

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

- and -

IN THE MATTER OF
STRATUS OFFSHORE (also operating as Stratus Financial Group International),
MAGNUS TORGERSON, JOHN WESTBROOK, MARK STONE AND TEDDY STONE
(collectively, the Respondents)

**Administrative Penalties Decision of
Nova Scotia Securities Commission**

Panel: Sandra MacPherson-Duncan, Q.C, Chair of the Panel
Michael Deturbide, Q.C., Commissioner, and
Valerie Seager, Commissioner

Hearing Date: December 21, 2015

Decision Date: February 11, 2016

Counsel:

For Staff: Ms. Heidi Schedler

For the Respondents: No one appeared on behalf of the Respondents

Following a hearing in this matter, on December 22, 2015 an order was made against the Respondents by the Commission on certain terms pursuant to sections 43(1) and 134(1) of the *Securities Act* R.S.N.S. 1989, Chapter 418, as amended (the Act). The terms of the order will not be repeated here. Enforcement counsel has requested that pursuant to section 135(1) of the Act, administrative penalties be imposed against the Respondents. Counsel has submitted that the following administrative penalties are warranted:

- against Stratus Offshore (Stratus): \$75,000 CAD
- against Magnus Torgerson (Torgerson): \$50,000 CAD
- against John Westbrook (Westbrook): \$25,000 CAD
- against Mark Stone (M. Stone): \$25,000 CAD
- against Teddy Stone (T. Stone): \$25,000 CAD

Enforcement counsel has also requested that costs be awarded against the Respondents jointly and severally in the amount of \$3,000 pursuant to section 135A of the Act in the amount. This amount is said to reflect Enforcement staff's costs in the amount of \$3078.42.

Written submissions were made by enforcement counsel in this regard. Those submissions have been properly served on the Respondents as disclosed by the affidavit of Marlene Bucci sworn December 23, 2015. No response has been received from any of the Respondents.

In the matter of *Quintin Earl Spangle and Trevor Wayne Hill*, decision dated October 20, 2011, a panel of the Nova Scotia Securities Commission had occasion to consider the nature of administrative penalties made pursuant to section 135 of the Act and how they differ from administrative orders and prohibitions made pursuant to section 134 of the Act. At paragraph 107 the panel observed as follows:

[107.] We also agree with the BC Court of Appeal in *Thow*. In our view, the nature of the administrative orders and prohibitions that the Commission is empowered to impose pursuant to section 134 of the *Securities Act* differ from the monetary administrative penalties that may be imposed pursuant to section 135. Administrative orders under section 134 are inherently preventative in nature. Though they may be based on past conduct, their application is clearly protective of the public interest in the future. While such administrative orders can be exceptionally serious and disabling to those upon whom they are imposed, their object is to protect the public by ensuring compliance with the *Securities Act* and by removing from the capital markets those who, in the view of the Commission, pose threats to its integrity.

[108.] Monetary administrative penalties are imposed for different reasons. They are intended to deter future misconduct by the person against whom they are ordered, as well as by others who would consider similar activity, by penalizing those who have breached the Act. This deterrent effect is achieved by removing any financial incentive to breach the Act, and also by imposing additional penalties sufficient to cause an apprehension in any person considering a breach of the Act in the future that they too will suffer a similar penalty if they proceed with such activity. Thus, we agree with the BC Court of Appeal in *Thow*, that while such measures are not punitive in the narrow sense because they are preventative in nature and imposed in the public interest, they are nevertheless punitive in a broader sense, and therefore subject to the common law prohibition against retroactivity.

[109.] We are strengthened in this view by the legislative treatment of these two distinct kinds of penalty. We note that the Act empowers the Commission to issue administrative orders pursuant to section 134 if the Commission "considers it to be in the public interest, after a hearing". Pursuant to section 135, before ordering a monetary administrative penalty, the Commission must, in addition to considering it in the public interest after a hearing to do so, make a positive finding that a breach of Nova Scotia securities laws has occurred. Thus, by requiring proof of past misconduct before monetary administrative penalties can be ordered, the legislature has acknowledged the distinct, and more punitive, nature of such penalties.

Thus, different considerations apply when determining whether to impose administrative penalties. Those considerations only become relevant after a finding of a breach of Nova Scotia securities laws as has occurred here. The decision is a discretionary one. The *Quintin Earl Spangle and Trevor Wayne Hill* judgement is again helpful in outlining some of the relevant factors to take into account. At paragraph 112 of the decision is the following:

[112.] The considerations guiding the imposition of sanctions on violators of securities laws were canvassed by the British Columbia Securities Commission in *Re Manna Trading Corp Ltd.*, 2009 BCSECOM 595. The Commission (at para 16), cites with approval *Re Eron Mortgage Corporation* [2000] 7 BCSC Weekly summary 22, in which the Commission (at page 24) discussed the factors relevant to sanction as follows:

[...] the Commission must consider what is in the public interest in the context of its mandate to regulate trading in securities. The circumstances of each case are different, so it is not possible to produce an exhaustive list of all of the factors that the Commission considers in making orders...but the following are usually relevant:

- the seriousness of 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 British Columbia by the respondent's conduct,
- the extent to which the respondent (sic) 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 British Columbia,
- the respondent's fitness to be a registrant or to bear the responsibilities associated with being a director, officer or adviser to issuers,
- the need to demonstrate the consequences of inappropriate conduct to those who enjoy the benefits of access to the capital markets,
- the need to deter those who participate in the capital markets from engaging in inappropriate conduct, and factors that mitigate the respondent's conduct,
- orders made by the Commission in similar circumstances in the past.

The evidence

At the hearing we heard from three witnesses:

B.L. who testified that she had been contacted five or six times by Stratus personnel around April 2015, and at least once by Mark Stone. The purpose of the calls was to get in touch with her husband. The callers were rude and on at least one occasion attempted to deceive her by suggesting that they were engaged in a project with her husband.

L.D. who testified that he was first approached by Stratus in 2012 by a man named Cole asking that he be his broker. He declined. The next contact was from Ted Stone in 2015. Ted Stone solicited him to invest in offshore options. L.D. received an options trading account application which he completed. That application disclosed the highly speculative nature of the investment. The application also made it clear Stratus and its personnel were not registered in any jurisdiction, had no intention of being so registered and would not report earnings to any tax authority. L.D. sent \$5000 USD in mid-March in accordance with wiring instructions to a bank in Costa Rica. Thereafter, L.D. testified his contact with Stratus was with a Mr. Davis, that perhaps Ted Stone contacted him on another occasion to invest more money and that he may have had contact with a David Evans. L.D.'s testimony was somewhat confused but it is clear that he made requests for information, requested the options be sold and requested the proceeds sent back to him and never received any funds. He did however receive further requests for funds. He described the Stratus personnel as very fast talkers who were overly optimistic, "promising the moon". They represented that he had missed out on profits by not investing with them sooner. He lost all \$5000 USD on his investment. He contacted the Securities Commission in the hope of preventing any other Nova Scotia resident from suffering the same fate.

Angela Dauphinee, investigator with the Nova Scotia Securities Commission who testified she first learned of Stratus through a telephone call either Oct 27 or 28, 2014. At that time she was advised by G.S. that he had received a cold call from an individual identifying himself as Magnus Torgerson. He was soliciting G.S. to make investments in natural gas futures. G.S. was alerting the Securities Commission.

Following receipt of this information, Ms. Dauphinee checked the internet for information on Stratus. At the hearing she produced information from Stratus's website, printed off by her on October 28, 2014. Included in that material were representations that Stratus provided an offshore advantage, that it would not register in an investor's domicile and that its investment advisors were highly trained. The materials also revealed there would be no recourse for a dissatisfied investor to local courts and that Stratus was simply not regulated anywhere. Ms. Dauphinee therefore worked with Securities Commission personnel to issue an investor alert warning of the dubious nature of Stratus.

A similar investor alert concerning Stratus was issued in New Brunswick in October 2014, in Ontario in January 2015, and in Manitoba in the spring of 2015.

Cease trade orders were issued against Stratus and certain of its personnel by the New Brunswick Securities Commission early in 2015. A temporary cease trade order in the terms of the New Brunswick order was issued here in Nova Scotia on April 10, 2015.

In the spring of 2015 Ms. Dauphinee was made aware of several more Nova Scotia residents who had been approached by Stratus personnel including:

- A.L. (husband of B.L.) who was being contacted daily by Mark Stone and others for the purpose of investing;
- G. H. in Kentville who advised her that she had received phone calls from Stratus personnel for months every day or every other day soliciting investments;
- L.D. who advised he was solicited by Ted Stone and ultimately invested \$5000 USD as described above. He also advised her he had been contacted by John Westbrook and requested to invest \$30,000 more;
- W.S. who was contacted at least twice around March 23, 2015 by Stratus personnel trying to get him to invest;
- D.K. who was contacted by Stratus personnel trying to get him to invest in offshore futures.

In April 2015, Ms. Dauphinee received information concerning Stratus and the activities of Magnus Torgerson. Several persons were contacting individuals in Nova Scotia to learn of their investment interests. A list of telephone numbers in the Kentville and Amherst area was provided to Ms. Dauphinee. It appears the results of the contacts were then provided to Mr. Torgerson.

Analysis

In the circumstances of this case, based on the evidence presented, while the conduct of the Respondents was serious it cannot be said there was significant harm suffered by investors in Nova Scotia or significant harm done to the capital markets of this province. Further, while there

was evidence of approaches made to investors in Nova Scotia it cannot be said the Respondents were significantly enriched. The evidence presented indicated that one investor lost a \$5,000 USD investment in what was known to him to be a highly risky venture.

On the other hand, it is clear the Respondents were not registered in Nova Scotia, had no intention of being registered in Nova Scotia and were actively seeking Nova Scotia investors to invest in highly speculative and questionable offshore investments. It can be inferred from the limited evidence of L.D. that there was no intention on the part of Stratus or its personnel to return any funds to investors once the money was forwarded to them. They posed a risk (albeit apparently unsuccessful) to potential investors and the capital markets of Nova Scotia. It is important to demonstrate to them and others the consequences of their inappropriate conduct. It is also extremely important to deter this type of conduct by others in the future.

There is little guidance in this province concerning an appropriate quantum of administrative penalty in similar circumstances. We have concluded that in all the circumstances the following administrative penalties are warranted:

- against Stratus: \$50,000 CAD
- against Torgerson: \$40,000 CAD
- against Westbrook: \$25,000 CAD
- against M. Stone: \$25,000 CAD
- against T. Stone: \$25,000 CAD


Costs

In accordance with section 135A of the Act we are prepared to award costs against the Respondents jointly and severally. The quantum of \$3000 CAD in costs requested by enforcement counsel is based upon the cost of staff of the Commission for the investigation and prosecution of case against the Respondents. The amount of costs requested does not appear unreasonable and we are prepared to grant the request.

DATED at Halifax, Nova Scotia, this 11 day of February, 2016.


 Sandra MacPherson-Duncan, Q.C., Chair of the Panel


 Michael Deturbide, Q.C., Commissioner


 Valerie Seager, Commissioner