

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

IN THE MATTER OF

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

AND

IN THE MATTER OF

EDGEDALE FINANCE

AND

GREYMOUNTAIN MANAGEMENT LTD.

Hearing Held: November 30, 2016

Panel: Gordon D. Hamilton (Chairperson)

The Honourable Larry Kyle (Panel Member)

Mary Ann McFadyen (Panel Member)

Appearances: Christina Meredith (Counsel for Staff of the Financial and Consumer Affairs Authority of Saskatchewan)

No one appeared on behalf of the Respondents, Edgedale Finance and Greymountain Management Ltd.

Date of decision: July 12, 2019

Note: This matter was heard on November 30, 2016, by a hearing panel appointed in accordance with Section 17(2) of *The Financial and Consumer Affairs Authority of Saskatchewan Act* (the "FCAA Act") and consisting of Gordon D. Hamilton, The Honourable Larry Kyle and Mary Ann McFadyen. The Honourable Larry Kyle resigned from the hearing panel on November 29, 2017, and took no part in the decision. Because quorum was maintained by the hearing panel in accordance with section 17(6) of the FCAA Act, no other persons were appointed to the hearing panel, and the decision was rendered by the remaining panel members.

Introduction

1. This matter involves two entities – Edgedale Finance and Greymountain Management Ltd. (the "Respondents"). The latter is a corporation registered in Ireland. The former claims to operate out of London, UK, and is the business name associated with an online binary option trading platform website accessible by Saskatchewan residents.

2. A binary option is a simple investment proposition regarding whether the value of an underlying asset will be above or below a certain price at a certain time. A trader buys an option based on his belief about the value of the underlying asset in relation to the specified price at the specified time. If the trader is correct, he will receive a fixed monetary payment. If he is wrong, he will lose all of his investment. The investment is very similar to a wager in a gambling context.
3. The Respondents are alleged to have acted in a manner contrary to specific registration provisions of *The Securities Act, 1988*, SS 1988-89, c S-42.2 (the Act), namely subsections 27(2)(a) and 27(2)(b). Those provisions are reproduced below for reference:

27(2) 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;

4. The allegations are that the Respondents acted as dealers and advisers without being registered with the Saskatchewan Financial and Consumer Affairs Authority of Saskatchewan (the "Authority").
5. The Hearing Panel has been asked to confirm that the Respondents have in fact breached the registration requirements of subsections 27(2)(a) and 27(2)(b) and issue the appropriate orders. The orders requested as being appropriate in the circumstances are:
 - a. The statutory exemptions from registration in Saskatchewan did not apply to the Respondents and that they will be forever prevented from relying upon the exemptions in the future;
 - b. The Respondents shall be permanently ordered to cease trading in any securities or derivatives in Saskatchewan;
 - c. The Respondents shall be permanently ordered to cease acquiring any securities or derivatives for and on behalf of residents of Saskatchewan;
 - d. The Respondents shall be permanently ordered to cease giving advice respecting any securities, trades or derivatives for and on behalf of residents of Saskatchewan;
 - e. The Respondents shall be ordered to pay a \$25,000 administrative penalty to the Authority;
 - f. The Respondents shall be ordered to 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' contravention of the Act in such amount as to be determined;
 - g. The Respondents shall be ordered to pay the costs of or relating to the hearing in this matter.

Preliminary Matters

6. The Respondents did not appear at the hearing. The hearing proceeded in their absence.
7. The Respondents had been sent the Notice of the Hearing on October 24, 2016, with it being transmitted to their electronic mail addresses which they were using for business purposes. No responses were received acknowledging the emailed notifications. This was consistent with previous attempts to elicit responsive communications from them.
8. The Respondents were unresponsive to any communications, beginning with the temporary cease trade order issued by the Director of the Securities Division on April 20, 2016. On numerous occasions thereafter, the Respondents were sent various documents, including the extending order, the first appearance (to set hearing dates), the statement of allegations against them, the application to extend the temporary cease trade order and an adjournment of the application to extend the temporary cease trade order. The Respondents consistently ignored the electronic communications.

Key Issues

9. Three issues have been identified for the Hearing Panel's consideration, namely:
 - a. Is a binary option a security within the meaning of the Act?
 - b. Did the Respondents act as dealers and advisers while not registered to do so, contrary to subsections 27(2)(a) and 27(2)(b)?
 - c. If the Respondents contravened subsections 27(2)(a) and 27(2)(b) of the Act, what are the appropriate orders to be imposed?

Facts

10. The Hearing Panel was provided with evidence about the actions of the Respondents and the impact of those actions.
11. The Respondents operated a website in which both entities, Edgedale Finance and Greymountain Management Ltd., acted in concert in promoting their binary option online trading platform. There was no basis upon which to separate one Respondent from the other, such that while perhaps legally distinct in name, they were clearly operating together.
12. The website identified the Respondents' underlying intentions with their provision of their binary option online trading platform: "Edgedale is one of the only experienced brokers to bring back the simplest way of trading without confusion"; "With Edgedale, you can simply trade binary options." The website enabled the Respondents to accomplish their stated mission of "bringing back binary options to its simplest form" so that users of their online trading platform website could quickly and easily understand and trade binary options.
13. The Hearing Panel was provided detailed evidence about a Saskatchewan resident (the "Investor") who had invested money as a direct consequence of accessing the Respondents' website. In response to a cold call by telephone in January 2016, the Investor had been directed to the binary option trading platform website to open a trading account. He provided the Respondents with copies of the requested personal information in order to verify his identity. The requested personal information included a copy of his passport, a copy of his driver's license showing his home address,

and a copy of his credit card through which his investments would be (and were subsequently) made.

14. The Investor was in communication with an Edgedale Finance account manager who purported to act on behalf of the Respondents. At the encouragement of the account manager, the Investor initially sent \$2,902.51 CAD to the Respondents on January 27, 2016 to be placed in his trading account. Thereafter, the Investor received advice and guidance from the account manager and a potential trade was identified which required a minimum balance of \$5000 in his trading account.
15. To demonstrate the legitimacy of the Respondents and their services, the account manager refunded \$100 CAD to the Investor's credit card. The Investor then sent the Respondents an additional \$4330.39 CAD on February 2, 2016 to be placed in his Edgedale Finance trading account. During the few weeks when his account was active, the Investor's balance in his trading account increased as a result of several trades which were made through the Respondents, with the advice and assistance of his account manager.
16. The Respondents' account manager sent a copy of the Terms and Conditions governing his trading account to the Investor shortly after the second deposit of investment funds. The Terms and Conditions tied the Investor to a specific level of trading before his funds would be returnable. The Investor was required to sign and return the document. After reading the Terms and Conditions document, the Investor requested that all of his funds be returned to him.
17. Over the course of the next few weeks, at least five times the Respondents' account manager requested the Investor's signature on the Terms and Conditions document, each time sending a copy of the Terms and Conditions document for the Investor's signature. Each time, the Investor reiterated his demand that his funds be returned to him and refused to sign the Terms and Conditions document.
18. The Respondents did not return the Investor's funds. The Investor did not request any further trades through his account after his initial request for the return of his investment funds.
19. The Respondents have never been registered with the Authority in any capacity for the trading in or advising on securities in Saskatchewan.

Analysis and Findings

20. Subsections 27(2)(a) and 27(2)(b) require registration with the Authority of any person or company who acts as a dealer or adviser. The allegations include the assertion that the Respondents acted as a dealer and adviser in relation to the Investor.
21. Section 2(1)(a.1) of the Act defines an "adviser" 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".
22. Section 2(1)(n) of the Act defines a "dealer" 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".

23. Section 2(1)(vv) of the Act defines what constitutes a “trade” as including:
- (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.1) entering into a derivative or amending, terminating or assigning a derivative;
 - (i.2) buying, selling or otherwise acquiring or disposing of a derivative;
 - (i.3) novating a derivative, other than a novation with a clearing agency;
 - (ii) participation as a trader in a transaction in a security made on or through the facilities of an exchange or reported through the facilities of a quotation and trade reporting system;
 - (ii.1) participation as a trader in a transaction in a derivative through the facilities of a derivatives trading facility;
 - (iii) any receipt by a registrant of an order to buy or sell a security or an order to buy, sell, enter into, amend, terminate, assign or novate a derivative; (iv) any transfer, pledge, mortgage or encumbrancing of a security from the holdings of a control person for the purpose of giving collateral for a bona fide debt; and (v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of anything mentioned in subclauses (i) to (iv);
 - (iv) any transfer, pledge, mortgage or encumbrancing of a security from the holdings of a control person for the purpose of giving collateral for a bona fide debt; and
 - (v) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of anything mentioned in subclauses (i) to (iv);
24. The facts disclosed that the Respondents, through the representations on their website and through their account manager’s communications with the Investor, engaged in and held themselves out to the Investor as engaging in the provision of advice regarding trading binary options through their binary options trading platform on their website. For example, on one occasion, the account manager recommended that the Investor take advantage of a specific trade which required a larger balance in his trading account.
25. Similarly, the Respondents, through the representations on their website and through their account manager, engaged in and held themselves out to the Investor as engaging in the business of trading binary options through their binary options trading platform on their website. For example, the website itself described the Respondents as “experienced brokers” who were providing an online binary options trading platform for the investors to access and use. The Investor’s investment funds were purportedly traded through the trading platform provided by the Respondents.
26. The Respondents’ online trading platform received more than \$7000 CAD being placed by the Investor in a trading account with the Respondents. The funds were obtained from the Investor’s credit card which he was required to provide to the Respondents upon opening his trading account.
27. In the 2016 decision of *In the Matter of RTG Direct Trading Group LTD. and RTG Direct Trading Limited*, another hearing panel of the Authority concluded in paragraph 24 that binary options were investment contracts. That decision relied upon the authority of the Supreme Court of Canada in *Pacific Coast Coin Exchange v. Ontario Securities Commission*, [1978] 2 SCR 112, 1977 CanLII 37 (SCC), which on page 129 reviewed the criteria for an investment contract. Those criteria were:
- a. The advancement of money by an investor...
 - b. ...with an intention or expectation of profit...

- c. ...in a common enterprise in which the fortunes of an investor are interwoven with and dependent upon the efforts and success of those who solicit the capital of third parties...and...
 - d. ...where the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or the success of the enterprise.
28. The evidence presented to the Hearing Panel confirmed that the Investor was solicited by the Respondents to advance money with an expectation of making a profit. Accepting at face value that the Respondents were conducting trades on behalf of the Investor, this was indicative of a common enterprise in which the Investor's fortune is directly impacted by the efforts and actions of the Respondents. The Respondents guided the Investor by identifying purportedly lucrative trades, one of which required additional investment funds from the Investor in order to qualify. The Investor's efforts were restricted to his limited role of providing investment funds. By comparison, the Respondents held themselves out as having specific skills and expertise in recommending binary options which would yield positive outcomes for the Investor.
29. Given the preceding analysis of the facts, an investment contract existed between the Investor and the Respondents, notwithstanding the Investor's refusal to formally execute the Terms and Conditions document when requested to do so by the Respondents.
30. Subsection 2(1)(ss)(xiv) includes investment contracts within the definition of what constitutes a security. Therefore, a binary option investment contract is a security within the meaning of the Act.
31. It is necessary to evaluate whether the Respondents were able to evade the registration requirements by qualifying under any of the permitted exemptions from registration under the Act. The Hearing Panel has reviewed the available statutory exemptions from registration and has concluded that none of the statutory exemptions apply to the Respondents and their activities with the Investor.
32. Having concluded that the Respondents had breached the registration requirements of the Act by acting as dealers and advisers while not registered to do so in a manner that was contrary to subsections 27(2)(a) and 27(2)(b), the Hearing Panel has an obligation to impose the appropriate sanctions. In considering possible sanctions, the Hearing Panel must consider its responsibilities in protecting the investing public and in supporting the integrity of the securities markets. In considering these responsibilities, it must evaluate whether the appropriate sanctions should reflect a need for general and/or specific deterrence to prevent comparable disregard for the provisions of the Act in the future by the Respondents or others.
33. Given the blatant disregard for the provisions of the Act, it is necessary that certain sanctions be imposed to prevent similar future actions by the Respondents. Subsection 134(1) provides a list of possible orders as sanctions for the Hearing Panel to consider, all of which include the orders and sanctions requested by Staff. This Hearing Panel has determined that the following sanctions are appropriate:
- a. The Respondents shall be permanently banned from relying upon any statutory exemptions from registration in the future, as permitted by subsection 134(1)(a);

- b. The Respondents shall be ordered to permanently cease trading in any securities or derivatives in Saskatchewan, as permitted by subsection 134(1)(b);
 - c. The Respondents shall be ordered to permanently cease acquiring any securities or derivatives for and on behalf of residents of Saskatchewan, as permitted by subsection 134(1)(d.1);
 - d. The Respondents shall be ordered to permanently cease giving advice respecting any securities, trades or derivatives for and on behalf of residents of Saskatchewan, as permitted by subsection 134(1)(e).
34. The above sanctions shall serve both as specific deterrence and as protection for Saskatchewan investors from the Respondents' unlawful conduct.
35. The necessity of a hearing arose because of the specific actions of the Respondents and their consistent lack of responsiveness to written communications sent to them in relation to the investigative and hearing process.
36. Subsection 135.1 permits the Hearing Panel to impose an administrative penalty in appropriate circumstances. It is appropriate to assess an administrative penalty given these circumstances. Having reviewed the range of administrative penalties assessed by previous hearing panels in comparable circumstances, such as found in *In the Matter of the Securities Act, 1988, ss 1988, c s-42.2*, and *In the Matter of Zuluoy's and RBOptions* (February 19, 2016), this Hearing Panel has determined that an administrative penalty of \$25,000 is appropriate.
37. The Hearing Panel has considered the request that the Respondents be ordered to 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' contravention of the Act. Given the recent decision of the Saskatchewan Court of Appeal in *C2 Ventures Inc. v Saskatchewan (Financial and Consumer Affairs Authority)*, 2019 SKCA 53 (CanLII), the Hearing Panel will not be making a compensation order.
38. The request for an order for costs shall be determined separately.

Conclusion

39. Having concluded that the Respondents had breached the registration provisions of the Act, the Hearing Panel will issue the following consequential orders in due course.

Whereas the statutory exemptions from registration in Saskatchewan did not apply to the Respondents:

- a. The Respondents are prevented from relying upon the statutory exemptions at any time in the future;
- b. The Respondents are ordered to permanently cease trading in any securities or derivatives in Saskatchewan;
- c. The Respondents are ordered to permanently cease acquiring any securities or derivatives for and on behalf of residents of Saskatchewan;
- d. The Respondents are ordered to permanently cease giving advice respecting any securities, trades or derivatives for and on behalf of residents of Saskatchewan;
- e. The Respondents are ordered to pay a \$25,000 administrative penalty to the Authority.

40. This is the unanimous decision of the Panel.

Dated at Regina, Saskatchewan, this 12th day of July, 2019.



Gordon D. Hamilton (Chairperson)



Mary Ann McFadyen (Panel Member)