan investors and were found to have contravened sections 27(2)(a) and 58(1) of the Act. Four of the five respondents received permanent bans from trading in securities and a total of $35,000 in administrative penalties was ordered.

EMO, Avci, Thornton, Jenson, St. Claire and Kraus disregarded securities laws, made no attempt to respond to the Notice of Hearing, communicate with staff or attend the hearing. The Panel concurred with the staff's view that a strong message must be sent that there will be serious consequences for those who disregard Saskatchewan's securities laws. Considering the circumstances in *Tri-Link* and *IWF*, the conduct of the Respondents and the losses to investors in the present matter, the Panel believes that an administrative penalty of $50,000 is appropriate.

[43] In the Statement of Allegations, staff requested that pursuant to section 135.6 of the Act, the Respondents be required to pay financial compensation to each person or company found to have sustained financial loss as a result the Respondents' contraventions of the Act. Staff advised the Panel that submissions on this matter may be made at a later date.

The Panel concluded that, consistent with the decisions of previous panels, financial compensation orders are appropriate in this matter.

[44] The wrongful acts of the Respondents have resulted in additional costs for the Authority. The Panel concurs with the staff's request pursuant to subsection 161(1) of the Act for an order that the Respondents pay the costs of and related to the hearing.

[45] Accordingly, the Panel will issue consequential Orders in due course that reflect the following determinations on sanctions in a manner consistent with the public interest:

a) Pursuant to clause 134(1)(a) of the Act, all of the exemptions in Saskatchewan securities laws do not apply to EMO, Avci, Thornton, Jenson, St. Claire and Krause, permanently;

b) Pursuant to clause 134(1)(d) of the Act, EMO, Avci, Thornton, Jenson, St. Claire and Krause shall cease trading in any securities and derivatives, in Saskatchewan, permanently;

c) Pursuant to clause 134(1)(d.1) of the Act, EMO, Avci, Thornton, Jenson, St. Claire and Kraus shall cease acquiring securities and derivatives, for and on behalf of residents of Saskatchewan, permanently;

d) Pursuant to clause 134(1)(e) of the Act, EMO, Avci, Thornton, Jenson, St. Claire and Krause shall cease giving advice respecting securities and derivatives, for and on behalf of residents of Saskatchewan, permanently;

e) Pursuant to section 135.1 of the Act, EMO, Avci, Thornton, Jenson, St Claire and Krause shall pay an administrative penalty to the Authority, in the amount of $50,000.

f) Pursuant to section 135.6 of the Act, EMO, Avci, Thornton, Jenson, St. Claire and Krause shall pay financial compensation to each person or company found to have sustained financial loss as a result, in whole or in part, of the Respondents' contraventions of the Act, in amounts to be determined; provided that such requests are received by the Panel by the end of the day on December 31, 2016, and

g) Pursuant to section 161 of the Act, EMO, Avci, Thornton, Jenson, St. Claire and Krause the Respondents shall pay the costs of or relating to this hearing in this matter.

This is a unanimous decision of the Panel.

Paul Robinson, Hearing Panel Chairperson

Howard Crofts, Hearing Panel Member

Justice Eugene Scheibel, Hearing Panel Member