

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.N.S. 1989, CHAPTER 418, AS AMENDED ("Act")

-AND

IN THE MATTER OF STRATUS FINANCIAL GROUP INTERNATIONAL AND KEN POWERS
(collectively the "Respondents")

Reasons for Decision of
Nova Scotia Securities Commission

Panel: Mr. Paul Radford, Q.C., Vice-Chair

Decision Date: July 7, 2015

Introduction

[1.] This decision concerns an application for an Enforcement Order under Section 134(1A) of the *Securities Act*, R.S.N.S. 1989, c. 418, as amended (the "Act") against the Respondents based on Reasons for Decision and Order of the New Brunswick Financial and Consumer Services Tribunal in Docket SE-004-2014 dated January 30, 2015 (the "New Brunswick Decision").

[2.] The matter was commenced by a Notice of Application dated May 13, 2015, to which was attached a copy of the New Brunswick Decision and which stated that the Application would be made in writing to a member of the Commission on May 13, 2015 requesting the Commission to make certain orders in the public interest pursuant to sections 134(1) and 134(1A) of the Act against the Respondents, with a copy of the draft Order sought and stating that if any of the Respondents intend to respond they must within 37 days, namely on or before June 19, 2015, in writing. No response had been received by the Commission by June 19, 2015.

Service

[3.] An affidavit of Service of Marlene E. Bucci sworn on May 13, 2015 attached as exhibits copies of the Notice of Application, submissions of enforcement counsel and a draft Order and gives testimony that she sent copies of these documents to the Respondents by email and by regular mail.

[4.] Part 1 of the General Rules of Practice and Procedure of the Commission (Rule 15-501) provide for service of documents "by any means effective to deliver the Notice or document or copy thereof to the person or company being served" and further provide that "service shall be sufficiently effected if sent by pre-paid mail at the last address of the person or company appearing on the records of the Commission".

[5.] The physical address and email address to which Marlene E. Bucci sent the copies of the Notice of Application, submissions and draft Order are the same address referenced in the New Brunswick Decision, namely the physical and email addresses shown on the web site <http://stratusoffshore.com>, given by the person who by telephone identified himself as the Respondent Ken Powers on behalf of the Respondent Stratus Financial Group International to the New Brunswick resident whose testimony was accepted as the basis for the finding by the of the breaches of New Brunswick securities laws in the New Brunswick Decision.

[6.] The Affidavit of Service of Marlene E. Bucci satisfies the me that that the requirements for service on the Respondents under the General Rules of Practice and Procedure with respect to this application have been duly satisfied.

Opportunity To Be Heard

[7.] For the Commission to have jurisdiction to make an Order under Section 134(1A) the Respondents must have been provided an opportunity to be heard. An opportunity to be heard does not require that a hearing take place, but rather provides a flexible procedure that satisfies natural justice proportional to the case being advanced against the Respondents. The prohibitions and restrictions being sought by the Commission against the Respondents are the same in all material respects as those granted in the New Brunswick Decision and are founded on the conclusions reached in the New Brunswick Decision and not on any unproven conduct alleged to have taken place such that the same sanctions for the same conduct are being sought equally applicable in Nova Scotia as in New Brunswick. The opportunity for the Respondents to respond in writing to the Notice of Application and submissions provided the Respondents a sufficient opportunity to be heard.

Finding of another Securities Commission

[8.] The basis for granting Reciprocal Sanctions in Nova Scotia are under Section 134(1A)(C) namely as follows:

"(1A) The Commission may, after providing an opportunity to be heard, make an order under clauses (a) to (h) of subsection (1) against a person or company if the person or company:

(c) Has been found by a securities commission, self-regulatory organization or other person or body empowered by statute to regulate

trading in securities or to administer, regulate or enforce securities laws of another province of Canada to have contravened the securities laws of that province or territory; or”

[9.] The pre-condition of the finding of another securities commission has been satisfied by the production of the New Brunswick Decision.

[10.] The policy basis of securities regulation in Canada was established in the cases of *Committee For the Equal Treatment of Asbestos Minority Shareholders v. Ontario Securities Commission* [2001] 2 S.C.R. 132 and re *Cartaway Resources Corp* [2004] 1 S.C.R. 672, as a public interest jurisdiction that is protective and preventative, designed to restrain and prevent future conduct in the capital markets that are against the public interest.

[11.] The Reciprocal Provisions in Securities Legislation across Canada, similar to those in Section 134(1A) of the *Act* provide mechanisms for the prevention of misconduct in one Province or Territory based on findings of misconduct in other Provinces or Territories by that other Province's or Territory's securities commission, provided that the respondents are given an opportunity to be heard. The determination under Section 134(1A) does not require the Commission to conduct any independent investigation into the appropriateness of the other Province's securities commission's finding. A person who wishes to challenge the finding in that other Province must seek that remedy in the Province where the original finding was made.

Public Interest

[12.] The Respondents have been subject to prior temporary orders of the Commission. On April 10th, 2015, the Commission issued a temporary order against the Respondents and Stratus Offshore, Magnus Torgerson and John Westbrook requiring them to cease contravening Nova Scotia securities laws and to cease trading in all classes of securities for a period of 15 days. On April 16th, 2015, the Commission issued an Order extending the Temporary Order until a hearing is held and a Decision rendered.

[13.] Section 134(1A) of the *Act* gives the Commission jurisdiction after having provided the Respondents with an opportunity to be heard to make an Order under clauses (a) to (h) of subsection 134(1), and subsection 134(1) stipulates the Commission may an Order where it considers to be in the public interest to do so.

[14.] In the Commission's prior decision in *Tri Clean Enterprises Inc.* dated October 5, 2010, it was held that the Commission's jurisdiction to make an order under subsection 134(1A) required a finding that to do so was in the public interest and that included actual or potential violations of Nova Scotia securities laws or other sufficient reason relevant to Nova Scotia. In the present case, the New Brunswick Decision found that the Respondents made telephone solicitations and referred the New Brunswick resident to the Respondents' website which refers to the Respondents' Costa Rica address. The Respondents' conduct of telephone solicitation and use of out of country websites gives real concern that such solicitations are as likely to be made to Nova Scotia residents as have been made to New Brunswick residents. This satisfies

the Commission that there is sufficient connection with and concern about protecting Nova Scotia investors to constitute a sufficient nexus or connection with Nova Scotia to constitute a public interest in making an order even without considering the temporary orders noted in paragraph 11 above issued by the Commission against the Respondents and others.

[15.] The principal purpose of securities regulation in Nova Scotia as set out in Section 1(A) of the Act is the protection of investors from practices and activities that tend to undermine investor confidence in the fairness and efficiency of capital markets. The general nature of the reciprocal enforcement provisions in securities legislation of Canadian Provinces and Territories similar to those of subsection 134(1A) of the Act are premised on protecting investors and preventing misconduct in one Province's or Territory's capital markets based on misconduct in other jurisdictions and this constitutes a sufficient public interest under subsection 134(1A) in Nova Scotia to grant the reciprocal order to protect Nova Scotia investors and prevent misconduct in Nova Scotia capital markets.

Conclusion

[16.] Accordingly, the Commission finds the Respondents have been adequately served, have been provided with an opportunity to be heard and have not responded, and that it is in the public interest that an Order following as closely as possible to the New Brunswick Decision be granted under the provisions of subsection 134(1A) of the Act in the form attached.



Paul E. Radford, Q.C.

Vice Chair