

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Fulcrum Financial Group Inc. et al.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
FULCRUM FINANCIAL GROUP INC., SECURED LIFE VENTURES INC.,
ZEPHYR ALTERNATIVE POWER INC., TROY VAN DYK, WILLIAM L. ROGERS,
LESZEK DZIADDECKI, WERNER REINDORF and REINDORF INVESTMENTS INC.

SETTLEMENT HEARING

Hearing: March 6, 2006

Panel: Paul M. Moore, Q.C., Chair
Robert W. Davis, Commissioner
David L. Knight, Commissioner

Appearances: Gregory W. MacKenzie For the Staff of the Commission
Melanie Adams

Matthew Wilton For Leszek Dziadecki

Also present: Leszek Dziadecki

ORAL RULING AND REASONS

The following text has been prepared for purposes of publication in the Ontario Securities Commission Bulletin and is based on excerpts of the transcript of the hearing. The excerpts have been edited and supplemented and the text has been approved by the chair of the panel for the purpose of providing a public record of the decision.

[1] We approve the settlement agreement as presented to us.

[2] The following are our oral reasons.

[3] The reasons should be read in connection with the reasons for approval concerning the parallel settlement agreement between Zephyr Alternative Power Inc. and the Commission which was approved previously today.

[4] Dziadecki is a registrant. In July of 2005 he began selling convertible debentures on behalf of Zephyr relying upon the accredited investor exemption in Rule 45-501.

[5] He received from Zephyr a sales commission of 20 percent for each convertible debenture sold.

[6] He is registered with the Commission as a salesperson and branch manager in the categories of mutual fund dealer, limited market dealer and scholarship plan dealer.

[7] We were advised by counsel that since this regulatory proceeding began, Mr. Dziadecki is no longer a branch manager.

[8] Dziadecki's sponsoring firm is Global Maxfin Investments Inc., a member of the Mutual Fund Dealers Association of Canada.

[9] Dziadecki failed to inform Global that he was selling Zephyr convertible debentures, which were sold without Global's knowledge or approval. The sales were characterized by counsel for Staff as off book sales.

[10] Between July and October 2005 Dziadecki sold \$171,000 worth of convertible debentures to ten investors and was paid \$28,200 in sales commissions by Zephyr.

[11] In October 2005 Dziadecki made two convertible debenture sales totalling \$30,000, which Zephyr had not issued at the time of the Commission cease trade order of November 3, 2005.

[12] These funds, including the \$6,000 sales commission payable to Dziadecki, were deposited in a dedicated bank account and are being held by Zephyr in this amount pending an order by the Commission.

[13] Dziadecki and Zephyr have agreed that the \$6,000 will not be paid to Dziadecki. The \$6,000 will be paid by Zephyr to the two investors in accordance with the procedures that have been accepted by the Commission pursuant to the Zephyr settlement agreement.

[14] The conduct of Dziadecki was contrary to the public interest in the following way:

1. Dziadecki sold Zephyr securities and accepted commission payments from Zephyr without the knowledge or approval of his sponsoring dealer, contrary to the Mutual Fund Dealers Association rule 1.1.5 paragraphs (g) and (h). By doing so, Dziadecki prevented Global from fulfilling its duties of supervision in respect of Dziadecki's sales of convertible debentures and its duty to provide to purchasers written confirmation of their trades as required by the section 36 of the Securities Act.
2. In respect of the three sales of Zephyr convertible debentures described above, Dziadecki failed to identify or correct erroneous information in the subscription agreement which indicated that Dziadecki would be paid a commission of 10 percent instead of 20 percent.

[15] Under the terms of the settlement set out in the settlement agreement, there will be:

1. An order by the Commission that:
 - (a) Pursuant to clause 1 of section 127(1) of the Act, that terms and conditions be imposed on Dziadecki's registration requiring close supervision of Dziadecki's trading by his sponsoring dealer for a period of two years and that within this time period Dziadecki complete the Conduct and Practices course;
 - (b) Pursuant to clause 6 of section 127(1) of the Act, Dziadecki be reprimanded;
 - (c) Pursuant to section 127(1) of the Act, Dziadecki pay to the Commission \$5,000 in costs.
2. An undertaking by Dziadecki that:
 - (a) Dziadecki will continue to cooperate with Staff in relation to the investigation of this matter and any related enforcement proceedings, and
 - (b) Dziadecki will make a settlement payment to the Commission of \$28,200, representing the total commissions paid to Dziadecki in respect of the sale of Zephyr convertible debentures and that these funds be designated for the benefit of certain investors who purchased Zephyr convertible debentures in circumstances contrary to Ontario securities law in accordance with procedures acceptable to the Commission or to other third parties as determined by the Commission. The procedures were accepted by the Commission pursuant to the Zephyr settlement agreement.

[16] We believe that this settlement agreement will act as a deterrent to others with respect to off book transactions and with respect to deliberate actions on the part of a registrant that frustrate the supervisory role assigned to dealers over their employees.

[17] Mr. Dziadecki would you stand, please.

[18] Mr. Dziadecki, we accept your counsel's representations that you are remorseful and we believe that your co-operation with the Commission and the terms of the settlement agreement show that that is the case.

[19] You are hereby reprimanded. You may be seated.

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Approved by the chair of the panel on March 9, 2006.

"Paul M. Moore"