
Citation: *New Brunswick (Financial and Consumer Services Commission) v. A25 Gold Producers Corp. et al.*, 2015 NBFCST 9

PROVINCE OF NEW BRUNSWICK
FINANCIAL AND CONSUMER SERVICES TRIBUNAL
IN THE MATTER OF THE *SECURITIES ACT*, S.N.B. 2004, c s-5.5

Date: 2015-10-23
Docket: SE-003-2015

BETWEEN:

Financial and Consumer Services Commission,

Applicant,

-and-

A25 Gold Producers Corp. and James Stuart Adams,

Respondents.

REASONS FOR DECISION AND ORDER

PANEL: John Hanson, Q.C., Panel Member
Jean LeBlanc, Panel Member
Gerry Legere, Panel Member

DATE OF HEARING: August 17, 2015

WRITTEN REASONS: October 23, 2015

APPEARANCES: Brian Maude for the Applicant
James Stuart Adams personally by teleconference

REASONS FOR DECISION AND ORDER

I. OVERVIEW

- [1] On May 7, 2015, the Financial and Consumer Services Commission (“the Commission”) filed an Application with the Financial and Consumer Services Tribunal (“the Tribunal”) seeking an order reciprocating a March 5, 2015 Order of the Ontario Securities Commission against the Respondents A25 Gold Producers Corp. and James Stuart Adams. The Commission also filed an Affidavit of Brian Maude as evidence in support of the application. The Commission’s application was brought pursuant to subsection 184(1.1) of the *Securities Act*, S.N.B. 2004, c S-5.5 (“the *Securities Act*”).
- [2] In its Application, the Commission requests the following relief against the Respondents pursuant to paragraphs 184(1.1)(c) and (d) of the *Securities Act* :
- (a) trading in any securities or derivatives of the Respondent A25 Gold Producers Corp. cease permanently or for such period as is specified by the Tribunal, pursuant to sub-paragraph 184(1)(c)(i) of the *Securities Act*;
 - (b) the Respondent A25 Gold Producers Corp. cease trading in any securities or derivatives permanently or for such period as is specified by the Tribunal, pursuant to clause 184(1)(c)(ii)(A) of the *Securities Act*;
 - (c) the Respondent James Stuart Adams cease trading in any securities or derivatives for a period of five years or for such period as is specified by the Tribunal, pursuant to clause 184(1)(c)(ii)(A) of the *Securities Act*;
 - (d) the acquisition of any securities by the Respondent A25 Gold Producers Corp. be prohibited permanently or for such period as is specified by the Tribunal, pursuant to sub-paragraph 184(1)(c)(ii) of the *Securities Act*;
 - (e) the acquisition of any securities by the Respondent James Stuart Adams be prohibited for a period of five years or for such period as is specified by the Tribunal, pursuant to sub-paragraph 184(1)(c)(ii) of the *Securities Act*;
 - (f) any exemptions contained in New Brunswick securities law do not apply to the Respondent A25 Gold Producers Corp. permanently or for such period as is specified by the Tribunal, pursuant to paragraph 184(1)(d) of the *Securities Act*;
 - (g) any exemptions contained in New Brunswick securities law do not apply to the Respondent James Stuart Adams for a period of five years (until March 5, 2020, the date of the expiration of an Order of the Ontario Securities Commission, made March 5, 2015) or for such period as is specified by the Tribunal, pursuant to paragraph 184(1)(d) of the *Securities Act*;
 - (h) the Respondent James Stuart Adams resign all positions that he holds as a director or officer of any issuer, registrant or mutual fund manager, pursuant to paragraph 184(1)(h) of the *Securities Act*;

- (i) the Respondent James Stuart Adams be prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager for a period of five years (until March 5, 2020, the date of the expiration of an Order of the Ontario Securities Commission, made March 5, 2015) or for such period as is specified by the Tribunal, pursuant to paragraph 184(1)(i) of the *Securities Act*;
 - (j) the Respondent A25 Gold Producers Corp. be permanently, or for such period as is specified by the Tribunal, prohibited from becoming or acting as a registrant, as a mutual fund manager or as a promoter, pursuant to paragraphs 184(1)(b) and (g) of the *Securities Act*; and
 - (k) the Respondent James Stuart Adams be prohibited from becoming or acting as a registrant, as a mutual fund manager or as a promoter for a period of five years (until March 5, 2020, the date of the expiration of an Order of the Ontario Securities Commission, made March 5, 2015) or for such period as is specified by the Tribunal, pursuant to paragraphs 184(1)(b) and (g) of the *Securities Act*.
- [3] The Tribunal issued a Notice of Application on May 21, 2015, which provided notice to the Respondents of the Commission's Application and their right to be heard. The Respondent James Stuart Adams appeared at the hearing via teleconference and on behalf of A25 Gold Producers Corp.
- [4] The hearing of this matter was initially scheduled for July 6, 2015. At that hearing, the Tribunal held that the Affidavit of Brian Maude was inadmissible as he could not act as lawyer and potentially act as a witness in the proceeding. The Tribunal issued an Order adjourning the hearing to August 17, 2015 to allow the Commission the opportunity to file new Affidavit evidence.
- [5] On July 7, 2015, the Commission filed an Affidavit of Linda Rickard, which was substantially the same as the prior filed Affidavit of Mr. Maude.
- [6] The Respondent James Stuart Adams indicated at the August 17, 2015 hearing that he consented to the relief sought by the Commission in its Application.

II. **FACTS**

- [7] The Affidavit of Linda Rickard outlines the Commission's investigation into the activities of the Respondents and details the Ontario Securities Commission's ("OSC") enforcement proceedings against the Respondents and the settlement reached between the Respondents and the OSC.
- [8] The Affidavit of Linda Rickard contains the following exhibits:
- (a) Exhibit A – a 2014 Annual Return for Touchstone International Business Services (New Brunswick) Ltd. signed by James Stuart Adams;
 - (b) Exhibit B – a January 8, 2013 Notice of Change of Registered Office for Touchstone signed by James Stuart Adams;
 - (c) Exhibit C - An August 14, 2012 decision of the New Brunswick Securities Commission

entitled *NRR N. Natural Resources Inc., Re*;

- (d) Exhibit D – a Settlement Agreement between the Respondents and the OSC dated March 3, 2015; and
 - (e) Exhibit E – an OSC Order issued on March 5, 2015 in the Matter of A25 Gold Producers Corp., David Amar, James Stuart Adams and Avis Amar (“OSC Order”).
- [9] A25 Gold Producers Corp. is a corporation incorporated in the province of British Columbia and which operated out of Toronto, Ontario. The Respondent James Stuart Adams was at all relevant times the president of A25 Gold Producers Corp.
- [10] In the March 3, 2015 Settlement Agreement with the OSC, the Respondents A25 Gold Producers Corp. and James Stuart Adams admit to selling securities of A25 from Ontario through unregistered trading and illegal distributions to an investor in Canada and investors in Europe. In addition, Mr. Adams admitted to participating in an act, practice or course of conduct relating to securities or derivatives that perpetrated a fraud on investors.
- [11] On March 5, 2015, the OSC approved the Settlement Agreement and ordered similar relief as what is sought by the Commission in this Application. In addition, the OSC ordered the A25 Gold Producers Corp. and James Stuart Adams to pay administrative penalties of \$150,000 and \$50,000 respectively and further ordered A25 Gold Producers Corp. to disgorge to the Commission the amount of \$2,000,000. Finally, James Stuart Adams was ordered to pay costs of \$25,000.
- [12] It bears noting that Mr. Adams is the director of Touchstone International Business Services (New Brunswick) Ltd., a company registered in New Brunswick and against which the Commission had enforcement proceedings in the past.

III. ISSUE

- [13] Should a reciprocal order be issued against the Respondents pursuant to paragraphs 184(1.1)(c) and (d) of the *Securities Act*?

IV. ANALYSIS

- [14] At the time the Application was filed, the relevant provisions of the *Securities Act* were as follows:

184(1) On the application of the Commission, the Tribunal, if in its opinion it is in the public interest to do so, may make one or more of the following orders:

[...]

(b) an order that the recognition granted to a person under New Brunswick securities law be suspended or restricted for such period as is specified in the order or be revoked, or that terms and conditions be imposed on the recognition;

- (c) an order that
 - (i) trading in or purchasing cease in respect of any securities, derivatives, class of securities or class of derivatives, or
 - (ii) a person specified in the order
 - (A) cease trading in or purchasing securities or derivatives, specified securities or derivatives or a class of securities or class of derivatives, or
 - (B) is prohibited from acting in a management or consultative capacity in connection with activities in the securities or derivatives market;

(d) an order that any exemptions contained in New Brunswick securities law do not apply to a person permanently or for such period as is specified in the order;

[...]

(g) an order that a person be reprimanded;

(h) an order that a person resign one or more positions that the person holds as a director or officer of an issuer, registrant or mutual fund manager;

(i) an order that a person is prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager;

[...]

184(1.1) In addition to the power to make orders under subsection (1), the Tribunal, on the application of the Commission and after providing an opportunity to be heard, may make one or more of the orders referred to in paragraphs (1)(a) to (d) and (1)(g) to (i) against a person if the person

[...]

(c) is subject to an order made by a securities regulatory authority or self-regulatory organization in Canada or elsewhere imposing sanctions, conditions, restrictions or requirements on the person, or

(d) has agreed with a securities regulatory authority or self-regulatory organization in Canada or elsewhere to be subject to sanctions, conditions, restrictions or requirements.

[15] *Shire International Real Estate Investment Ltd., Re*, 2010 NBSECE 1 [*Shire*], is the leading New Brunswick case on the test for issuing a reciprocal order. The general principles gleaned from that decision are:

1. There are two pre-conditions to issuing a reciprocal order under subsection 184(1.1) of the *Securities Act*: (1) the Respondents must have been provided an opportunity to be heard; and

(2) each Respondent must be subject to an order made by a securities regulatory authority in Canada or elsewhere imposing sanctions, restrictions, or requirements on the Respondents. [Shire, par. 20]

2. The power to grant a reciprocal order under subsection 184(1.1) of the *Securities Act* is discretionary and not mandatory. [Shire, par. 34]
 3. The test to be applied is the following: It is in the public interest for the Tribunal to exercise its discretion under subsection 184(1.1) to recognize the order of another securities regulatory authority when the Tribunal is satisfied that there is a real and substantial connection between that securities regulator and the subject matter of the order. [Shire, par. 34]
 4. The Tribunal should not enquire into the evidence behind the original proceeding or order as this could lead to a re-hearing of the same evidence. [Shire, par. 29]
 5. Evidence of actual conduct by the Respondents in New Brunswick or actual harm to New Brunswick residents is not a prerequisite to granting a reciprocal order pursuant to subsection 184(1.1). [Shire, par. 22]
- [16] The panel in *Shire* added the following regarding the sufficiency of the evidence required to issue a reciprocal order:

[40] [...] While, as noted, we are of the view that we should not look behind the evidence led in the original proceeding, the mere existence of an order of another securities regulator should not be accepted as *prima facie* evidence that the jurisdiction of the regulator was properly or appropriately issued. Evidence that there was a real and substantial connection between the jurisdiction issuing the order and the subject matter of the order must be submitted in support of an application. In many instances, sufficient evidence of that connection may well be part of the order.

- [17] While Mr. Adams has consented to the relief sought by the Commission, consent itself does not satisfy the test for granting a reciprocal order [See *AdCapital Industries Inc., Re*, 2008 NBSECE 3]. Subsection 184(1.1) of the *Securities Act* requires that the Tribunal be satisfied that it is in the public interest to grant the order.
- [18] With respect to the pre-conditions for an order to be issued under subsection 184(1.1) of the *Securities Act*, the Tribunal is satisfied that the Respondents were provided with an opportunity to be heard and that the Respondents are subject to the OSC Order, which is an order made by a securities regulatory authority in Canada imposing sanctions, conditions, restrictions or requirements on the Respondents.
- [19] We turn now to the real and substantial connection test. In the March 3, 2015 Settlement Agreement, the Respondents made several admissions. In particular, they admitted to breaching Ontario securities law by engaging in unregistered trading and illegal distributions to an investor in Canada and investors in Europe and acting contrary to the public interest. The Respondent James Stuart Adams further admitted to participating in an act, practice or course of conduct relating to securities or derivatives that perpetrated a fraud on investors.

- [20] In approving the Settlement Agreement, the OSC indicated that it was of the opinion that it was in the public interest to approve the Settlement Agreement.
- [21] After reviewing the Affidavit of Linda Rickard, which included the OSC Settlement Agreement and the OSC Order, the Tribunal is satisfied that there is a real and substantial connection between the Respondents and the originating jurisdiction, Ontario, as required in the *Shire* decision.
- [22] Finally, the Tribunal highlights that the Respondent James Stuart Adams has a nexus to New Brunswick in that he is the sole director of a New Brunswick corporation, called Touchstone International Business Services (New Brunswick) Ltd. This nexus is but another piece of evidence which weighs in favour of the Tribunal exercising its public interest jurisdiction.
- [23] Due to the contents of the OSC Settlement Agreement and the OSC Order, the Panel finds it in the public interest to grant the order requested by the Commission under section 184(1.1) of the *Securities Act*.

V. DECISION AND ORDER

- [24] For the reasons set out above, the Tribunal concludes that it is in the public interest to make an Order against the Respondents under subsection 184(1.1) of the *Securities Act* as follows:
- (a) pursuant to sub-paragraph 184(1)(c)(i) of the *Securities Act*, trading in any securities or derivatives of the Respondent A25 Gold Producers Corp. cease permanently;
 - (b) pursuant to clause 184(1)(c)(ii)(A) of the *Securities Act*, the Respondent A25 Gold Producers Corp. cease trading in any securities or derivatives permanently;
 - (c) pursuant to clause 184(1)(c)(ii)(A) of the *Securities Act*, the Respondent James Stuart Adams cease trading in any securities or derivatives for a period of five years;
 - (d) pursuant to sub-paragraph 184(1)(c)(ii) of the *Securities Act*, acquisition of any securities by the Respondent A25 Gold Producers Corp. is prohibited permanently;
 - (e) pursuant to sub-paragraph 184(1)(c)(ii) of the *Securities Act*, acquisition of any securities by the Respondent James Stuart Adams is prohibited for a period of five years;
 - (f) pursuant to paragraph 184(1)(d) of the *Securities Act*, any exemptions contained in New Brunswick securities law do not apply to the Respondent A25 Gold Producers Corp. permanently;
 - (g) pursuant to paragraph 184(1)(d) of the *Securities Act*, any exemptions contained in New Brunswick securities law do not apply to the Respondent James Stuart Adams until March 5, 2020;
 - (h) pursuant to paragraph 184(1)(h) of the *Securities Act*, the Respondent James Stuart Adams resign all positions that he holds as a director or officer of any issuer, registrant or mutual fund manager;

- (i) pursuant to paragraph 184(1)(i) of the *Securities Act*, the Respondent James Stuart Adams is prohibited from becoming or acting as a director or officer of any issuer, registrant or mutual fund manager until March 5, 2020;
- (j) pursuant to paragraphs 184(1)(b) and (g) of the *Securities Act*, the Respondent A25 Gold Producers Corp. is permanently prohibited from becoming or acting as a registrant, as a mutual fund manager or as a promoter; and
- (k) pursuant to paragraphs 184(1)(b) and (g) of the *Securities Act*, the Respondent James Stuart Adams is prohibited from becoming or acting as a registrant, as a mutual fund manager or as a promoter until March 5, 2020.

[25] There shall be no Order for costs.

DATED this 23rd day of October, 2015.

John M. Hanson, Q.C., Panel Chair

Jean LeBlanc, Panel Member

Gerry Legere, Panel Member