Financial and
Consumer
Affairs Authority

Suite 601
1919 Saskatchewan Drive
Regina, SK
Canada S4P 4H2

IN THE MATTER OF

***THE SECURITIES ACT, 1988*, S.S. 1988-89, c. S-42.2**

AND IN THE MATTER OF

THE FINANCIAL AND CONSUMER AFFAIRS AUTHORITY
("FCAA")

AND IN THE MATTER OF

DOMINION BITCOIN MINING COMPANY LTD.,
JASON EDMUND DEARBORN,
PETER SCOTT VOLDENG, AND
RONALD JAMES FREDERICK GIBBON
(the "Respondents")

Ms. Dallas Smith — for The Financial and Consumer Affairs Authority

Cloudesley Rook-Hobbs — for Jason Edmund Dearborn

Decision dated: October 22, 2015

[1] The Respondent, Dominion Bitcoin Mining Company Ltd. ("Dominion") is a federally incorporated business corporation. The respondents, Jason Edmund Dearborn, of Regina, Saskatchewan, Peter Scott Voldeng, of Saskatoon, Saskatchewan, and Ronald James Frederick Gibbon, of Edmonton, Alberta, are or were at the time of incorporation of Dominion, directors of the company.

[2] By a number of allegations, the Staff of The Financial and Consumer Affairs Authority of Saskatchewan ("FCAA"), asserts that the Respondents, acting in concert, engaged in an offering of securities without the filings and registrations required by *The Securities Act, 1988*, S.S. 1988-89, c. S-42.2 (the "*Act*"). During a hearing of the matter attended by all parties, evidence was presented in the form of a number of screen captures taken from the Website at www.dominionbitcoin.com (the "Website"). The screen captures were obtained by Mr. Harvey White, an FCAA Investigator, who searched the Website during April of 2014. Mr. White testified that he accessed the Website by entering the URL mentioned above on a computer on April 30, 2014 and several previous days. Details of what he found are as follows:

(i) On a page labelled "Corporate Structure," the Website stated, "There are ten provincially held entities that each contract with Dominion. Each of these Provincial Companies is 90% owned by Dominion. When you purchase a share you are purchasing assets from Dominion in the regional entities. You are purchasing shares as assets." The page identified the following as the ten provincial corporations: Grasslands Bitcoin, Red River Bitcoin, Algonquin Bitcoin, Bitcoin Nationale, Grand Banks Bitcoin, New Scotland Bitcoin, Acadian Bitcoin, GreenGables Bitcoin, Rocky Mountain Bitcoin, and Pacific Bitcoin;

(ii) On a page labelled "BitCoin Information," the Website stated, "By taking part in our offering, you own a share in one of the ten provincial companies that own Dominion. That share allows you an equal part in EVERY SINGLE BITCOIN WE EVER MINE. Not one single portion of a bitcoin will ever be used for anything, including operations, without your consent, since shareholders may take part in any growth. This means we give you 'the gold.' 100% of all bitcoins goes to the shareholders;"

(iii) On a page labelled "Regulatory Adherence," the Website stated, "Investment is being made directly into provincial corporations with local Presidents. The assets of these corporations are mining services agreements with Dominion. By this process all investors have direct recourse relative to their investment with corporate officers and the provincial securities commission that oversees investment processes;

(iv) On a page labelled "Mining 'the new frontier,'" the Website stated, "If you are a sophisticated investor please feel free to peruse the rest of the site. Learn about bitcoins and learn how to share in the proceeds;" and

(v) On a page labelled "How to Invest," the Website provided a phone number, with area code 306, and an email address, and stated, "We are accepting investors from all ten provinces at this time. We will only accept Sophisticated investors and will require third party verification based on your individual provincial requirements."

[3] On May 7, 2014, the FCAA issued an Investigation Order and Mr. White proceeded under its authority to interview the individual Respondents. Objections to the admission of recordings of these interviews on the ground that they offended the Respondents' rights under the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11 (the "*Charter*") were considered by the Panel and fully argued by the Respondents and FCAA counsel.

[4] The Panel has considered authorities with respect to the protections provided by sections 7, 8 and 11 of the *Charter*; *British Columbia (Securities Commission) v Branch,* [1995] 2 SCR 3, 1995 CarswellBC 171 and *Johnson v British Columbia (Securities Commission)*, 1999 BCCA 465, 1999 CarswellBC 1824 (In Chambers). The relevant sections provide as follows:

> **7.** Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice;
>
> **8.** Everyone has the right to be secure against unreasonable search or seizure.
>
> ...
>
> **11.** Any person charged with an offence has the right
> ...
>
> (c) not to be compelled to be a witness in proceedings against that person in respect of the offence....

[5] The *Act* is regulatory in nature and was enacted with the goal of protecting the investor, as well as the goals of ensuring capital market efficiency and public confidence in the securities system. The nature and purpose of the *Act* justifies the powers it grants to investigators with respect to compelling testimony and the production of documents, and the exercise of those powers does not infringe the individual Respondents' section 7 and 8 Charter rights.

[6] Compelling testimony from the individual Respondents does not infringe their section 7 and 11 Charter rights to refuse to provide information which may serve to incriminate them. The proceedings taken pursuant to the *Act* are administrative in nature and instituted for the protection of the public in accordance with the *Act's* purposes. Proceedings of this sort are not criminal or quasi-criminal in nature, and thus sections 7 and 11 of the *Charter* are not applicable.

[7] Section 11 of the *Charter* will not prevent compelled testimony and evidence from being admitted in proceedings before the Panel. Such testimony and evidence was obtained by FCAA Staff for the purpose of furthering the objectives of the *Act*, including protecting investors and regulating capital markets. Again, the proceedings before the Panel are not criminal in nature, and thus any compelled testimony or evidence cannot serve to incriminate the Respondents.

[8] Subsection 131(5) of the *Act* does not render all enforcement proceedings under it to be criminal or quasi-criminal proceedings, thereby engaging the individual Respondents' Charter rights. An individual's Charter rights will be engaged only when criminal or quasi-criminal sanctions are a possible outcome of the proceedings. FCAA Staff retain remedial flexibility and it is open to them to choose the appropriate avenue of enforcement for alleged breaches of the *Act*. Had the Respondents been prosecuted pursuant to subsection 131(5) of the *Act*, they would be entitled to different procedural protections. Those different procedural protections are warranted by virtue of the fact that different consequences follow such prosecution.

[9] The Panel has decided on these grounds to admit the recorded interviews into evidence.

[10] A reading of the screen captures leaves room for little doubt that an offering of securities was being made and *prima facie*, a contravention of s. 27 of the *Act* had occurred.

[11] It is asserted on behalf of the Respondents, that the Website was not live, that it was or was supposed to be password protected and encrypted, and that it was a Website under construction, which did not reflect the present status of the Bitcoin project. They say that there were no securities to sell and, most of the corporations mentioned did not exist. The terms "whiteboard" and "chatroom" were mentioned.

There is evidence to support their position. On April 28, 2014, two days before the aforementioned screen captures, some of the pages appear to have been, as to most of their content, encrypted. Encrypted pages were presented for the purpose of showing that the offering

was not what it seemed to be. The formation of the company had been undertaken by experienced counsel and by the parties, and they were all fully aware of the securities laws with which they fully intended to comply. If part of the Website was not effectively password protected and encrypted, it was unintended. Certain facts emerge from the evidence:

(i) no securities were sold;

(ii) no member of the public subscribed;

(iii) there were no shares created in anticipation of a sale;

(iv) the Respondents had no clear picture of what an investor might be investing in.

[12] Section 27 of the Act prohibits a person or company from acting as a dealer without registration. The term "dealer" is defined in clause 2(1)(n) of the Act to mean a person or company engaged in the business of trading in securities. "Trade" is defined under clause 2(1)(vv) of the Act to include any act in furtherance of trading. After considering the conduct of the Respondents and the context in which the acts occurred, we do not find that the above actions constitute acts in furtherance of trading.

[13] Much of the evidence tendered at the hearing was objected to for various reasons. Most of the objections were of a technical or procedural nature. Subsections 9(6) and (7) of the *Act* provide as follows:

> (6) In the case of a hearing or review, evidence shall be received that, in the opinion of the Commission, the Chairperson or the Director, as the case may be, is relevant to the matter being heard.
>
> (7) The legal and technical rules of evidence do not apply to a hearing or review.

These provisions give the Panel considerable latitude in determining what evidence to admit and if admitted, the weight to assign to that evidence. The evidence received was tendered with honest intent, and reasons for strictly enforcing rules of evidence were not present.

[14] In light of the decision of the Panel most, if not all, of the objections taken will be moot and accordingly we are not dealing with them individually.

DECISION

[15] It is the determination of the Panel that, notwithstanding the initially apparent validity of the allegations of the FCAA Staff, an offering of shares did not at material times exist, and the parties did not individually or collectively engage in any acts in furtherance of trading or in any breach of the provisions of the *Act*.

[16] It would not, therefore, be in the public interest to award sanctions as sought by the Staff of the FCAA.

Mary Ann McFadyen

The Hon. L. A. Kyle

The Hon. E. A. Scheibel