

IN THE MATTER OF THE SECURITIES ACT,
S.N.B. 2004, c. S-5.5, AS AMENDED

AND IN THE MATTER OF

**WEALTH POOLS INTERNATIONAL, INC.,
ROBERT E. LANE, JAMES H. OAGLES,
RONALD J. FULTON, and JEANNIE TRACY**

(Respondents)

REASONS FOR THE DECISION:

James H. Oagles, Ronald J. Fulton, Jeannie Tracy

Date of Hearing: 26 March 2008

Date of Decision: 21 July 2008

Panel:

Hugh J. Flemming, Q.C., Panel Chair

Anne W. La Forest, Panel Member

Kenneth Savage, Panel Member

Representatives:

Jake van der Laan

Mark McElman

For the staff of the New Brunswick
Securities Commission

Arthur Doyle

For the respondents
James H. Oagles and
Jeannie Tracy

Ronald J. Fulton *per se.*

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INTRODUCTION

[1] The New Brunswick Securities Commission ("Commission") held hearings on 26 March 2008 pursuant to Notices of Hearing dated 28 February 2008 to consider whether, in the opinion of the Commission, it was in the public interest to approve Settlement Agreements reached between Staff of the Commission ("Staff") and the respondents James H. Oagles ("Oagles"), Ronald J. Fulton ("Fulton") and Jeannie Tracy ("Tracy"), and to make certain orders against Oagles, Fulton and Tracy pursuant to sections 184, 185 and 186 of the *Securities Act* (the "*Act*").

[2] Three separate settlement hearings were held for each of the respondents Oagles, Fulton and Tracy. At each hearing, a Settlement Agreement was entered into evidence. Counsel for Staff, counsel for Oagles and Tracy, and Fulton on his own behalf made arguments with regard to facts and law that they felt were relevant to the matter.

[3] Each Settlement Agreement contains the terms of an Order agreed upon between Staff and the relevant party.

[4] In the Settlement Agreement between Staff and Oagles ("Oagles Agreement"), Oagles agreed to the following terms:

- (a) pursuant to section 184(1)(c)(ii) of the *Act*, Oagles shall permanently cease trading in all securities, other than those beneficially owned directly by him;
- (b) pursuant to section 186(1) of the *Act*, Oagles shall pay an administrative penalty for failing to comply with New Brunswick securities law in the amount of \$10,000.00 (ten thousand dollars); and
- (c) pursuant to section 185(1) of the *Act*, Oagles shall pay the fees and expenses for the costs of the investigation in the amount of \$2,500.00 (two thousand five hundred dollars).

[5] In the Settlement Agreement between Staff and Fulton ("Fulton Agreement"), Fulton agreed to the following terms:

- (a) pursuant to section 184(1)(c)(ii) of the *Act*, Fulton shall permanently cease trading in all securities, other than those beneficially owned directly by him.

[6] In the Settlement Agreement between Staff and Tracy ("Tracy Agreement"), Tracy agreed to the following terms:

- (a) pursuant to section 184(1)(c)(ii) of the *Act*, Tracy shall permanently cease trading in all securities, other than those beneficially owned directly by her;
- (b) pursuant to section 186(1) of the *Act*, Tracy shall pay an administrative penalty for failing to comply with New Brunswick securities law in the amount of \$2,500.00 (two thousand five hundred dollars); and
- (c) pursuant to section 185(1) of the *Act*, Tracy shall pay the fees and expenses for the costs of the investigation in the amount of \$500.00 (five hundred dollars).

[7] The Panel considered and accepted the Oagles Agreement, Fulton Agreement and Tracy Agreement (together the "Agreements") and made Orders to this effect on

26 March 2008. The following are the Panel's reasons for its acceptance of the Agreements.

FACTS

General

[8] Agreed Statements of Facts are found as Part II of each Agreement. The Oagles Agreement is attached as Schedule "A" to these Reasons; the Fulton Agreement as Schedule "B"; and the Tracy Agreement as Schedule "C".

[9] The Statements of Facts each outline the structure of the investment scheme known as Wealth Pools International Inc. ("Wealth Pools"), and the relevant respondents' involvement with Wealth Pools. In summary, Wealth Pools was a pyramid scheme wherein under the guise of the purported sale of Spanish-language tutorial video DVDs, participants could pay to become "associate" members of the Wealth Pools scheme. As a Wealth Pools associate, individuals were promised to receive passive income. The Wealth Pools pyramid scheme promoted the recruitment of others into the scheme, and through this recruitment associates would receive money. Associates had the option of paying more and recruiting more participants in order to upgrade to a higher pool, with the promise of greater returns.

[10] The parties to the Agreements agree that the Wealth Pools scheme constitutes an investment contract, and therefore a "security", pursuant to subsection 1(1) of the *Act*. To trade in a security, requirements for registration and disclosure (for example, prospectus requirements) attach.

Oagles's Involvement

[11] Beginning in February of 2006, Oagles signed up as a Wealth Pools Associate. He was the first New Brunswick resident to do so. Oagles directly recruited approximately 20 New Brunswick residents to invest in Wealth Pools, and lent approximately \$19,000.00 to 11 of these recruits to permit them to participate in the scheme. Oagles also arranged and conducted sales seminars at hotels in the Saint John area, and he traveled to Florida to meet with representatives of Wealth Pools. Oagles' profits from his

involvement with Wealth Pools were approximately \$10,000.00. Oagles admits that his solicitation of investors in the Wealth Pool scheme constitutes trading in securities; he was at no relevant time registered with the Commission.

[12] Oagles recognizes that his participation in the scheme resulted in financial losses to the persons he recruited. Staff agreed, however, that Oagles was not aware that he was acting in contravention of New Brunswick securities laws when he participated in the scheme. The Oagles Agreement also states that Oagles fully cooperated with Staff's investigation, and that he is remorseful about his participation in the scheme and his recruitment of others.

Tracy's Involvement

[13] Tracy became an associate in the Wealth Pools scheme in February of 2006, after being solicited to invest by Oagles. Tracy solicited investments from amongst friends and family, and directly recruited 11 New Brunswickers to invest in Wealth Pools. She lent money to one individual to facilitate their involvement.

[14] Tracy profited in the amount of \$2,500.00 from her involvement in Wealth Pools. Tracy agrees that her solicitation of investors into Wealth Pools constitutes trading in securities. Tracy was at no relevant time registered with the Commission.

[15] Tracy has cooperated with Staff in their investigation, and she is remorseful about her participation in Wealth Pools. She recognizes that her participation in the scheme resulted in financial losses to those she recruited. Staff agrees that Tracy was not aware she was acting in contravention of New Brunswick securities laws through her participation in the Wealth Pools scheme.

Fulton's Involvement

[16] Fulton signed up as an associate with Wealth Pools in February of 2007, after having been recruited by Tracy and after attending a Wealth Pools presentation. Fulton solicited investments from amongst friends and family, and recruited five New

Brunswickers to invest in Wealth Pools. He lent money to one investor to facilitate their involvement.

[17] Fulton profited from his involvement in Wealth Pools in the amount of \$2,000.00. Fulton agrees that his solicitation of investors into Wealth Pools constitutes trading in securities. Fulton was at no relevant time registered with the Commission.

[18] Fulton has cooperated with Staff in their investigation, and he is remorseful about his participation in Wealth Pools. He recognizes that his participation in the scheme resulted in financial losses to those he recruited. Staff agrees that Fulton was not aware he was acting in contravention of New Brunswick securities laws through his participation in the Wealth Pools scheme.

[19] Fulton is insolvent and declared bankruptcy in October 2007.

REASONS FOR DECISION

General

[20] The role of a Commission in reviewing a settlement agreement, as stated in *Re Sohan Singh Koonar*, (2002), 25 O.S.C.B. 2691 at page 2692, and reiterated by this Commission in its decision in *Baskin Financial Services Inc. et al.* issued 1 May 2007, is not to substitute the sanctions it would impose for what is proposed in the settlement agreement. Rather, the Commission should ensure that the agreed sanctions are within acceptable parameters and should give significant weight to the agreement reached between adversarial parties.

[21] In the context of these parameters, the Commission must determine if the sanctions set out in the Agreements are appropriate to the specific circumstances of this case and of each respondent.

[22] The Ontario Securities Commission ("OSC") decisions in *Belteco Holdings Inc., Re* (1998), 21 O.S.C.B. 7743 and *MCJC Holdings Inc., Re* (2002), 25 O.S.C.B. 1133, list a number of factors to consider in imposing penalties, including:

- (a) the seriousness of the allegations proved,
- (b) the respondent's experience in the marketplace,
- (c) the level of a respondent's activity in the marketplace,
- (d) whether or not there has been a recognition of the seriousness of the improprieties,
- (e) the restraint of future conduct that is likely to be prejudicial to the public interest (with reference to past conduct),
- (f) whether or not the sanctions imposed may serve to deter not only those involved in the case being considered, but any like-minded people from engaging in similar abuses of the capital markets,
- (g) any mitigating factors,
- (h) the size of any profit (or loss avoided) from the illegal conduct;
- (i) the reputation and prestige of the respondent; and
- (j) the remorse of the respondent.

[23] The Commission utilized these factors when considering the settlement agreement in *Baskin*, and considered them in relation to the sanctions proposed against Oagles, Fulton and Tracy.

Oagles

[24] Oagles was the first New Brunswicker to become involved with Wealth Pools. His involvement began in February of 2006. Oagles not only directly recruited numerous individuals into the Wealth Pools scheme, but also facilitated and hosted seminars and information sessions intended to boost the number of investors into Wealth Pools. Oagles even lent money to some people to facilitate their involvement. Oagles agrees that his conduct resulted in significant financial loss to several New Brunswick investors.

[25] Oagles was not registered with the Commission, and has no history with the Commission. There was no evidence as to any prior involvement or experience with securities markets, or specifically with investment contracts. However, Oagles' ignorance of his contravention of securities law does not excuse the seriousness of his

actions. Oagles was intimately involved in Wealth Pools, and was at the top of the “pyramid” within New Brunswick.

[26] Oagles’ actions were prejudicial to the public interest. Along with specific harmed investors, his actions and the Wealth Pools scheme itself directly harmed the integrity of, and investor confidence in, New Brunswick’s capital markets. For these reasons, a cease trade order is appropriate.

[27] The registration and prospectus requirements in the *Act* are central requirements. If market participants do not comply with these requirements, the Commission is deprived of a key means of protecting investors and the integrity of the capital markets. Imposing a cease trade order and administrative penalty on Oagles is a means of restraining similar conduct in the future. These sanctions will provide a clear message that it is not acceptable to engage in activities which require registration under the *Act* without being registered.

[28] The administrative penalty of \$10,000.00 agreed upon by Staff and Oagles is directly related to Oagles’ profit from his involvement with Wealth Pools. This penalty, along with Oagles’s agreement not to collect on funds lent to others to participate in Wealth Pools, illustrates to the public that there is no benefit to be gained from contravention of securities laws. Staff has submitted, and the Panel agrees, that a settlement that removes all benefit from Oagles’ actions is appropriate. The Panel also agrees that an order for Oagles to pay \$2,500.00 of the costs of the investigation is appropriate and acceptable in the circumstances.

[29] As for mitigating factors, Oagles has recognized the seriousness of his actions and has shown significant remorse. He was also fully cooperative with Staff during their investigation. The Panel is satisfied that Oagles did not intend to harm investors, or to cause any financial loss. Those he recruited into the Wealth Pools scheme included friends, family, co-workers and members of his church. The Panel accepts that Oagles did not intend to defraud these individuals.

Tracy

[30] Tracy was solicited by Oagles to invest in Wealth Pools in February of 2006. Tracy solicited friends and family to invest in Wealth Pools, and ended up recruiting 11 New Brunswickers. Her actions resulted in financial losses to these 11 individuals and damaged the integrity of, and investor confidence in, New Brunswick's capital markets.

[31] Tracy has no prior involvement with the Commission. As to mitigating factors, the Panel accepts that Tracy did not realize that her soliciting investors in Wealth Pools was in contravention of New Brunswick securities laws, and that she did not intentionally set out to cause financial harm to the friends and family she recruited. However, for the reasons expressed above in relation to Oagles, her lack of knowledge does not excuse her actions. Tracy, like Oagles, profited from her involvement, and she directly caused financial harm to a number of New Brunswickers.

[32] The Panel finds a cease trade order and an administrative penalty of \$2,500.00, which essentially negates any profits made by Tracy through her involvement in Wealth Pools, are appropriate sanctions in these circumstances. The Panel also agrees that an order for Tracy to pay \$500.00 of the costs of the investigation is appropriate and acceptable.

Fulton

[33] Fulton became an associate in Wealth Pools in February of 2007, and recruited five others to invest money in the scheme. His actions were contrary to the public interest in that they resulted in direct financial loss to these five individuals, and caused larger damage to confidence in New Brunswick's capital markets.

[34] Fulton has no history with the Commission, and did not realize his actions were in contravention of New Brunswick's securities laws. However, as stated above in relation to Oagles, Fulton's lack of knowledge of his contravention does not minimize its seriousness. Securities laws are in place in New Brunswick to protect investors; when they are not followed, as in Fulton's case, there is often resulting harm. The Commission accepts a cease trade order as appropriate in these circumstances.

[35] Fulton did profit from his involvement with Wealth Pools, and the Commission does consider Fulton's actions, and the resulting harm to investors and the capital markets, an appropriate case for an administrative penalty and for payment of investigation costs. However, Fulton has recently declared bankruptcy and the Panel accepts Staff's submission that there is no reasonable prospect of his paying the Commission any meaningful sanction. The Panel is satisfied with Fulton's agreement not to seek repayment for funds loaned to investors for them to become involved with Wealth Pools.

[36] As for mitigating factors, the Panel accepts that Fulton did not set out to defraud the friends and family he solicited to invest in Wealth Pools. He also fully participated with Staff's investigation, and accepts the seriousness of his actions.

CONCLUSION

[37] The circumstances that led to this matter being before the Commission are unfortunate and regrettable for Oagles, Fulton and Tracy, and for those they recruited.

[38] The Panel is cognizant that Oagles, Fulton and Tracy did not intend to operate outside of the law. In many ways, they are themselves victims of this pyramid scheme. A large number of cases brought before the Commission involve individuals who create and/or participate in schemes with the sole purpose of defrauding investors. The Panel is satisfied that Oagles, Fulton and Tracy – and their actions – are not in this category. However, whatever their motives, the result was significant financial loss for numerous New Brunswickers.

[39] Though they sympathize with Oagles, Fulton and Tracy, as stated above the Panel is satisfied that the sanctions proposed in the Agreements are appropriate and acceptable in the circumstances, and are in the public interest. Anyone intending to trade in securities in the province must follow the requirements set out in the *Act*, for the protection of investors and capital markets in the province.

[40] This case provides a strong example of the importance of contacting the Commission prior to becoming involved with any purported investment schemes. If it sounds too good to be true, it usually is.

[41] For the reasons set out above, under section 191(1)(a) of the *Act*, the Panel approved the Oagles Agreement, the Fulton Agreement and the Tracy Agreement on 26 March 2008 and executed the resulting Orders of the same date.

Dated on this 21 day of July, 2008.

“original signed by”
Hugh J. Flemming, Q.C., Panel Chair

“original signed by”
Anne W. La Forest, Panel Member

“original signed by”
Kenneth Savage, Panel Member

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