

ALBERTA SECURITIES COMMISSION

Citation: Re Cawaling, 2022 ABASC 170

Docket: ENF-012780

Date: 20221219

NOTICE OF HEARING

To: Raymond Cawaling and RTAX Financial Corp. (the **Respondents**)

Notice: The Alberta Securities Commission (the **Commission**) will convene at 1:30 p.m. on Wednesday, February 8, 2023, or as otherwise directed (the **Set Date Hearing**), at Calgary, Alberta, to set a date or dates for the conduct of a hearing regarding the allegations in this Notice (the **Merits Hearing**). At the Merits Hearing, the Commission will consider whether the allegations have been proven. If so, the Commission will subsequently consider whether it is in the public interest to make orders against you under sections 198, 199, and 202 of the *Securities Act*, RSA 2000, c. S-4, as amended (the *Act*).

Location: Alberta Securities Commission, 5th Floor, 250 – 5 Street SW, Calgary, Alberta.

Procedure:

1. You may obtain disclosure and particulars of the allegations in this Notice from Carson Pillar, c/o Alberta Securities Commission, 600, 250 - 5 Street SW, Calgary, Alberta, T2P 0R4, telephone: 403.297.2427, email: carson.pillar@asc.ca.
2. You may be represented by legal counsel or represent yourself. You or your legal counsel may make representations at the Set Date Hearing as part of the process for scheduling the Merits Hearing and the hearing management sessions that will take place between the Set Date Hearing and the Merits Hearing. At the Merits Hearing, you or your legal counsel may make representations and introduce evidence regarding the allegations in this Notice.
3. If you or your legal counsel fail to attend the Set Date Hearing, the scheduling of the Merits Hearing and the hearing management sessions may proceed in your absence without further notice, following which orders may be made against you.

See attached sections 29, 93(1)(b), 110(1) 198, 199, and 202 of the Act, and Commission Rule 15-501 – Rules of Practice and Procedure for Commission Proceedings.

Reciprocation: Take notice that orders or settlements made by the Commission may form the basis for parallel orders in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions may allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to you. If an order is made or a settlement agreement is reached in relation to this Notice, you should contact the securities regulator of any other jurisdiction in which you may intend to engage in any securities related activities.

Allegations

Parties

1. Raymond Cawaling (**Cawaling**) is an individual who resided in Calgary, Alberta during the period of October 2016 to November 2019 (the **Relevant Period**).
2. RTAX Financial Corp. (**RTAX**) is an Alberta company.
3. Cawaling was a director of RTAX and was the guiding mind of RTAX during the Relevant Period.

Circumstances

4. Cawaling, through RTAX, was in the business of providing accounting services, giving tax advice, selling insurance and investing.
5. During the Relevant Period, the Respondents raised capital from investors for RTAX to invest in various third-party investments (collectively, the **RTAX Investment Schemes**).
6. The RTAX Investment Schemes included:
 - 6.1 Purporting to invest capital with a Swiss-based resource company, Chimera Corporation; and
 - 6.2 Purporting to invest capital with a Portuguese company, Definitely Green Investments LDA, related to an investment in a precious stone.
7. In furtherance of the RTAX Investment Schemes, the Respondents:
 - 7.1 Entered into short term loan agreements with investors promising high rates of return in short periods of time;
 - 7.2 Connected investors with Chimera, which entered into short term loan agreements with investors promising high rates of return in short periods of time; or
 - 7.3 Entered into joint venture agreements with investors promising high rates of return in short periods of time.

8. In each of the circumstances described in paragraph 7, investors would pay their funds to the Respondents or entities under Cawaling's direction and control.
9. Each of the short term loan agreements and joint venture agreements (collectively, the **Securities**) are a security within the meaning of section 1(ggg) of the *Act*.
10. During the Relevant Period, the Respondents raised more than \$800,000 in capital from investors.
11. In engaging in the RTAX Investment Schemes, the Respondents engaged in a continuing course of conduct in breach of Alberta securities laws.

Illegal Distributions

12. During the Relevant Period, the Respondents sold the Securities to approximately 20 investors (the **Distributions**).
13. As trades in securities of an issuer that had not been previously issued, the sales of the Securities were "distributions" as defined in the *Act*.
14. At no time did RTAX file a preliminary prospectus or prospectus with the Executive Director of the Alberta Securities Commission, or receive a receipt for same, in respect of the Distributions.
15. The Respondents did not qualify investors for any of the prospectus exemptions listed in National Instrument 45-106, *Prospectus Exemptions*.
16. For many of the Distributions, prospectus exemptions were not available.
17. For some of the Distributions where RTAX was not the issuer, Cawaling and RTAX nonetheless engaged in acts in furtherance of trade in relation to those Distributions.

Fraudulent Course of Conduct

18. During the Relevant Period, the Respondents:
 - 18.1 Provided false and misleading information to investors about how their funds would be used, including false representations made to certain investors that their funds would be used for the RTAX Investment Schemes; and
 - 18.2 Misappropriated investor funds for Cawaling's personal use and/or other unauthorized uses including by:
 - 18.2.1 Transferring investor funds to his personal bank accounts;
 - 18.2.2 Paying debts unrelated to the RTAX Investment Schemes; or
 - 18.2.3 Paying to other investors outstanding interest and returns of capital.

(collectively, the **Prohibited Acts**).

19. In carrying out the Prohibited Acts, the Respondents deceived some or all of the investors. In particular, the Respondents:
 - 19.1 Provided false and misleading information to certain investors regarding the Securities;
 - 19.2 Did not invest funds as was represented to investors;
 - 19.3 Did not advise investors that some or all of their investment was or would be used to pay other investors; and
 - 19.4 Did not advise investors that investors' funds would be, or had been, used directly or indirectly for Cawaling's personal use and/or other unauthorized uses.

Investors' Pecuniary Interests at Risk

20. In carrying out the Prohibited Acts, the Respondents put the investors' pecuniary interests at risk as follows:
 - 20.1 The Respondents used investor funds for purposes that were contrary to the representations made to those investors about how their funds would be used; and
 - 20.2 The Respondents put the investors at risk of losing funds or caused investors to lose funds.

Knowledge of the Prohibited Acts and Deprivation

21. Cawaling, by engaging in the Prohibited Acts, had knowledge of the Prohibited Acts. Cawaling made the representations to the investors and controlled the capital raised from investors.
22. In carrying out the Prohibited Acts, Cawaling knew or reasonably ought to have known that engaging in the Prohibited Acts could have, as a consequence, investor losses or investors' pecuniary interests being put at risk.
23. RTAX, through its guiding mind Cawaling, had knowledge of the Prohibited Acts and knew or reasonably ought to have known that engaging in the Prohibited Acts could have, as a consequence, investor losses or investors' pecuniary interests being put at risk.
24. In carrying out the Prohibited Acts, the Respondents engaged in acts, practices or a course of conduct that they knew or ought to have known may perpetrate a fraud on investors within the meaning of the *Act*.

Breaches

25. As a result of the above, Staff allege that:

- 25.1 The Respondents breached section 110(1) of the *Act* by distributing the Securities without having filed and received a receipt for a preliminary prospectus or a prospectus, and without an exemption from that requirement for some or all of the relevant distributions of the Securities; and
- 25.2 The Respondents breached section 93(1)(b) of the *Act* by directly or indirectly engaging or participating in an act, practice or course of conduct relating to securities that they knew or ought to have known may perpetrate a fraud on investors.

Calgary, Alberta, 19 December, 2022.) ALBERTA SECURITIES COMMISSION))) <i>“Original signed by”</i>) _____) David C. Linder, K.C.) Executive Director
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