



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
THE SECURITIES ACT, RSO 1990, c S.5**

- and -

**IN THE MATTER OF
THE FALLS CAPITAL CORP.,
DEERCREST CONSTRUCTION FUND INC.,
WEST KARMA LTD. and RODNEY JACK WHARRAM**

**STATEMENT OF ALLEGATIONS
OF STAFF OF THE ONTARIO SECURITIES COMMISSION**

Staff of the Ontario Securities Commission (“Staff”) allege:

I. OVERVIEW

1. The Falls Capital Corp. (“Falls”), Deercrest Construction Fund Inc. (“Deercrest”), and West Karma Ltd. (“West Karma”) (each incorporated in Alberta), and Rodney Jack Wharram (“Wharram”) (collectively, the “Respondents”) are subject to an order made by the British Columbia Securities Commission (the “BCSC”) dated November 25, 2015 (the “BCSC Order”) that imposes sanctions, conditions, restrictions or requirements upon them.

2. In its findings on liability dated February 11, 2015, together with its supplementary findings on liability dated March 2, 2015 (collectively, the “Findings”), a panel of the BCSC (the “BCSC Panel”) found that each of the Respondents perpetrated a fraud in contravention of section 57(b) of the British Columbia *Securities Act*, RSBC 1996, c 418 (“BC Act”). The BCSC Panel further found that Wharram made false statements to BCSC investigators, contrary to section 168.1(1)(a) of the BC Act.

3. Staff are seeking an inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, RSO 1990, c S.5 (the “Act”).

II. THE BCSC PROCEEDINGS

The BCSC Findings

The Falls Capital Corp. Investments

4. The conduct for which the Respondents were sanctioned took place between approximately 2007 and 2013 (the “Material Time”).
5. At the time of the BCSC proceedings, Wharram was a resident of British Columbia. Wharram has never been registered in any capacity under the BC Act. During the Material Time, the BCSC Panel found Wharram was the President and a director, and the directing mind of, each of Falls, Deercrest and West Karma.
6. Falls, Deercrest and West Karma have never been registered in any capacity under the BC Act, and have never filed a prospectus under the BC Act.
7. In 2007, Wharram began to raise funds through Falls to lend to a developer, Blackburn Developments Ltd. (“Blackburn”). Blackburn was the developer of a mixed-use recreational property (the “Falls Resort”) in Chilliwack, British Columbia. The Falls Resort development was to include residential units, with recreational and retail enhancements, to an existing golf course.
8. In October 2007 and in October 2008, Falls promoted and sold its securities by issuing Offering Memoranda (the “Falls OMs”), offering investors an opportunity to acquire units at a price of \$100 per unit. Each unit comprised one non-voting share of Falls (priced at \$1), and a 5% bond issued by Falls (priced at \$99). The Falls OMs provided that funds raised would be loaned to meet Falls’ financial contribution obligations pursuant to joint venture agreements with four entities (the “Joint Venture Entities”), to facilitate funding of the Falls Resort. Notwithstanding the description of the use of proceeds in the Falls OMs, funds raised were provided directly to Blackburn, and not the Joint Venture Entities.

9. The Falls OMs also provided that West Karma would promote and sell the offering, and, in return, West Karma was to receive a percentage of funds provided to the joint ventures. The Falls OMs further provided that the Joint Venture Entities would pay West Karma after Falls advanced them funds. Notwithstanding this provision in the Falls OMs, Falls paid West Karma directly from investor funds.
10. The BCSC Panel found that a total of \$5,442,400 was raised from investors under the Falls OMs, and that Falls provided \$2.3 million, directly and indirectly, to Blackburn (as described further at paragraph 16 below). The BCSC Panel further found that \$75,000 of the funds were transferred from a Falls bank account into a West Karma account, and subsequently withdrawn by Wharram to purchase a house, and not repaid to Falls.

Deercrest Construction Fund Inc. Investments

11. In 2009, Wharram, through Deercrest, also raised funds to develop townhomes and a new golf course clubhouse at the Falls Resort. Deercrest issued an Offering Memorandum on March 2, 2009, and an amended Offering Memorandum on March 31, 2010 (the “Deercrest OMs”), offering investors the opportunity to acquire \$1,000 bonds with a 12% interest rate. The Deercrest OMs provided that funds raised would be loaned to Deercrest Resort and Clubhouse Ltd. (which was referred to in the Deercrest OMs as the “Developer.”) Notwithstanding the description of the use of proceeds in the Deercrest OMs, Blackburn was the developer of the townhomes. Funds raised were provided by Deercrest directly Blackburn.
12. The Deercrest OMs also provided that West Karma was responsible for paying any commissions, and other expenses, associated with the sale of the Deercrest offering. During the BCSC’s investigation, Wharram stated that 10% of the Deercrest offering was paid to West Karma as reimbursement for commissions, and, as later agreed by Blackburn, that commission increased to 12%.
13. The BCSC Panel found that a total of \$3,953,000 was raised from investors under the Deercrest OMs, and that Deercrest provided \$1.6 million to Blackburn (as described further at paragraph 17 below).

14. The BCSC Panel further found that \$130,000 was transferred from Deercrest bank accounts into a West Karma account. Wharram then withdrew \$170,000 from the West Karma account and used the funds to purchase a house, which funds have not been repaid. The BCSC Panel also found that Wharram used other monies in Deercrest's bank accounts, including \$24,000 to purchase a ring for his wife and another \$240,000 as a loan to his wife to invest in a grocery store, neither of which were repaid.

Bankruptcy – Blackburn Developments Ltd.

15. In February 2011, Blackburn was granted bankruptcy protection. In March 2012, a receiver was appointed over its affairs. During 2011, Falls, Deercrest and West Karma filed claims against Blackburn in its bankruptcy proceedings.
16. Falls and the Joint Ventures Entities filed claims against Blackburn for a total of \$2,302,332.75. The BCSC Panel found that Falls provided \$2.3 million, directly and indirectly, to Blackburn.
17. Deercrest filed a claim against Blackburn for \$1,636,000. The BCSC Panel found that Deercrest provided \$1.636 million to Blackburn.
18. In September 2011, Falls sold its creditor claims against Blackburn to a third party for \$64,000, and proceeds of the sale were deposited in a Falls' bank account. Wharram spent \$47,500 of those proceeds on personal expenses and his family members.

False Statements – BCSC Investigation

19. In March 2013, Wharram made false statements, concerning raising of funds from investors, to a BCSC investigator during the course of the BCSC's investigation. While Wharram stated he had not raised any funds from investors in 2013, he had in fact, raised a total of approximately \$490,000.
20. In its Findings, the BCSC Panel concluded that:
 - a. Wharram and Falls breached section 57(b) of the BC Act when they took \$47,500 directly from a Falls' bank account and used it for Wharram's personal expenses;

- b. Wharram, West Karma and Falls breached section 57(b) of the BC Act when they took \$75,000 from Falls, deposited it into a West Karma account and then used it for Wharram's personal expenses;
- c. Wharram, West Karma and Deercrest breached section 57(b) of the BC Act when they took \$130,000 from Deercrest, deposited the funds into a West Karma account and then used them for Wharram's personal expenses; and
- d. Wharram and Deercrest breached section 57(b) of the BC Act when they took \$265,000 directly from Deercrest's bank accounts and used the funds for Wharram's personal expenses; and
- e. Wharram contravened section 168.1(1)(a) of the BC Act when he made false statements to BCSC investigators.

The BCSC Order

- 21. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements upon the Respondents:
 - a. against Wharram:
 - i. under section 161(1)(b) of the BC Act, that he cease trading permanently, and be permanently prohibited from purchasing any securities or exchange contracts;
 - ii. under section 161(1)(d)(i) and (ii) of the BC Act, that he resign any position that he holds as, and be prohibited from becoming or acting as, a director or officer of any issuer, registrant, or investment fund manager;
 - iii. under section 161(1)(d)(iii) of the BC Act, that he be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;

- iv. under section 161(1)(d)(iv) of the BC Act, that he be permanently prohibited from acting in a management or consultative capacity in connection with activities in the securities market;
 - v. under section 161(1)(d)(v) of the BC Act, that he be permanently prohibited from engaging in investor relations activities;
 - vi. under section 161(1)(g) of the BC Act, that he pay to the BCSC \$517,500; and
 - vii. under section 162 of the BC Act, that he pay an administrative penalty of \$500,000;
- b. against Falls:
- i. under section 161(1)(b) of the BC Act, that all persons cease trading permanently, and be permanently prohibited from purchasing any of its securities;
 - ii. under section 161(1)(b) of the BC Act, that it cease trading permanently, and be permanently prohibited from purchasing any securities or exchange contracts;
 - iii. under section 161(1)(d)(iii) of the BC Act, that it be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
 - iv. under section 161(1)(d)(v) of the BC Act, that it be permanently prohibited from engaging in investor relations activities; and
 - v. under section 161(1)(g) of the BC Act, that it pay to the BCSC \$517,500;

- c. against Deercrest:
 - i. under section 161(1)(b) of the BC Act, that all persons cease trading permanently, and be permanently prohibited from purchasing any of its securities;
 - ii. under section 161(1)(b) of the BC Act, that it cease trading permanently, and be permanently prohibited from purchasing any securities or exchange contracts;
 - iii. under section 161(1)(d)(iii) of the BC Act, that it be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
 - iv. under section 161(1)(d)(v) of the BC Act, that it be permanently prohibited from engaging in investor relations activities; and
 - v. under section 161(1)(g) of the Act, that it pay to the BCSC \$517,500;
- d. against West Karma:
 - i. under section 161(1)(b) of the BC Act, that all persons cease trading permanently, and be permanently prohibited from purchasing any of its securities;
 - ii. under section 161(1)(b) of the BC Act, that it cease trading permanently, and be permanently prohibited from purchasing any securities or exchange contracts;
 - iii. under section 161(1)(d)(iii) of the BC Act, that it be permanently prohibited from becoming or acting as a registrant, investment fund manager or promoter;
 - iv. under section 161(1)(d)(v) of the BC Act, that it be permanently prohibited from engaging in investor relations activities; and

- v. under section 161(1)(g) of the BC Act, that it pay to the BCSC \$517,500; and
- e. Wharram, Falls, Deercrest and West Karma be jointly and severally liable for the \$517,500 ordered under section 161(1)(g) of the BC Act and that no amount in excess of \$517,500 be paid by them under those orders.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

- 22. The Respondents are subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements upon them.
- 23. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.
- 24. Staff allege that it is in the public interest to make an order against the Respondents.
- 25. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.
- 26. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the Ontario Securities Commission's *Rules of Procedure*.

DATED at Toronto, this 2nd day of August, 2016.