

**DECISION OF A PANEL APPOINTED PURSUANT TO *THE FINANCIAL AND CONSUMERS
AFFAIRS AUTHORITY OF SASKATCHEWAN ACT***

In the Matter of

The Securities Act, 1988, SS 1988-89, c S-42.2

and

In the Matter of

ASBC Financial a.k.a ASBCFinancial

And

Walter Turner

Hearing held: January 7, 2020

Panel: Peter Carton (Chairperson)

The Honorable Eugene Scheibel (Panel Member)

Norman Halldorson (Panel Member)

Appearances: Dallas Smith (Counsel for Staff of the Financial and Consumer
Affairs Authority of Saskatchewan)

██████████ (Investor)

Troy Ostapiw (Investigator for the Securities Division, Financial
and Consumer Affairs Authority of Saskatchewan)

No one appeared on behalf of the Respondents, ASBC Financial,
ASBCFinancial or Walter Turner

Date of Decision: February 27, 2020

Background

1. Financial and Consumer Affairs Authority of Saskatchewan (“FCAA”) Staff allege that ASBC Financial, a.k.a. ASBCFinancial (“ASBC”) and Walter Turner (“Turner”) (collectively “the Respondents”) contravened clause 27(2)(a), of *The Securities Act, 1988* (“the Act”) as well as clause 27(2)(b) of the Act, by acting as dealers and advisers in Saskatchewan while not registered to do so.
2. FCAA Staff’s allegations against the Respondents were outlined in a Statement of Allegations, dated August 12, 2019. The actions that form the basis for the allegations took place over a period of months between 2017 and 2018.
3. As a result of the Respondents’ breaches of the Act, FCAA Staff in the statement of allegations urged the hearing panel of the FCAA (“the Panel”) to consider whether it was in the public interest to make the following orders:
 - a. pursuant to clause 134(1)(a) of the Act, the exemptions in Saskatchewan securities laws do not apply to the Respondents, permanently;
 - b. pursuant to clause 134(1)(d) of the Act, the Respondents shall cease trading in any securities or derivatives in Saskatchewan, permanently;
 - c. pursuant to clause 134(1)(d.1) of the Act, the Respondents shall cease acquiring securities or derivatives for and on behalf of residents of Saskatchewan, permanently;
 - d. pursuant to clause 134(1)(e) of the Act, the Respondents shall cease giving advice respecting securities, trades or derivatives in Saskatchewan, permanently;
 - e. pursuant to section 135.1 of the Act, the Respondents shall pay an administrative penalty of \$35,000; and
 - f. Pursuant to section 161 of the Act, the Respondents shall pay the costs of or relating to the hearing in this matter.

Evidence

4. During the course of the hearing in this matter, the Panel heard evidence from the following witnesses:

Witness #1, [REDACTED]:

[REDACTED] testified as follows:

5. [REDACTED], a long-time resident of Regina was referred to ASBC by her daughter. When she looked at the website, it looked legitimate, professional and she had a favourable impression of the company. She applied online and opened an account.
6. Starting in or around December 2017 and continuing through to or around June 2018, [REDACTED] sent and received a number of emails to and from ASBC (see **Exhibit S1**).
7. She was told by ASBC that she should make various specific investments.
8. She was given instructions, via email from ASBC, to wire transfer funds to specific accounts, each held in the name of [REDACTED] in California, U.S.A., in order that she could fund her account at ASBC and make the investments she was being told to make.
9. She followed the instructions she received from ASBC, and made the following wire transfers from her personal bank account:
 - a. On or about December 17, 2017:
 - in the amount of USD\$75,663.99 converted to \$97,999.99 (see **Exhibit S2**), payable to the benefit of [REDACTED], to a bank located in Fresno, California;
 - b. On or about January 16, 2018:
 - in the amount of USD\$31,000.00 converted to CAD\$39,177.80 (see **Exhibit S2**), payable to the benefit of [REDACTED], to a bank located in Fresno, California; and,
 - c. On or about February 2, 2018:
 - in the amount of USD\$43,000.00 converted to CAD\$53,926.30 (see **Exhibit S2**), payable to the benefit of [REDACTED], to a bank located in Fresno, California.
10. [REDACTED] understood that the funds she had sent to ASBC were used to make investments in bitcoin, litecoin, monero and gold, though [REDACTED] did not ever take delivery or receive into her possession any bitcoin, litecoin, monero or gold.
11. [REDACTED] did not choose these investments herself, but she was told by ASBC that she should make these specific investments.

12. [REDACTED] also received emails from ASBC which suggested that she purchase various stocks in solar energy companies, though she does not recall making investments into these (see **Exhibit S1**).
13. [REDACTED] received a few emails from an individual who worked for ASBC named Walter Turner (see **Exhibit S1**). [REDACTED] understood that Turner was the person with whom her daughter had been dealing with at ASBC.
14. [REDACTED] advised that her daughter also invested through ASBC, but she does not know how much she invested.
15. [REDACTED] was aware that ASBC had a website during the time frame that she was investing, and she visited this website occasionally. When she visited the website, [REDACTED] was able to log in, using a username and password, and when she did so, she was able to see a balance in her account. She understood that her balance had been growing as a result of earnings on her investments.
16. [REDACTED] tried to make some withdrawals from her account at ASBC but was never able to do so. She made requests via email to have funds transferred out, but in the end, she was never able to get any of her money back.

Witness #2, Troy Ostapiw (Ostapiw):

Ostapiw testified as follows:

17. Ostapiw is an investigator in the Securities Division of Financial and Consumer Affairs Authority of Saskatchewan (the Authority). He took over this file from another investigator (Deb Swenson), after he was hired in 2019.
18. Ostapiw reviewed Swenson's notes and the exhibits left on the file by Swenson, and picked up the investigation from there.
19. Ostapiw noted that Swenson had saved as exhibits a handful of documents, each labelled July 5, 2018, which appeared to be visual captures of a website that was located at www.asbcfinancial.com ("the Website"). He noted from her notes that she had indicated she had visited that website on that date.
20. Upon taking over the file in 2019, Ostapiw attempted to visit the website himself, but by this time, it was no longer available, and he was unable to do so.
21. Ostapiw testified he used a tool called the "Wayback Machine" in his investigation. It was developed by the founders of the Internet Archive in conjunction with the University of California in 2001 and enables users to view websites as they existed in

any point in time. Despite the website not being in existence now, by using this tool he was able to see a copy of ASBC's website as it was in August of 2018. Ostapiw provided the Hearing Panel with a demonstration of the Wayback Machine, and in so doing, was able to show the Hearing Panel that there appeared to be a copy of the Website which was captured by the Wayback Machine in August 2018.

22. Ostapiw was not involved in the development of the Wayback Machine and was unable to comment on its accuracy, however, he provided the information in the demonstration as supporting his opinion that the documents captured by Swenson, which appeared to show the contents of the Website on July 5, 2018, were accurate captures of the website as it appeared to the public on the internet.
23. Ostapiw provided the Hearing Panel with a number of documents, each labelled July 5, 2018, and each of which appeared to have been a visual capture of a page of information from the Website on that date (see **Exhibit S3**). It was Ostapiw's position, given the information above, that these were depictions of the Website as of July 5, 2018.
24. From these documents, Ostapiw pointed out a few key phrases:
 - a. "From the first day, our aim has not changed: we would like to offer forex managed accounts service to our clients which meet their expectations and desires completely.";
 - b. "By holding an investment with us you can enjoy the benefits of the forex and cryptocurrency market without economic expertise, time and efforts [*sic*].";
 - c. "With our trading services, you can have 71% ROI (return on investment) in our expert managed account or subscribe to our signals with 85% winning rate."; and
 - d. "We provide expert financial advice and wealth management. With over 20 years of experience we'll ensure you're getting the best guidance from the smartest people in the industry. For businesses and individuals, you can rely on our team of financial experts to deliver".
25. Ostapiw also noted, based upon the information in the printouts, the following:
 - a. There appeared to be someone named Walter Turner who was listed on the Website, alongside a picture, as an Account Manager for ASBC;
 - b. The Website listed an address located in Toronto, Ontario, for ASBC;
 - c. The Website indicated that ASBC was accepting clients from all countries, including Canada; and
 - d. The Website stated that ASBC was regulated by the National Futures Association, as well as the Commodity Futures Trading Association.

26. Through the course of his investigation into this matter, Ostapiw was able to determine that ASBC was not located at the address that was listed in Toronto, Ontario, as someone from the Ontario Securities Commission attended at that address, and it was reported by this individual that ASBC was not located there.
27. Ostapiw also determined that neither ASBC nor Walter Turner were registered with the National Futures Association (see **Exhibit S4**), nor the Commodity Futures Trading Association.
28. Ostapiw indicated that he was not able to locate any real individual named Walter Turner who worked for ASBC, nor was he able to locate any real company behind ASBC. There was a company with a similar name, namely, ASBC Financial Planning Pty Ltd., out of Australia, however, through communications with its director, Ostapiw satisfied himself that this was not the same company that ██████ had been dealing with, and that this Australian company had actually gone out of business in 2016. Ostapiw also indicated that he did not locate any records of ASBC or Walter Turner being registered with the Authority in any capacity.

Issues for the panel to determine

29. The evidence presented at the hearing raises the following issue for determination:

- (i) Did ASBC and Turner act as dealers and advisers in Saskatchewan while not registered to do so, contrary to clauses 27(2)(a) and 27(2)(b) of the Act?*
- (ii) If so, what is the appropriate Order for the Panel to impose?*

Analysis

30. Did ASBC and Turner act as dealers and advisers?

31. Subsection 27(2) of the Act states:

No person or company shall:

- (a) act as a dealer or underwriter unless the person or company:
 - (i) is registered as a dealer; or
 - (ii) is registered as a representative of a registered dealer and is acting on behalf of the dealer;
- (b) act as an adviser unless the person or company:
 - (i) is registered as an adviser; or
 - (ii) is registered as a representative of a registered adviser and is acting on

behalf of the adviser;

32. “Dealer” is defined at clause 2(1)(n) of the Act as “a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in securities or derivatives as principal or agent”.

33. “Adviser” is defined at clause 2(1)(a.1) as “a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising another as to the investing in or the buying or selling of securities or derivatives”.

34. Clause 2(1)(vv) of the Act provides:

“trade” includes:

- (i) any transfer, sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, instalment or otherwise, but does not include a purchase of a security or, except as provided in subclause (iv), a transfer, pledge, mortgage or encumbrance of securities for the purpose of giving collateral for a bona fide debt;
- (i.2) buying, selling or otherwise acquiring or disposing of a derivative;
...; and
- (v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of anything mentioned in subclauses (i) to (iv);

35. The term “security” is also defined in a similar fashion in the Act, at clause 2(1)(ss):

“security” includes:

- (i) any document, instrument or writing commonly known as a security; ...
- (iv) a contract or instrument evidencing a derivative, subscription or other financial contract or instrument referencing an interest in or to a security if the trade in the security delivered pursuant to the contract or instrument would constitute a distribution; ...
- (xiv) any investment contract; ...

36. “Derivative”, according to clause 2(1)(o.1), means:

- (i) an option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value or delivery, payment or settlement obligations are derived from, referenced to or based on an underlying interest of a derivative, including a value, price, index, event, probability or thing; ...

but does not include:

- (ii) a contract or instrument that would be derivative under subclause (i) if the contract or instrument is an interest in or to a security and a trade in the security pursuant to the contract or instrument would constitute a distribution.

37. These sections of the Act prohibit anyone from engaging in the business of trading in or advising on securities or derivatives, or holding themselves out as engaging in the business of trading in or advising on securities or derivatives, unless registered as a dealer or adviser, as the case may be.
38. The panel heard clear evidence that the Respondent's engaged in the business of trading and advising in securities and derivatives in Saskatchewan while not registered to do so.
39. Our first witness, [REDACTED], testified she wired monies to the Respondents, upon their advice, to buy securities, cryptocurrencies and gold as investments on her behalf. The panel found her to be a very vulnerable investor with limited knowledge.
40. The panel saw evidence through multiple email exchanges between the Respondent and the Investor ([REDACTED]) that the investor was receiving advice and instruction on how to facilitate the trades.
41. The panel also viewed evidence from the website that the Respondents were engaged in the business of advising and trading in securities/derivatives.
42. The Panel heard that the Respondents were not registered in any category with the Authority.

Findings of the Panel

43. It is the finding of the Panel that the Respondents were engaged in the business of advising and trading in securities/derivatives.
44. It is also the finding of the Panel that when the Respondents acted as dealers and advisers, they did so while not registered, and in contravention of clauses 27(2)(a) and 27(2)(b) of the Act.

What is the appropriate order for the Panel to impose?

45. In evaluating the appropriate considerations in assessing sanctions, the Panel was directed to the criteria set out in a previous decision of the Saskatchewan Financial Services Commission, the predecessor to the Financial and Consumer Affairs

Authority. In the Matter of *The Securities Act, 1988* and in the Matter of Darcy Lee Bergen (Bergen). The hearing panel outlined a non-exhaustive list of factors that would influence the imposition of sanctions on a respondent:

- the seriousness of the respondent's conduct;
- the harm suffered by investors as a result of the respondent's conduct;
- the damage done to the integrity of the capital markets in the province by the respondent's conduct;
- the extent to which the respondent was enriched;
- factors that mitigate the respondent's conduct;
- the respondent's past conduct;
- the risk to investors and the capital markets posed by the respondent's continued participation in the capital markets of the province;
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to investors;
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to capital markets;
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct; and
- orders made by the Commission in similar circumstances in the past.

46. Staff drew the Panel's attention to three previous decisions by Panels of the predecessor of the Financial and Consumer Affairs Authority, In the Matter of *The Securities Act, 1988, SS 1988, c S-42.2* and In The Matter of *RBOptions*; In the Matter of *The Securities Act, 1988, SS, c42.2* and in the matter of *AAOption*; and In the Matter of *The Securities Act, 1988, SS 1988, c S-42.2* and In the Matter of *RTG Direct Trading* The comparisons between these matters are strikingly similar. In *RBOptions*, *AAOption* and *RTG Trading* the companies provided an online trading platform accessible by Saskatchewan residents, to trade binary options. The investors opened trading accounts, deposited funds, made initial investments that were successful. Then deposited more funds that eventually were purportedly lost through unsuccessful purchases of binary options. In *RBOptions*, *AAOption* and *RTG Trading* a strong message was sent to the respondents that the integrity of the capital markets in the province must be preserved. The respondents were permanently banned from

participation in the securities industry in Saskatchewan, were each assessed an administrative penalty of \$25,000 and required to pay the costs related to the hearing. The Panel feels strongly that it should attempt to promote consistency by considering orders made by other panels in similar circumstances in the past. The penalties assessed in RBOptions, AAOption and RTG Direct Trading are relevant and should be taken as guidance in this matter.

47. Additionally, the panel was referred by staff to two previous cases: Aidan Trading and Edgedale, both decisions by panels of the FCAA. Each of these cases involved a very similar fact pattern and similar breaches to the ones in this case, and each the respondents in these matters were meted a \$25,000 administrative penalty.
48. The conduct in this matter engaged in by the Respondents was more serious and egregious than the above cases by virtue of the amount lost and how simply they stole nearly \$200,000 from one unsuspecting, vulnerable Saskatchewan investor.
49. The Panel heard from FCAA Staff of their wish to send a message that while such actions appear to be easy, they will not be tolerated in our province.
50. These Respondents caused significant damage to [REDACTED], who lost all of the money that she thought she had invested with them. They were clearly enriched by having taken her money.
51. The panel heard that FCAA Staff are not aware of any mitigating factors in this case, nor does there appear to be any record of any past conduct, good or bad, to consider.
52. FCAA Staff requested from the Panel that the Respondents be permanently banned from:
 - a. utilizing any and all exemptions in Saskatchewan securities laws, pursuant to clause 134(1)(a) of the Act;
 - b. trading in securities or derivatives in Saskatchewan, pursuant to clause 134(1)(d) of the Act;
 - c. acquiring securities or derivatives for and on behalf of residents of Saskatchewan, pursuant to clause 134(1)(d.1) of the Act; and
 - d. giving advice respecting securities, trades or derivatives in Saskatchewan, pursuant to clause 134(1)(e) of the Act.
53. Given the size of the loss, in relation to past cases, FCAA Staff also request that the Respondents be order to pay an administrative penalty of \$35,000.00, pursuant to section 135.1 of the Act, as well as costs in the amount of \$5,347.62, pursuant to section 161 of the Act. The panel is in agreement with this request and feels it is appropriate.

54. With respect to the requested bans, the Panel feels that the seriousness of the Respondents' conduct, coupled with the facts that they did not attend at the hearing to dispute the allegations against them, and that they do not reside in Saskatchewan or depend upon doing business within the province to make their livelihoods, are sufficient factors to warrant the imposition of permanent bans from the industry.

Conclusion

55. On the basis of the evidence heard, the Panel finds that: ASBC Financial, a.k.a. ASBCFinancial ("ASBC") and Walter Turner ("Turner") contravened clause 27(2)(a), of *The Securities Act, 1988* (the Act) as well as clause 27(2)(b) of the Act, by acting as dealers and advisers in Saskatchewan while not registered to do so.

56. 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:

- pursuant to clause 134(1)(a) of the Act, the exemptions in Saskatchewan securities laws do not apply to the Respondents, permanently;
- pursuant to clause 134(1)(d) of the Act, the Respondents shall cease trading in any securities or derivatives in Saskatchewan, permanently;
- pursuant to clause 134(1)(d.1) of the Act, the Respondents shall cease acquiring securities or derivatives for and on behalf of residents of Saskatchewan, permanently;
- pursuant to clause 134(1)(e) of the Act, the Respondents shall cease giving advice respecting securities, trades or derivatives in Saskatchewan, permanently;
- pursuant to section 135.1 of the Act, the Respondents shall pay an administrative penalty of \$35,000; and
- Pursuant to section 161 of the Act, the Respondents shall pay the costs of or relating to the hearing in this matter amounting to \$5,347.52.

57. This is the unanimous decision of the Hearing Panel.

Dated at Regina, Saskatchewan, this 27th day of February, 2020.



Peter Carton (Chairperson)



The Honourable Eugene Scheibel (Panel Member)



Norman Halldorson (Panel Member)